

### Health Reform News Alert – June 29, 2011

#### *Bipartisan appeals panel upholds federal mandate that everyone buy health insurance*

A three-judge panel for the Sixth U.S. Circuit Court of Appeals in Ohio became the first federal appellate court today to uphold the constitutionality of the Affordable Care Act mandate that all Americans purchase health insurance coverage.

The 2-1 decision is particularly significant as it was joined by Judge Jeffrey Sutton, a conservative jurist appointed by President George W. Bush who has previously stoked controversy for rulings that narrowed federal protections available to persons with disabilities. Judge Sutton rejected the argument that the purchase of health insurance constitutes “inactivity” that cannot be regulated by the federal government. Instead, he became the first Republican-appointed federal judge to conclude that self-insuring is economic activity that is within the bounds of Congress’ historically-broad power to regulate interstate commerce.

Judge Sutton’s opinion followed the decision written by Judge Boyce Martin, who was appointed by President Carter. The majority decision held that “the unique aspects of health care...make all individuals active in this market” and that an individual mandate was a constitutional mechanism to prevent “free riders” who can afford to purchase health insurance but instead force taxpayers to subsidize their health care when they inevitably get sick or injured. However, Judge Sutton included the caveat that the court could revisit the issue once the full impact of the individual mandate becomes clear after its 2014 implementation.

Judge Michael Graham, a Reagan appointee, was the lone dissenter. He argued that upholding the individual mandate would effectively make Congress’ interstate commerce power boundless.

The case was brought by the conservative Thomas More Law Center and four individuals, who can now appeal to the full Sixth Circuit and ultimately the U.S. Supreme Court. Three-judge panels for the Fourth and 11<sup>th</sup> Circuits are expected to render decisions in July.

<http://www.nytimes.com/2011/06/30/us/30health.html>

<http://thehill.com/blogs/healthwatch/legal-challenges/169035-appeals-court-says-healthcare-law-is-constitutional>

<http://www.politico.com/news/stories/0611/58040.html#ixzz1QgrGgpAT>