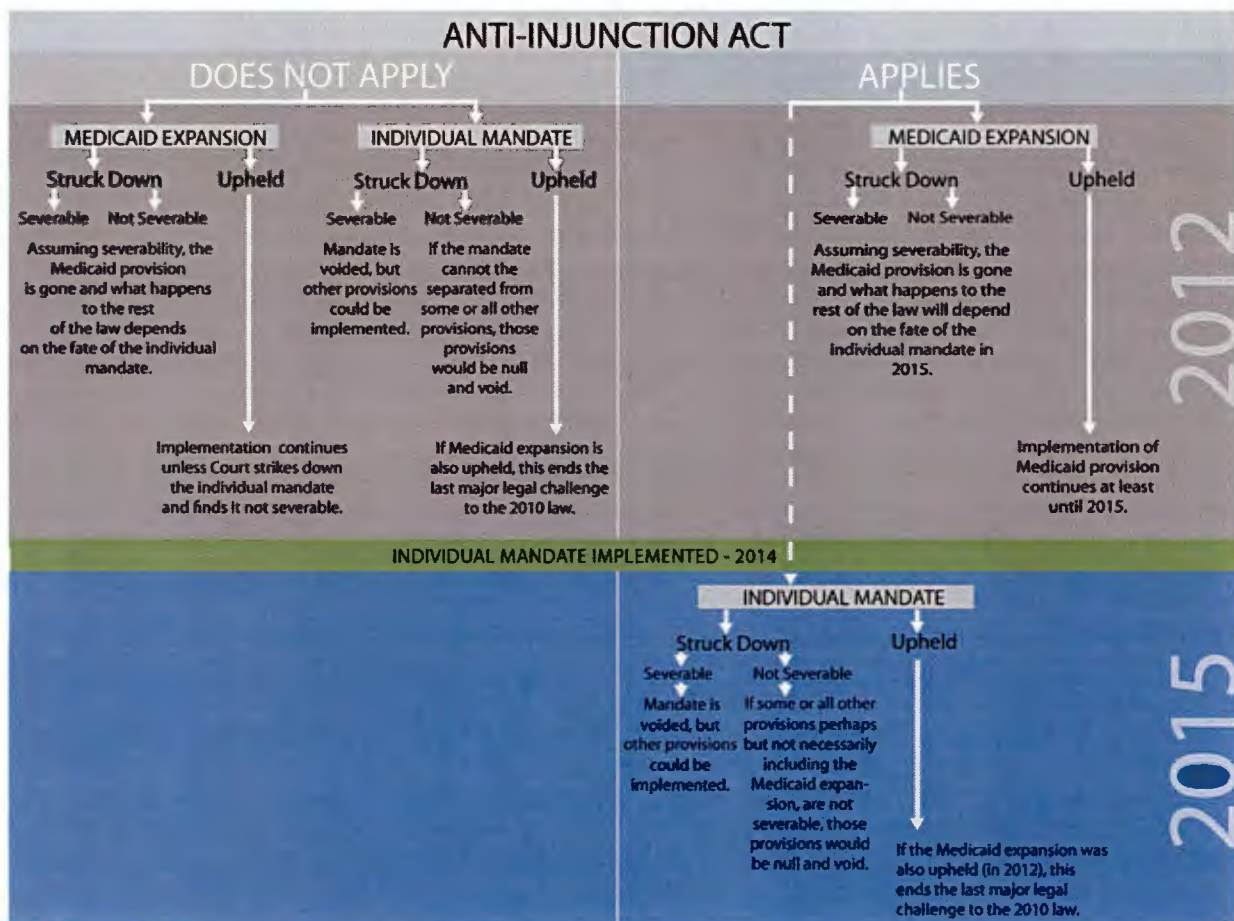## Legal Questions And Answers That Will Decide The Health Law's Fate

NOV 18, 2011

The challenge to the Affordable Care Act that the U.S. Supreme Court will consider this March involves a series of complex and inter-related legal questions. How the court views each one -- including the constitutionality of the law's individual mandate and Medicaid expansion, as well as the application of the Anti-Injunction Act and the question of severability -- will trigger a cascade of related decisions. What the court finds will determine whether the measure is implemented in whole, in part or at all.

With Stuart Taylor as a guide, Kaiser Health News provides this diagram to help see how the sweeping health law's implementation could proceed -- or not -- based on each of these questions.

Although the Anti-Injunction Act does not apply to the constitutionality of the Medicaid expansion, the diagram is designed to show how the various decisions related to each could potentially interact.

ANTI-INJUNCTION ACT

DOES NOT APPLY

MEDICAID EXPANSION

Struck Down   **Upheld**

Severable   Not Severable

Assuming severability, the Medicaid provision is gone and what happens to the rest of the law depends on the fate of the individual mandate.

Implementation continues unless Court strikes down the individual mandate and finds it not severable.

INDIVIDUAL MANDATE

Struck Down   **Upheld**

Severable   Not Severable

Mandate is voided, but other provisions could be implemented.

If the mandate cannot the separated from some or all other provisions, those provisions would be null and void.

If Medicaid expansion is also upheld, this ends the last major legal challenge to the 2010 law.

APPLIES

MEDICAID EXPANSION

Struck Down   **Upheld**

Severable   Not Severable

Assuming severability, the Medicaid provision is gone and what happens to the rest of the law will depend on the fate of the individual mandate in 2015.

Implementation of Medicaid provision continues at least until 2015.

2012

INDIVIDUAL MANDATE IMPLEMENTED - 2014

INDIVIDUAL MANDATE

Struck Down   **Upheld**

Severable   Not Severable

Mandate is voided, but other provisions could be implemented.

If some or all other provisions perhaps but not necessarily including the Medicaid expansion, are not severable, those provisions would be null and void.

If the Medicaid expansion was also upheld (in 2012), this ends the last major legal challenge to the 2010 law.

2015

Individual Mandate	Anti-Injunction Act	Medicaid Expansion	Severability
This provision of the health law requires people not covered by group plans to buy government-approved health insurance by 2014 or pay a penalty.	A statute that bars federal courts from striking down tax provisions until they have taken effect, and thus would require delaying any decision on the individual mandate until 2015 if its penalty is deemed a "tax."	A provision requiring states to extend Medicaid coverage to people with incomes up to 133 percent of the federal poverty level in order for the states to keep their federal matching Medicaid funds. Some states say this will compel them to spend too much on their share of the match.	If the court strikes down the individual mandate or the Medicaid provision, it will then decide whether that voided provision or provisions can be separated from the rest of the law. If some cannot be separated, the non-severable ones would be dead.