

# INFORMED ON REFORM ALERT



Alerting you on federal health care legislation and regulations

## ACA Ruled Unconstitutional – Law Remains in Effect During Appeal

December 17, 2018

On Dec. 14, 2018, U.S. District Judge Reed O'Connor issued a ruling that determined the Affordable Care Act (ACA) is unconstitutional because of last year's change to the federal tax law that zeroed out the ACA's individual mandate penalty. The ruling was in favor of Texas and a number of states in *Texas v. United States*, which is the most recent in a series of judicial challenges to the ACA. The ruling is expected to be appealed, and the ACA remains in effect.

### How did we get here?

The U.S. Supreme Court has upheld the ACA as constitutional twice since the law was enacted. In the 2012 decision, the Supreme Court ruled that the individual mandate was a tax, which Congress has authority to impose, and therefore the ACA was constitutional.

The plaintiffs in the *Texas v. United States* litigation argued that when the mandate penalty was reduced to zero in the 2017 Tax Cuts and Jobs Act, the tax was effectively eliminated, so the individual mandate – and ACA as a whole – is unconstitutional. Judge O'Connor agreed that the mandate "can no longer be fairly read as an exercise of Congress' tax power." He further stated that because the mandate was essential to the law, it could not be severed (or separated) from the ACA, which means the entire ACA is invalid.

### What the ruling means for the ACA today

The *Texas v. United States* ruling is not an injunction and does not block the operation of the law, so the ACA remains in effect. California is expected to appeal Judge O'Connor's ruling. The newly elected Democratic majority in the U.S. House is also expected to support the appeal. This is the first step in what is expected to be a long legal process.

On Dec. 15, the Centers for Medicare & Medicaid Services (CMS) stressed that open enrollment for health coverage on the public Marketplaces would continue as planned, and there would be no impact to coverage or subsidies for 2019. While open enrollment

ended in most states on Dec. 15, some state-run Marketplaces\* have extended open enrollment periods. Individuals interested in purchasing coverage should confirm enrollment deadlines with their [state-specific Marketplace](#).

### **Potential impact moving forward**

If the ruling is upheld on appeals, the entire ACA – containing hundreds of provisions affecting all areas of the health care system – would be struck down. It would void ACA provisions such as protections for people with preexisting conditions, 100% coverage for certain preventive services, dependents remaining on their parents' health plan until age 26, and more. It could also mean Americans who buy plans on the public Marketplace would be at risk of losing their health coverage, as well as those who receive coverage as a result of Medicaid expansion that has been adopted in 36 states plus the District of Columbia.

We encourage you to bookmark Cigna's health care reform website [www.InformedonReform.com](http://www.InformedonReform.com), where we will continue to keep you updated as this news develops.

\*California, Colorado, Connecticut, Massachusetts, Minnesota, Rhode Island, New York and the District of Columbia have extended deadlines. Vermont also has a grace period through Dec. 21 that may allow enrollees additional time.



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