The Supreme Court ACA Case: Implications for Health IT
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Learning Objectives

• Define the four major issues before the Supreme Court and how they could be addressed by the Court
• Explore how the Court’s ruling could invalidate other important provisions of the ACA, or the entire law
• Discuss the short- and long-term implications of the Supreme Court’s decisions on health information technology
### The Supreme Court ACA Case: Implications for Health IT

<table>
<thead>
<tr>
<th><strong>Stimulus Law</strong></th>
<th><strong>Healthcare Reform Law</strong></th>
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| American Recovery and Reinvestment Act of 2009  
Includes HITECH/EHR Incentive Program  
Not part of case before Supreme Court | Patient Protection and Affordable Care Act of 2010  
Supreme Court is debating Constitutional issues regarding this law |
Today’s Speakers

Nandan Kenkeremath, JD
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HIMSS Legal Task Force
The Justices' Conference Room, where the Justices meet in private to discuss cases.
Status of Case

- Twenty-six states, the National Federation of Independent Business, and other parties have challenged the Affordable Care Act (ACA) in Federal Court on Constitutional grounds.

- The U.S. Supreme Court heard oral arguments in the Affordable Care Act case on March 26-28, 2012, with a decision anticipated by the end of June 2012.
Four Major Issues for the Court

• **Anti-Injunction Act**—Does the Anti-Injunction Act prevent a court challenge regarding the individual mandate until a penalty/tax is actually paid?

• **Individual Mandate**—Does Congress have the power under the Constitution to requiring nearly all individuals to purchase minimum health insurance coverage under threat of penalty?

• **Medicaid Expansion**—Is ACA’s requirement that the states expand Medicaid eligibility unduly coercive in violation of principles of federalism in the Constitution?

• **Severability**—If either the Individual Mandate or the Medicaid Expansions are found unconstitutional what provisions, if any, of ACA can remain as severable?
Certain Article I, Section 8 Powers

- The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

- To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

- To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.
Certain Statements of Justice Kennedy

- During arguments, Justice Kennedy said the government has a "very heavy burden of justification" to show that Congress is allowed to change "the relationship between the individual and the government in a very fundamental way"
- He also asked Obama administration lawyer if Congress can create commerce in order to regulate it
- [T]he government tells us that[] . . . the insurance market is unique. And in the next case, it’ll say the next market is unique. But I think it is true that if most questions in life are matters of degree, in the insurance and health care world, both markets — stipulate two markets — the young person who is uninsured is uniquely proximately very close to affecting the rates of insurance and the costs of providing medical care in a way that is not true in other industries. That’s my concern in the case.”
Severability Options

• The Court could just strike the Individual Mandate
• The Obama administration argues that only provisions for pre-existing conditions and guaranteed issue requirements should be invalidated if the individual mandate is struck
• The Court could find additional related provisions to strike
• The Court could strike all of ACA
ACA Overview – Health Information Technology

• ACA’s Three Health IT Themes:
  – Enhance Quality Reporting and Measurement
    • Expand and Enhance Quality Reporting
    • Improve Quality of Care
    • Encourage Quality Care through Reimbursement
  – Establish Uniform Operating Rules and Standards
  – Health IT Workforce Initiatives

• Many of the ACA Health IT provisions reflect the increasing adoption by the federal government of Health IT enabled performance measurements for health care purchasing and other innovative programs. This adoption will continue regardless of the fate of the ACA in the Supreme Court.

• Funding may be the issue for certain of the ACA provisions, depending on the Supreme Court’s decision.
Data Quality: The legislation includes provisions regarding quality reporting by healthcare providers. Health IT is a key tool among these provisions to efficiently improve the accuracy and expand the scope and type of data collected.

- Section 2717: Directs the establishment of quality reporting requirements for group or individual health insurance issuers offering insurance.
Quality Reporting

- **Section 3004 3005**: Requires long-term care hospitals, inpatient rehabilitation hospitals, hospice programs and cancer hospitals to submit data on quality measures to the Secretary.
Quality Reporting

- **Section 3013:** Directs the establishment of new quality measures where no quality measures exist and to improve, update, and expand existing quality measures. The law defines a quality measure as a standard for measuring the improvement of population health or of health plans, service providers, and other clinicians in the delivery of health care services. The law requires grants to be awarded to entities for the purpose of developing quality measures that allow for the assessment of, among others, meaningful use of health IT, health disparities, and equity of health services.
Quality Reporting

• **Section 4302**: Requires federally conducted or supported healthcare programs or surveys to collect and report demographic data, including ethnicity, sex, primary language, and disability status, as well as data at the smallest geographic level possible, such as state or local, etc. Requires HHS, with the Office of the National Coordinator (ONC), to develop national standards for data collection, and interoperability and security for data management systems.
Quality Reporting

• **Section 6301**: Calls upon the Office of Communication and Knowledge Transfer to disseminate findings of government-sponsored research to groups such as, among others, vendors of health IT focused on clinical decision support. The Office must assist users of health IT so that the research is incorporated into clinical practices in a timely and efficient manner.

• **Section 10332**: Requires claims data for items and services under Medicare parts A, B, and D to be made available for performance evaluations of providers and suppliers of healthcare services.
Quality Reporting

- **Section 10333**: Establishes grants to support the development of community-based collaborative care networks. Grants can be used for, among many things, telehealth services.

- **Section 10109**: Directs the Secretary to seek input on a variety of topics from such organizations as the National Committee on Vital and Health Statistics (NCVHS), the Health Information Technology Policy Committee, and the Health Information Technology Standards Committee, and standard setting organizations and stakeholders as determined appropriate.
Quality Reporting

• **Section 10305**: requires the public reporting of performance information, which must be aligned with the expansion, interoperability efforts, and standard setting of health IT.
New Programs

Programs: The legislation establishes a host of new programs to foster quality healthcare. Health IT is a key factor in many of these new programs.

- **Section 1322**: Creates the Consumer Operated and Oriented Plan (CO-OP) program to establish non-profit health insurance companies. Organizations in the CO-OP program may enter into collective purchasing agreements for items and services such as health IT.
New Programs

• **Section 1323**: Requires the establishment of competitive and affordable community health insurance options offered through the Exchanges. The non-profit entities that will provide the community option shall, among other things, include procedures for the use of technology so that real-time data can be used to investigate indications of fraud and abuse
New Programs

• Section 2401: Provides medical assistance for home and community-based services and support for eligible individuals, which should help in the accomplishment of activities of daily living and include back-up systems and mechanisms to ensure continuity of care
New Programs

- **Section 2703**: Provides medical assistance to eligible individuals with chronic conditions, who shall receive payments for the provision of home health services, which will include, among many things, care management and the use of health IT to combine services.
New Programs

• **Section 3011**: Requires the Secretary to create a national strategy to improve the delivery of healthcare services, patient outcomes, and population health by January 1, 2011. This national plan should be integrated with the quality improvements and measurements for health IT required by the American Recovery and Reinvestment Act (ARRA) of 2009.
New Programs

- **Section 4103**: Creates an “Annual Wellness Visit” for each Medicare beneficiary, who will be encouraged to increase self-management skills and management of and adherence to provider recommendations through the use of health IT and other personalized technology.
New Programs

• **Section 5405**: Establishes the “Primary Care Extension Program” which will educate and provide technical assistance to primary care providers about evidence-based practices and disseminate research findings. To carry out this program, the Secretary will consult with agencies experienced in health care and preventative care, including the ONC.
New Programs

• **Section 934:** Establishes technical assistance grants for eligible entities to demonstrate the capability to provide information and technical assistance to healthcare providers, to provide technical support to institutions that deliver healthcare. The entities that receive such grants shall coordinate with health IT regional extension centers regarding quality improvement, system delivery reform, and best practices information.
New Programs

• **Section 5604**: Establishes grants for qualified community mental health programs to, among many things, provide health IT for healthcare professionals

• **Section 6701**: Establishes grants for long-term care facilities to assist in the purchase, lease, development, and implementation of certified EHR technology. Electronic standards must be adopted for the exchange of clinical data between long-term care facilities
New Programs

- **Section 10410**: Makes available grants to eligible entities to establish national centers of excellence for depression, which are required to, among other things, use electronic health records and telehealth technology to coordinate, manage, and improve access to healthcare.
Reimbursement Structures

Reimbursement Structures: The legislation aims to reward providers for demonstrating the delivery of quality healthcare. Health IT will be a key component in the process.

- **Section 1311**: Creates state-based American Health Benefit Exchanges through which individuals and small businesses can purchase health insurance. Increased reimbursement will be developed for providers who implement, among many things, best clinical practices, evidence based medicine, and health IT to improve patient safety and reduce medical errors.
Reimbursement Structures

• **Section 2706**: Establishes the Pediatric Accountable Care Organization Demonstration Project to recognize pediatric medical providers as ACOs for the purpose of receiving incentive payments. A minimal level of savings must be reached to receive the payment.

• **Section 3002**: Extends the Physician Quality Reporting Initiative (PQRI) program to 2014, integrates the quality reporting measures within the PQRI with reporting requirements for meaningful use of electronic health records, and establishes an informal review process.
Reimbursement Structures

• **Section 3021**: Creates the Center for Medicare and Medicaid Innovation (CMI), which will test innovative payment and service delivery models. These models should, among many things, support care coordination for patients through the use of a health IT enabled network.
Reimbursement Structures

- **Section 3022**: Creates a “shared savings program” that encourages the investment in infrastructure and redesigned care processes for high quality and efficient service delivery. Healthcare providers may manage and coordinate care for Medicare beneficiaries through an accountable care organization (ACO), which can be eligible to receive payments for shared savings. An ACO is required to, among many things, promote evidence-based medicine and coordinate care through the use of telehealth and other enabling technologies.
Reimbursement Structures

- **Section 3024**: Requires the test of a payment incentive and delivery service model that reduces costs by creating physician and nurse practitioner directed home-based primary care teams. These teams will employ, among many things, electronic health information systems. Teams who employ, among others, EMR and health IT will receive preference for approval.
Reimbursement Structures

- **Section 3201**: Establishes bonus payments to Medicare Advantage Plans that conduct, among many things, clinical decision support and data collection using health IT systems
Operating Rules and Standards

- **Section 1104**: Establishes a single set of operating rules regarding eligibility and claims status, electronic funds transfers, healthcare payment and remittance rules, health claims, enrollment in health plans, health plan premium payments, referral authorizations, and unique health plan identifiers, for the purpose of simplifying the administration of healthcare. The operating rules will be consensus-based and will reflect the business rules of health plans and healthcare providers, as well as operation under the standards issued under HIPPA. The NCVHS will advise the Secretary on the process, and audits will be performed to ensure that health plans are in compliance. A Review Committee will review the adopted standards and, when appropriate, will coordinate between the EHR standards approved by the ONC.
Operating Rules and Standards

• **Section 1561**: Requires the Secretary and the HIT Policy and Standards Committees to develop interoperable and secure standards for the enrollment of individuals in Federal and State health service programs. These standards must allow for electronic matching against existing data, simplification of documentation, reuse of stored eligibility information, capability for individuals to manage information online, integration with new programs and rules, and other functionalities necessary to streamline the process. The Secretary retains the option to require States to implement these standards in order to receive Federal funding for health IT investments, and is required to award grants to eligible entities for the purpose of developing new or adapting existing health IT so that compliance with standards is reached. The eligible entities are then required to share any developed technology and/or other information.
Health IT Workforce

• **Section 2801**: Updates the membership composition of the Medicaid and CHIP Payment and Access Commission (MACPAC) to include individuals who have had direct experience in, among many things, health IT.

• **Section 3012**: Establishes the “Interagency Working Group on Health Quality,” which will collaborate with Federal departments and agencies, disseminate strategies and models, avoid duplication, and assess the quality of the public sector. The group will be made up of representatives from organizations such as HHS, CMS, CDC, AHRQ, and ONC.
Health IT Workforce

• Section 3501: Establishes the Center for Quality Improvement and Patient Safety within the Agency for Healthcare Research and Quality (AHRQ). The Center will identify, develop, and disseminate innovative methodologies and strategies for quality improvement practices, including, among other things, the expansion of health IT into children’s healthcare
Health IT Workforce

- **Section 3502**: Creates community-based interdisciplinary “health teams” to provide support services to primary care practices within a hospital service area. These health teams must demonstrate a capacity to implement and maintain health IT that meets certification.
Health IT Workforce

- Section 5101: Establishes the “National Healthcare Workforce Committee” that communicates between Departments, develops education and training, disseminates information on policies that affect recruitment and retention of the workforce, and identifies barriers to coordination. The Committee should address a range of healthcare topics, including the increased demand for workers in the enhanced IT and management workplace.
Health IT Workforce

• **Section 5301**: Supports the development of primary care training and enhancement programs, such as capacity building in primary care. The Secretary should award grants to entities that fulfill some categories, such as providing training in evidence-based practice and health IT.

• **Section 6114**: Requires the Secretary to conduct two projects, one of which updates nursing practices and facilities for the use of health information technology to improve care.
Questions?

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Upcoming HIMSS Events

HIMSS Virtual Conference & Expo
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Government Health IT Conference & Exhibition
June 11-12, 2012   www.govhealthit.org

National Health IT Week
September 10-14, 2012   www.healthitweek.org

HIMSS 11th Annual Policy Summit
September 12-13, 2012   www.himss.org/policysummit