



The Pinellas Protector



Greetings to Our Clients, Friends and Broccoli-Lovers!

We hope that 2012 is bringing you good fortune. In just nine months, we'll learn the truth about the end-of-the-world predictions! My call is that the earth will be spinning as usual next year, plus or minus a few meters per second.

I've decided not to try to predict the fate of the Affordable Care Act (ACA), which is under the review of the U.S. Supreme Court. That doesn't mean I don't have my own opinion about the constitutionality of ACA's mandate to purchase health protection! Many will remember references to the broccoli case, after a federal judge in Pensacola Florida argued last year that Congress has no more right to order residents to purchase health coverage than it does to require them to buy broccoli (see lead article below).

I've been back in the saddle with insurance product design, helping my low-based client create a new combination product to cover both Life Insurance and Long Term Care under one policy. See the short article below to learn more about combination products, which are designed to protect hard-earned assets and address the concern "what if I don't use it" raised on LTC policies.

Finally in this issue, I'm including a testimonial to my new masseuse in the Clearwater area. Maria Chang of [Maria's Professional Massage](#) has been a breath of fresh air in an otherwise overwhelming cloud of challenges I've faced balancing the demands of actuarial consulting and insurance sales.

It doesn't matter whether or not you're a broccoli-lover.. either way we wish you a happy, healthy and stress-free spring.

Until next quarter,

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Quote of the Month

"The Future Is Purchased By The Present."

Samuel Johnson
1709 - 1784

Health Care Reform Update

What did the SCOTUS have to say about the Affordable Care Act?



Tasty!

More than a year ago, U.S. District Judge Roger Vinson in Pensacola, Florida argued that the Commerce Clause of the U.S. Constitution gives Congress no more right to order residents to own health insurance than it does to require them to buy broccoli. This year, we will find out whether or not the U.S. Supreme Court agrees with Judge Vinson.

The High Court Justices could choose to sort out the broccoli case in a number of ways, instead of simply striking down or upholding the law. But many believe, and the Justices may agree, that other provisions of the ACA cannot be severed from the individual mandate provision.

This past week, a professional organization to which I belong, the American Academy of Actuaries, reiterated its position on severability of the individual mandate from other provisions of the ACA.

[In its amicus brief](#), the Academy informed the Court that, "However the Court rules on the constitutionality of the individual-mandate provision ... the guaranteed-issue and community-rating provisions should stand or fall together with it." This judgment stems from the fundamental actuarial perspective that, "... in order for the community-rating and guaranteed-issue provisions in the Act to operate as intended, they must be paired with an effective mechanism to ensure broad participation in the health-insurance market, such as an individual mandate."

The Academy is not taking a position on the law itself, on the constitutionality of the mandate, or if the mandate should be severable from any provisions in the law other than those related to guaranteed-issue and community-rating.

So how did the March hearings go? Well, nothing has been decided but read on to make your own judgment.

On day one, Robert Long, a lawyer representing "friends of the court," made his argument that the Tax Injunction Act forbids the federal

courts from hearing challenges to new taxes -- including the penalties individuals might have to pay if they failed to buy minimum coverage as required by ACA -- until the taxes actually have taken effect. But Donald Verrilli Jr., the solicitor general for the Obama administration, and Greg Katsas, who represented the National Federation for Independent Business, Nashville, Tenn., and the 26 states that are trying to overturn ACA, argued that the federal courts already have jurisdiction over the constitutionality of the individual coverage mandate penalty.

Katsas said the Supreme Court can rule on the challenge because opponents of the law are separating the challenge of the coverage ownership requirement from the penalty provision. Chief Justice John Roberts questioned that line of reasoning, saying "it seems very artificial to separate the punishment from the crime."

On day two, interesting comments were made by Associate Justice Anthony Kennedy, who may be the likeliest candidate to provide the "fifth vote" that ACA supporters need to keep the individual mandate alive.

Toward the end of oral arguments, Kennedy said to U.S. Solicitor General Donald Verrilli Jr. that he finds the implications of the individual mandate "concerning" because "it requires the individual to do an affirmative act."

"In the law of torts our tradition, our law, has been that you don't have the duty to rescue someone if that person is in danger," Kennedy said. "The blind man is walking in front of a car and you do not have a duty to stop him absent some relation between you. And there is some severe moral criticisms of that rule, but that's generally the rule. And here the government is saying that the federal government has a duty to tell the individual citizen that it must act, and that is different from what we have in previous cases and that changes the relationship of the federal government to the individual in the very fundamental way."

Kennedy went on to ask, "Was the government's argument this -- and maybe I won't state it accurately -- it is true that the noninsured young adult is, in fact, an actuarial reality insofar as our allocation of health services, insofar as the way health insurance companies figure risks? That person who is sitting at home in his or her living room doing nothing is an actuarial reality that can and must be measured for health service purposes; is that their argument?"

Kennedy also said regarding noninsured young adults that, "They are in the market in the sense that they are creating a risk that the market must account for."

On day three, Kennedy told Edwin Kneedler, a lawyer representing the Obama administration, that severing the individual mandate from the rest of the PPACA could be a more extreme exercise of judicial power than knocking down the whole act. "We would be exercising the judicial power if one act was -- one provision was stricken and the others remained to impose a risk on insurance companies that

Congress had never intended," Kennedy said. "By reason of this court, we would have a new regime that Congress did not provide for, did not consider."

So now, with the very real possibility of the individual mandate being struck down by the Supreme Court as unconstitutional, the question then becomes what else would go with the mandate? Will the High Court conclude that some or all of the other provisions related to the mandate must go too?

While I have no duty to do so, I agree with the official position of the American Academy of Actuaries; namely that the the guaranteed-issue and community-rating provisions of the bill cannot reasonably be severed from the individual mandate. I say if the mandate is to fall, then so should the entire bill. And truth be told, that's the outcome I'd like to see.

Life/Long Term Care Insurance Combo Products

What's the buzz about?

Combination policies involving Life Insurance and Long Term Care protection have been on the market for nearly two decades, yet these products are not well known. The typical design is to accelerate the policy's face amount to pay for Long Term Care services if the insured meets benefit criteria as defined in the contract. The product also may allow the insured to extend Long Term Care benefits beyond the total payout provided by the face amount, or to include a return of premium.

In recent years, companies have been developing combination policies involving Annuities and Long Term Care protection. This type of design has more of an investment-oriented focus; and in 2010 the doors were opened up for new sales due to passage of the Pension Protection Act.

Combination designs may be appealing to people who have rejected standalone Long Term Care Insurance because that coverage expires without value if the insured never uses Long Term Care services. Combination products address this concern over potential lack of value, since no matter what happens an insurance benefit will be paid.

The combination product that I'm helping to design and price should be available for sale in most states within the coming year. LTC benefits will be paid in cash based on meeting either the Activity of Daily Living (ADL) or Cognitive Impairment trigger; and without any requirement to submit a bill for services received. With a cash design, insureds have no need to be concerned if a certain facility or provider will be covered by the policy.

An interesting twist on this product is the availability of second-to-die joint coverage, intended for couples who are interested in protecting their estate from the potential cost of Long Term Care. In this design, two insureds share access to a single face amount which will be accelerated if the LTC benefit trigger is met by either person; and for

additional premium both insureds can extend LTC protection for their lifetime.

If there is a feature you'd like to see included in a new combination product design, please get in touch with me... quickly!

Highly Recommended Professional Masseuse - Maria Chang

This year, I've had the great fortune of meeting Maria Chang, a professional masseuse based in Clearwater. I located Maria through an internet search, and as we all know there's no guarantee of success when thumbing through the yellow pages or your favorite search engine!

Maria delivers high-quality massage therapy using many different modalities and techniques, tailored to your personal preferences. For instance, she offers Ashiatsu Massage to those who enjoy having a professional walk on their back. I enjoy the barefoot massage quite a bit; but my personal favorites are her Deep Tissue, Warm Bamboo and Thai Yoga Massage. Maria is still developing her expertise with Thai Yoga; and I feel honored to be one of her early clients with this modality.

When you contact Maria, please mention that you heard of her through AH Insurance Services, Inc. She earned my highest recommendation.

[Click here to visit Maria's website.](#)

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If you have questions/comments, call us on 727-397-6932; or visit us online at www.ahinsuranceservices.com.



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