



National
Congress of
American
Indians

SUPREME COURT TO HEAR ORAL ARGUMENTS THE AFFORDABLE CARE ACT & INDIAN COUNTRY

On March 23, 2010, with the permanent reauthorization Indian Health Care Improvement Act (IHCIA), tribal leaders and advocates achieved a 34 year old goal - a permanent legislative commitment by the federal government to delivering health care for American Indian and Alaska Natives.

Passed with the Patient Protection and Affordable Care Act (ACA), the IHCIA permanently reauthorized critical legislation that authorizes daily healthcare delivery to over 2 million American Indians and Alaska Natives. Together, both pieces of legislation empower the Indian Health Service (IHS), its patients, and tribal governments by improving access to quality care and strengthening the entire IHS system.

Two years since it was restored, the highest court in the nation will consider the constitutionality of central pieces of the ACA, including whether or not the IHCIA will stand if other pieces of the ACA fall. This, and many other questions before the court this week, will directly impact the implementation of ACA and IHCIA in tribal communities. What follows is a summary of the questions the Court will decide and how its decisions will affect implementation of the IHCIA:

Can the Supreme Court Rule Prematurely on the Minimum Coverage Requirement?

On Monday March 26, 2012, the first day of arguments, the Court heard arguments about whether the challenges to the minimum coverage requirement (also referred to as the “individual mandate”) are premature and if it has jurisdiction to rule on the requirement prior to the law’s enforcement.

If the justices decide there is no jurisdiction to rule on the requirement before enforcement, a decision about its constitutionality will be postponed until 2015—when individuals first begin incurring the penalty. Delaying the decision to 2015 means the implementation of the ACA and IHCIA will continue as planned. However, if the constitutionality is later challenged again and the Court decides to overturn the law in 2015, it will come at a cost to the federal government and result in reduced health care and insurance access for American Indians and Alaska Natives.

Is the Minimum Coverage Requirement Constitutional?

During the second day of oral arguments, litigators debate whether the minimum coverage requirement is constitutional. This question has been highlighted in the national media since passage of health reform, but it is one that does not directly affect American Indians and Alaska Natives.

HEALTH INSURANCE ACCESS FOR NATIVE PEOPLE

In 2009,

- 33% of American Indians had no health insurance coverage.*
- 36% had private insurance.*
- 30% relied on Medicaid coverage.*

In a recent report, 29,000 more American Indian and Alaska Native young adults gained health care coverage directly as a result of the ACA.**

When the Medicaid expansion is implemented even more American Indians and Alaska Natives will gain coverage.

* Office of Minority Health “American Indian/Alaska Native Profile”

** Office of Minority Health. “More Minority Young Adults are Obtaining Health Insurance.”

Citizens of federally recognized tribes are statutorily exempt from the minimum coverage requirement, meaning that American Indians and Alaska Natives that choose to receive their health care directly from the IHS will not be affected. Additionally, a ruling on this provision will have no impact on implementation of the IHCA. However, tribal nations recognize the importance of building a strong market for health insurance, and maximum participation in the market will ultimately make all communities across the United States stronger and healthier. Tribal governments are committed to working with the federal government in implementing provisions of the ACA and IHCA to improve access to insurance, quality of primary and preventative care, and overall health status.

HEALTH STATUS OF TRIBAL COMMUNITIES

American Indians and Alaska Natives are:

- Twice as likely as their white counterparts to suffer from diabetes.*
- 400% more likely to contract tuberculosis.**
- 638% more likely to suffer from alcoholism. **
- 67% more likely to have pneumonia or influenza.**

* Centers for Disease Control and Prevention. "National Diabetes Fact Sheet: General Information and National Estimates on Diabetes in the United States, 2003."

** Indian Health Services, "Trends in Indian Health, 2000-2001."

Will the permanent reauthorization of IHCA stand without the ACA?

Indian Country has a huge stake in the question that the Court will consider on Wednesday. The question of severability – which asks if one part of the law is found unconstitutional, can the rest of the law still be implemented – is the most critical in regards to implementation of IHCA. The permanent reauthorization of this statute depends on the Court's decision to uphold the larger piece of legislation despite its final decision about the minimum coverage requirement.

A decision that the law is unseverable would make the entire law null and void, and would erase significant strides made through the IHCA by: terminating ongoing feasibility, obstructing enrollment of tribal employees in the Federal Employees Health Benefits Program, and endangering current implementation efforts by IHS, the Department of Veterans Affairs, and Department of Health and

Human Services. If the Court finds the law unseverable, the loss to tribal communities would be tremendous, and permanent reauthorization of the IHCA would be undone.

Hundreds of tribal governments, tribal organizations, and partners signed and submitted an amicus brief that supports the minimum coverage requirement and, alternatively, severability of the law if the Court should find the individual mandate unconstitutional.

Is the Medicaid Expansion Constitutional?

In addition to severability, the Court will hear arguments about the ACA's Medicaid expansion and its constitutionality. Medicaid expansion will allow for greater coverage of American Indian and Alaska Native patients and better access to preventative care. Upholding the Medicaid expansion provisions is integral to strengthening the IHS system. IHS is chronically underfunded, and the expansion will enable IHS clinics to recover greater reimbursements, resulting in more funding for direct care of patients.

ABOUT NCAI - Founded in 1944, the National Congress of American Indians (NCAI) is the oldest, largest, and most representative American Indian and Alaska Native organization in the country. **For more information visit www.ncai.org**

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