

PUBLICATION

New Federal Court Ruling Creates Further Uncertainty for the Affordable Care Act

Authors: Sheila P. Burke

December 20, 2018

On December 14, Texas U.S. District Judge Reed O'Connor issued a broad federal court ruling in *Texas v. Azar* to overturn the entire Affordable Care Act (ACA) on the basis that the individual mandate penalty, which Congress reduced to zero in last year's tax cut bill, is now unconstitutional. While the ruling does not have an immediate impact, it injects fresh uncertainty into the health care system regarding the ACA's coverage expansions, consumer protections, and payment policies. The controversial case will be appealed to the Fifth Circuit Court of Appeals and may reach the Supreme Court for a final decision.

Judge O'Connor's decision rests on two key questions. First, is the ACA's individual mandate constitutional? In the 2012 landmark decision *National Federation of Independent Business v. Sebelius*, the Supreme Court decided that the individual mandate's income tax-based penalty meant that it was constitutional under federal ability to levy a tax. However, Congress eliminated the tax penalty under the 2017 Tax Cuts and Jobs Act enacted last December. Without the tax penalty, the judge ruled that the individual mandate is unconstitutional. Second, if the individual mandate is unconstitutional, is it severable from the rest of the legislation (allowing the rest of the ACA to stand)? Here, the judge ruled that the individual mandate is not severable, and the entire ACA must be invalidated.

The ruling starts a legal process that will likely reach the Supreme Court and that has already reignited the political debate on health care for 2019 and 2020. Most stakeholders and legal experts have expressed skepticism regarding the legal argument made by Judge O'Connor, but there is no guarantee regarding how the Appeals Court and/or Supreme Court may decide on the case. If upheld, the decision would not just eliminate ACA coverage for nearly 20 million Americans, but also numerous consumer protections and payment reforms – including authority for the Trump Administration's drug pricing proposals – instituted under the broad law.