



**THE STATE OF NEW HAMPSHIRE
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Supreme Court Health Reform Decision FAQs – July 10, 2012

On June 28, 2012, the United States Supreme Court issued its decision on the federal health reform law. Here are answers to some questions the New Hampshire Insurance Department has received about how the Court's decision will affect health insurance in New Hampshire.

1. Did the U.S. Supreme Court uphold all components of the Affordable Care Act (ACA) as written, or were some parts amended or rejected?

The Supreme Court upheld virtually the entire ACA. The central debate in the Supreme Court focused on whether the federal government has the power to require people to purchase health insurance. In the final decision, a majority of the Justices concluded that Congress cannot issue a legal command requiring the purchase of insurance, as this is not authorized by the Commerce Clause, but can impose a tax on those who choose not to make the purchase. Because the Court decided that Congress does have the power to take this action, the law was upheld - not as a legal command to buy insurance, but as a tax on those who choose to go without insurance.

Under the Court's decision, all of the insurance-related provisions remain intact. The requirements that have already taken effect, such as coverage for dependents up to age 26, will stay in place. In addition, many other provisions will take effect on January 1, 2014. These include guaranteed issue (no one who applies can be denied health insurance), coverage for preexisting conditions, and the establishment of Health Benefit Exchanges where people can purchase health insurance and see whether they qualify for Medicaid or premium tax credits.

Only one portion of the ACA was actually struck down. The Court removed language in the law that would have allowed the federal government to withhold funds for the entire existing Medicaid program based on a state's refusal to participate in the Medicaid expansion. The practical effect of this ruling is to give states a choice of whether or not to implement the expansion. This portion of the Court's decision came as a surprise to many people, as the lower courts had not focused much attention on the Medicaid issue.

2. In response to the ACA, the New Hampshire legislature passed a law making it unlawful to force any state resident to purchase health insurance. How does the Supreme Court ruling on the ACA affect this New Hampshire law?

RSA 400-A:14-a, which took effect July 1, 2011, provides that “No resident of this state . . . shall be required to obtain or maintain a policy of individual insurance coverage except as required by a court or the department of health and human services where an individual is named a party in a judicial or administrative proceeding.” The provision also states that no resident of the state shall be liable under the state Insurance Code “for any penalty, assessment, fee, or fine as a result of his or her failure to procure or obtain health insurance coverage.”

The Supreme Court ruled that Congress does not have the power to require citizens to purchase health insurance. Thus, the first sentence of RSA 400-A:14-a does not come into play. The federal government cannot force citizens to obtain insurance, and there is no state law that imposes such a requirement.

The Court did conclude that Congress has authority to impose a tax on citizens who can afford insurance but choose not to purchase it. The New Hampshire law does not address the tax issue. Rather, it prohibits the state Insurance Department from imposing any penalty for failure to obtain health insurance. The Insurance Department is not involved in collecting federal taxes. Any collection of taxes (or award of tax subsidies) under the ACA will be conducted entirely by the federal government.

3. As of 2014, uninsured people in New Hampshire will have to pay a federal tax. What monies or services do New Hampshire residents get back in exchange for that tax?

Under the ACA, New Hampshire residents who choose to remain without health insurance after January 1, 2014 must make an annual payment that has been characterized as a tax by the Supreme Court. However, the ACA also provides for significant tax credits that people earning up to 400% of the federal poverty level can use to purchase health insurance. These Health Insurance Premium Tax Credits will be available through a federally-facilitated Health Exchange that will begin operating in January of 2014.

4. Will New Hampshire have a Health Exchange? What role (if any) will state agencies play in the Exchange?

The New Hampshire legislature has prohibited the state from establishing a state-based Exchange under the ACA. Thus, any Exchange in New Hampshire will be a federally-facilitated Exchange.

Even after an Exchange is set up, New Hampshire agencies will continue to play the roles they have played in the past with respect to health insurance regulation and Medicaid. The Insurance Department will continue to regulate health insurance companies and policies and to assist consumers who have questions or complaints about their policies. The Department of Health and Human Services will continue to make decisions about Medicaid eligibility.

New Hampshire law allows state agencies to operate certain limited and specific Exchange functions consistent with the agencies' traditional roles, such as reviewing and approving the health insurance plans that would be offered on the Exchange. The agencies plan to work with the joint legislative Health Reform Oversight Committee to determine what degree of state agency involvement is appropriate.

5. What services will be covered under health insurance purchased through the Exchange?

The ACA requires that certain services designated as Essential Health Benefits (EHB) be included in all insurance policies sold through the Exchange or through the individual or small group health insurance markets. Each state must select its own EHB benchmark from a list of ten insurance plans in existence as of January 2012. In New Hampshire, the Health Reform Oversight Committee will choose the EHBs. This must occur no later than September 30, 2012.