

## **Health Plans Should Prep for the Supreme Court's ACA Decision in June.**



**As the Supreme Court prepares to announce its decision potentially affecting the Affordable Care Act (ACA) by the end of June 2021, here's what providers of ACA-qualified health plans should know.**

What can be expected from the Supreme Court's pending decision this month on the Affordable Care Act and how can health plans prepare? *California v Texas* is the major case that deals with the constitutionality of the 2010 Affordable Care Act (ACA) following the passage of the Tax Cuts and Jobs Act of 2017. The crux of this case asks whether there should be an income tax penalty on those who do not have health insurance.

During oral arguments for this case in November 2020, a majority of justices indicated via their questions that they were ready to uphold most of the ACA. But the justices also face several challenging procedural issues regarding this case. Questions arose during oral arguments surrounding the legal standing to bring this lawsuit and whether a problematic section of the ACA, if found to be the case, should necessarily invalidate the entire law.

As the Supreme Court prepares to announce its decision by the end of June 2021, the final month of the court's annual term, here's what providers of ACA-qualified health plans should know.

### **How Did We Get Here?**

The insurance requirement of the ACA, known as the "individual mandate," is a key provision of the law. It's designed to promote balance within an ACA health plan's membership to include plan members who are relatively healthy to offset the higher costs of members with multiple care conditions.

In December 2017, President Trump signed a bill reducing the individual mandate tax penalty to \$0 in 2019. Afterward, several states, led by Texas, argued that the part of the ACA tied to the individual mandate was no longer valid. The argument continues that the individual mandate was so fundamental to the ACA that the ACA would have never passed in 2010 without it; therefore, the entire ACA should be overturned. Before lower courts could rule on this argument, the Supreme Court stepped in and agreed to hear this case.

In November 2020, the Supreme Court heard two hours of oral arguments over the constitutionality of the individual mandate. Chief Justice John Roberts and Justice Brett Kavanaugh indicated via their questions that the ACA could be upheld, even if the court determines that a tax penalty enforcing the individual mandate is unconstitutional. This is a concept known as severability, which holds that a law may continue to remain effective, even if one or more of its terms or provisions are found to be unenforceable.

In two previous legal challenges to the ACA, the Supreme Court has left the law largely intact. If Roberts and Kavanaugh both join the Supreme Court's three justices (Stephen Breyer, Elena Kagan and Sonia Sotomayor) who have previously upheld the ACA, then the Supreme Court will also uphold the ACA in *California v. Texas*, in full or in part.

As reported by *The Washington Post* and others, the Supreme Court could decide to:

1. Dismiss the case on technical grounds, thus kicking it back to the lower courts (this is unlikely)
2. Uphold the ACA in its entirety, including the individual mandate and tax penalty
3. Uphold the ACA, minus the individual mandate (status quo where the tax penalty = \$0)
4. Uphold the ACA, minus the individual mandate, and strike other provisions in the ACA closely linked to the mandate
5. Strike down the ACA in its entirety (this is also unlikely)

### **What if the ACA is Repealed?**

Approximately 12 million individuals selected or were automatically reenrolled in the ACA's Health Insurance Marketplaces during the 2020 open enrollment period, according to [KFF](#). In the unlikely event that the ACA is

repealed, that could mean the following for individuals enrolled in a Marketplace Plan:

- People who had COVID-19 could be classified as having a ‘pre-existing’ condition (pre-existing conditions are currently protected under the ACA)
- Young adults under age 26 could lose their health coverage
- People who rely on health coverage for mental health support could find themselves at greater risk
- Women could pay more for health coverage – something that the ACA prohibited because of its provisions regarding sex discrimination
- Drug costs for seniors could increase. The ACA lowered drug costs by closing the Medicare Part D coverage gap (the “donut hole”) where seniors who reached a certain level of prescription drug spending faced a coverage gap until their plan’s catastrophic coverage kicked in
- Hospitals and health systems would take another financial hit because their uninsured and uncollectable balances would increase – on top of the financial hit they took in 2020 because of Covid-19 spending and cancellation of elective surgeries and procedures to make room for Covid-19 patients

### **Handling the Supreme Court Ruling**

The justices of the Supreme Court typically save announcing their biggest decisions, such as *California v. Texas*, until the final month of their term. Depending on this case’s outcome, health plans should be prepared to quickly communicate about the Supreme Court’s decision to their key constituents, including members, providers and other pertinent groups. Proactive communication can do much to allay individuals’ concerns about ACA coverage, as well as position health plans that carefully explain this subject as recognized thought leaders in the industry.