



Print Close

## With Judge's Ruling, Health-Care Industry is Left Waiting for Direction

By Ken Sweet

Published December 14, 2010 | FOXBusiness

What will be the fate of the health-care industry -- or more specifically, what will be the fate of President Obama's recently-enacted health-care law -- if the individual mandate is ultimately found unconstitutional?

That's what policymakers, industry participants and Wall Street analysts have been digesting since Monday afternoon when U.S. District Judge Henry Hudson ruled that a provision in the Patient Protection and Affordability Act requiring Americans to have a minimum level of health coverage -- commonly known as the individual mandate -- was unconstitutional and would need to be stripped from the law.



ADVERTISEMENT

While Judge Hudson's ruling is non-binding on other courts unless it is upheld by the Supreme Court, the question of whether the individual mandate is constitutional or not could put the long-term business and policy implications of Obama's health-care law on hiatus for the time being.

Agree with the individual mandate or not, the health-care industry was working on the assumption that the entire 2,000-page law would be implemented over a period of time. This ruling calls that all into question.

"The thing that concerns me about [the ruling] is it further delays our understanding of what the ramifications of the health-care bill is going to be," said Toby Cosgrove, CEO of the well-regarded Cleveland Clinic, in an interview with FOX Business on Tuesday.

Cosgrove said the industry was also still waiting for the Department of Health and Human Services' regulations that are supposed to accompany this bill. He expects those regulations could be delayed even further with the ruling hanging over regulators' heads.

Analysts who cover the health industry generally took a "wait and see" stance following Judge Hudson's ruling.

In a note, Bank of America Merrill Lynch analyst Andrew Bressler said "these challenges will ultimately be decided by the Supreme Court over the next several years, and we do not expect that any preliminary court decisions will have a major impact on the implementation [and the industry] until that time."

Bressler did say that if successful a challenge to the individual mandate would be a negative for hospitals and health-care providers because uninsured patients would once again become an issue. For insurers, the implications are less certain because of a range of new regulations that are still part of the law that are largely unaffected by the narrow ruling.

Wedbush analyst Sarah James said she does not expect the Supreme Court to rule on this issue until 2012 "if at all" and largely expects that the entire law will be found constitutional. James echoed Bressler's comments that if Judge Hudson's ruling was upheld by the Supreme Court it would negatively impact managed-care institutions like hospitals.

From a policy perspective, the individual mandate was often seen as the keystone to Obama's health-care reform proposal.

Michael Cannon, a health policy expert with the libertarian think tank CATO Institute, called the individual mandate one part of a "three-legged stool" needed to make the other parts of the

legislation work. Without the mandate, regulations such as insurance companies being prohibited from denying coverage to those with pre-existing conditions and lifetime dollar limits become impossible to enforce.

“Patients could simply wait to enroll in health coverage until they needed some kind of expensive treatment or procedure, and thus pocket the premiums they would have paid when they were not in need of much medical attention,” wrote James Capretta, who covers health care for the conservative-leaning *National Review*.

The other side of the political spectrum generally agrees that the individual mandate provision is required to make the whole law work.

“Without this provision, the law is unworkable and the consumer protections it provides become unenforceable,” wrote Jonathan Gruber and Judy Feder with the Center for American Progress. “If people who need health care come to dominate an insurer’s policyholders, then insurance can no longer spread or ‘pool’ risk.”

Of course, there is also the question as to whether Judge Hudson’s ruling will stand up in higher courts. A judge in another district in Virginia ruled two weeks ago, hearing the same testimony, that the individual mandate was constitutional. A ruling by a federal district court judge in Florida is due later this week.

 Print  Close

---

**URL**

<http://www.foxbusiness.com/markets/2010/12/14/judges-ruling-healthcare-industry-left-waiting-direction/>

---

[Home](#) | [Video](#) | [Markets](#) | [Personal Finance](#) | [Small Business](#) | [Home Office](#) | [On Air](#) | [RSS Feeds](#) | [Mobile](#) | [Contact Us](#) | [About Us](#) | [FAQs](#)

| [Fox News](#) | [Advertise with us](#) | [Jobs at FOX Business Network](#) | [Internships at FBN](#)

[Terms of use](#). [Privacy Statement](#). For FOXBusiness.com technical issues write to [foxbusinessonline@foxbusiness.com](mailto:foxbusinessonline@foxbusiness.com); for all other feedback, write to [feedback@foxbusiness.com](mailto:feedback@foxbusiness.com).

Quotes delayed at least 15 minutes. Market Data provided by Interactive Data (Terms & Conditions). Powered and implemented by Interactive Data Managed Solutions. Company fundamental data provided by Morningstar. Earnings estimates data provided by Zacks. Mutual fund data provided by Lipper. Economic data provided by Econoday. Dow Jones & Company Terms & Conditions.

This material may not be published, broadcast, rewritten, or redistributed. © 2010 FOX News Network, LLC. All rights reserved. All market data delayed 20 minutes.

#