

Supreme Court's Ruling on Affordable Care Act Raises Medical Liability Concerns

July 5, 2012

On June 28, the U.S. Supreme Court issued a ruling on the Affordable Care Act (ACA). With Chief Justice John Roberts siding with the majority, the individual mandate and Medicaid expansion, two key provisions of the ACA, were resolved.

Beginning in 2014, individuals who do not comply with maintaining “minimum essential” health insurance coverage will be “penalized” in the form of a tax enforced by the IRS. In addition, the Medicaid expansion was ruled as unconstitutional, and the federal government cannot revoke existing Medicaid funding from states that do not participate.

While the potential impact of the ACA on medical liability cannot be known unless, and until, the law is fully implemented, you should be aware that some of its provisions may affect medical litigation. The following are highlights of projected changes:

- The ACA does not include caps on recovery in medical liability lawsuits. However, the Act does not limit the ability of individual states to enact caps. Therefore, Michigan’s two-tier limitation on noneconomic loss will remain unchanged.
- The ACA includes funding for state-level “demonstration projects” to study the effectiveness of proposed litigation reform measures such as offer and disclosure and dedicated health courts.
- As more patients are covered under a government-sponsored health insurance program, settlement of medical liability matters may become more complex as defendants could be required to protect liens for past care and to supply “set asides” for future care. This is much like the current system that already applies to cases involving litigants receiving Medicaid and Medicare benefits.
- A shortage of physicians and other health care professionals resulting from a growing pool of insured patients has been predicted. If this occurs, patient safety could be compromised.
- The ACA places an emphasis on patient safety. Hospitals may expect to see expansion of “never events” and denial of payment for conditions thought to be due to medical negligence.

Plunkett Cooney’s Medical Liability Practice Group will continue to follow the implementation of the ACA and will issue updates, as necessary, to keep you informed about the impact of this sweeping health care legislation. Should you have questions about the information presented in this Rapid Report or about the ACA generally, contact the author or your Plunkett Cooney attorney.

SUPREME COURT'S RULING ON AFFORDABLE CARE ACT RAISES MEDICAL LIABILITY CONCERNS Cont.

To review the Supreme Court's decision in its entirety, [click here](#). To download an ACA employer timeline that marks key deadlines as implemented by the Act, [click here](#).

Rapid Reports are distributed by the firm of Plunkett Cooney. Any questions or comments concerning the matters reported may be addressed to D. Jennifer Andreou or any other members of the practice group. The brevity of this update prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. Copyright © 2012. All rights reserved PLUNKETT COONEY, P. C.