



## Women & the Affordable Care Act & the Supreme Court Challenge

# Why This is Important

The health care law, known as the Affordable Care Act (ACA), protects women from discriminatory health insurance practices, makes health coverage more affordable and easier to obtain, and improves access to many of the health services women need.

## Why This is Very Important

- In 2008, one in four women reported going without necessary health care because they could not afford it.
- The Department of Labor estimates that women make approximately 80% of health care decisions.
- In 2009 only 13% of plans sold in the individual market included comprehensive maternity coverage.
- Historically, women in the most states have been charged more for health insurance than men—a practice known as gender rating (NM already bans it!).

## Under the Health Care Law: 17 million Women will Gain Insurance Coverage

1. Universal Insurance Coverage  
Everyone has health insurance, financial assistance to purchase insurance and expanded eligibility for Medicaid
2. Reform Insurance Market  
Everyone can get insurance, stronger consumer protections
3. Personal Responsibility  
Everyone must participate with narrow exceptions

## Reforms Now

- Ban on rescinding coverage
- Ban on denials of kids with pre-existing conditions
- Eliminate lifetime limits
- Remain on parents coverage until 26
- Prohibitions on discrimination
- Closing the “donut hole”
- Providing preventive services at no additional cost
- Small business tax credits
- Pre-Existing Condition Insurance Plans
- Greater transparency for premium rate review
- Requirements on Medical Loss Ratio

## Reforms Later

- Ban on Gender Rating (done in New Mexico)
- Ban on denials for pre-existing conditions
- Establish Affordable Insurance Exchanges
- Expand coverage options
- Eliminate annual limits

# ACA Helps Women Now

- Health plans are prohibited from imposing lifetime limits on coverage and limiting the amount of money they will pay for benefits during one year.
- Women now have “direct access” to obstetrical and gynecological care.
- All new health plans are required to cover key preventive health services for women at no cost, such as co-payments and deductibles.
- A requirement that employers with more than 50 employees provide women a reasonable time and place to express breast milk.

## ACA is helping women in New Mexico

- Over 111,000 women in New Mexico are receiving preventive services without a co-payment.
- Over 21,00 young adults in New Mexico gained insurance coverage.
- Nearly 213,000 women in New Mexico no longer have a lifetime limit on their health coverage.
- Over 114,000 women on Medicare in New Mexico have received preventive services.



## More Benefits and Protections in 2014

- Starting in 2014, 159,000 women who are uninsured—25.6% of women in New Mexico—will have new options for affordable health insurance coverage.
- Starting in 2014, all new health plans must cover a list essential health benefits including maternity and newborn care, mental health treatment, and pediatric services such as vision and dental care.

# Questions Before the Court

- 1. Too Early to Decide?**
- 2. Individual Responsibility Provision (the Mandate)**
- 3. If the Individual Responsibility Provision Goes, What Else Goes? (Severability)**
- 4. Medicaid Expansion**

# SCOTUS Questions

## 1. Too Early to Decide?

Before deciding on the constitutionality of the individual mandate, the Court must decide whether the federal Anti-Injunction Act (AIA) prevents the courts from deciding lawsuits about the ACA at this time.

# SCOTUS Questions

## **2. Individual Responsibility Provision (the Mandate)**

The Court is looking at whether requiring someone either to obtain health insurance or pay a penalty is a fundamentally different sort of requirement than other types of commercial regulation and thus goes beyond Congress's commerce clause powers.

# SCOTUS Questions

## 3. Severability

If the Court decides that the individual mandate is unconstitutional, it then must decide whether the mandate is “severable” so that the rest of the ACA would survive.

# SCOTUS Questions

## 4. Medicaid Expansion

A group of states has argued that it is unconstitutional for Congress to expand Medicaid eligibility under the ACA.

States challenging the Medicaid expansion argue that because it is politically difficult to turn down Medicaid funding, the ACA's expansion of Medicaid unconstitutionally coerces the states to spend more on the program.

## What has already happened?

- Four Courts of Appeals have considered the ACA.
  - Two have held that the individual responsibility provision is constitutional
  - One has held that the individual responsibility provision cannot be challenged until it goes into effect in 2014
  - One has held that the provision is unconstitutional
- The only Court of Appeals to consider the Medicaid expansion found it constitutional.

# What Happens Next?

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# Frequently Asked Questions

Q: Will the Court rule on the individual mandate? Or will it defer due to the Anti-Injunction Act?

Q: If the Court finds either the individual mandate or Medicaid expansion unconstitutional, must the rest of the ACA fall?

Q: What happens if:

- The Court upholds the whole law?
- The Court strikes down the individual mandate and/or Medicaid expansion?
- The Court strikes down the entire ACA?

Q: If the individual mandate is struck down, can States still move forward with implementation?

# Thank you!

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