

P4P Webinar:
Preparing for the Supreme Court
Decision on Health Reform
June 7, 2012



AMERICAN BENEFITS

COUNCIL



How will the U.S. Supreme Court rule on health reform...

**... and what are the
implications for plan
sponsors?**

Supreme Court Decision

- Originally considered by many a frivolous challenge; expected to be quickly resolved by lower courts
- Now, seen as a likely landmark case with potentially far-reaching impact ... well beyond health care reform

Agenda

- **When** will the decision be released?
- **What** are the key issues:
 - Challenge to Individual Mandate (IM)
 - Severability: what else falls if IM struck down?
- **What** are the possible outcomes?
- **How** do they impact plan sponsors?
- **How** will the Court rule?

When will the Court rule?

- When will the decision be released?
 - Late June
 - Possibly earlier?
 - Will the Court announce when the decision will be released?

What are the Key Issues?

- Constitutionality of the individual mandate
 - What are the legal issues?
 - What are the main arguments of plaintiffs and federal government?
 - Take-aways from oral arguments

What are the Key Issues?

- Severability: If the individual mandate is unconstitutional, what else falls?
 - What test does the Court apply in determining whether the IM is severable?
 - What are the main arguments of the plaintiffs and federal government?
 - Take-aways from oral arguments

Possible Outcomes

- Individual mandate upheld
 - PPACA implementation continues
 - Congressional response?
 - End of litigation?

Possible Outcomes

- Individual mandate held unconstitutional
 - IM severed and remainder of law stands
 - IM and insurance reforms severed and rest of the law stands
 - How does this impact insurance markets? Plan sponsors?

Possible Outcomes

- Individual mandate held unconstitutional
 - IM not severable and entire law is struck down
 - What is the impact on PPACA implementation and compliance?

Immediate Issues for Employers

- What should I do about provisions already implemented?
 - Coverage for children up to age 26
 - Early Retiree Reinsurance Program (ERRP) payments
 - First-dollar coverage for preventive care
 - Annual or lifetime dollar limits
 - New claims appeals and external review procedures

Immediate Issues for Employers

- What should I do about provisions in the pipeline for 2012 and 2013?
 - W2 reporting on the value of health coverage
 - Summaries of Benefits and Coverage (SBC)
 - \$2500 limit on health FSA
 - PCORI fee

Looking Ahead to 2014 ...

- What about provisions effective 2014 and beyond?
 - Employer shared responsibility (4980H)
 - Automatic enrollment
 - Exchanges and premium subsidies
 - Wellness plan incentive increase to 30%
 - High cost plan tax

Strategic Issues for Employers

- What immediate guidance will be needed to clarify compliance obligations?
- Will Congress attempt to fix any constitutional defects? What will the President propose?
- What portions of the law might continue under agency authority?
- What happens to coverage under the health insurance exchanges and will it still be available?
- What communications should I make to employees?

Predictions?

For More Information

www.americanbenefitscouncil.org

The screenshot shows the homepage of the American Benefits Council. At the top left is the logo and the text "AMERICAN BENEFITS COUNCIL SHAPING THE WORLD OF CORPORATE BENEFITS POLICY". To the right is a search bar and a "Site Map/Index" link. Below this is a navigation menu with links for "ABOUT THE COUNCIL", "OUR ISSUES", "NEWS ROOM", "PUBLICATION LIBRARY", "RESOURCES", "CONTACT US", and "MEMBERS ONLY".

The main content area is divided into three columns:

- SPOTLIGHT ON:** A yellow box titled "Employers enter health care reform compliance phase". It contains text about the Council's work with employers and a list of links: "The Health Care Reform Issue Page", "A detailed implementation chart (members only)", and "The Council's Webinar Archive (members only)". A "details" button is at the bottom.
- LATEST NEWS:** A grey box titled "Council Files Amicus Brief in U.S. Supreme Court PPACA Case". It contains a quote from the brief and a link to read the full news release. "previous" and "more" navigation links are at the bottom.
- JOIN US!** A grey box titled "Become a Member". It describes the Council's mission and lists the types of plans covered. A "sign up" button is at the bottom.

Below the main content area are two more sections:

- OUR ISSUES:** A dark grey box with three columns of links: "HEALTH" (including Health Care Reform (PPACA), Employer Shared Responsibility, Premium Tax Credit, Essential Benefits, Summary of Benefits, Health Insurance Exchanges, Claims and Appeals, Preventive Care Coverage), "RETIREMENT" (including Defined Contribution/401(k) Plan Reform, Automatic Enrollment, Investments, Plan fees, Taxation of Retirement Plans/Limits, Defined Benefit Plans & PBGC, Funding Reform), and "OTHER ISSUES" (including International Issues, Electronic Disclosure, Executive Compensation).
- FOLLOW US ON TWITTER:** A teal box with the Twitter handle @benefitscouncil and a tweet about pension plan underfunding.

Kathryn Wilber
kwilber@abcstaff.org

(202) 289-6700