

## PRACTICE ALERT

### Court Decision on the Affordable Care Act: Texas v. Azar

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In early 2018, a coalition of 20 states with Republican leadership brought a case seeking to dismantle the Patient Protection and Affordable Care Act (ACA) to a Texas federal court. The Department of Justice, under the direction of the Trump Administration, chose not to defend the ACA. A group of 16 attorneys general from states with Democratic leadership represented the ACA and argued in its defense.

The Affordable Care Act originally passed with the individual mandate, requiring individuals to have health insurance coverage or face a penalty. The tax penalty was ended by Congress in December 2017. In 2018, the attorneys general from Republican states argued that without the tax penalty or individual mandate, all of the ACA's provisions are invalid. This case rested on the principle of "severability," meaning that if one part of a law is invalid, the entire law is invalid.

With oral arguments ending in September, consumers and advocates awaited a decision. On Friday, Dec 14<sup>th</sup>, Judge Reed O'Connor issued a partial summary judgment that the ACA is unconstitutional, because it is not severable. Many legal scholars question the rationale of the decision, expect an appeal to be filed, and do not think that other courts will uphold the decision.

**Thus far, there is no indication that the decision has any immediate effect. The decision will not cause loss of health insurance coverage or prevent individuals from obtaining health insurance coverage for 2019.** Individuals are still able to maintain coverage in the health insurance marketplace, secure insurance through Medicaid expansion and continue to have ACA consumer protections in the private insurance market. On Wednesday, December 19<sup>th</sup> the U.S. Department of Health and Human Services released the following statement:

*The recent U.S. District Court decision regarding the Affordable Care Act is not an injunction that halts the enforcement of the law and not a final judgment. Therefore, HHS will continue administering and enforcing all aspects of the ACA as it had before the court issued its decision. This decision does not require that HHS make any changes to any of the ACA programs it administers or its enforcement of any portion of the ACA at this time. As always, the Trump Administration stands ready to work with Congress on policy solutions that will deliver more insurance choices, better healthcare, and lower costs while continuing to protect individuals with pre-existing conditions.*

Steps are being taken to challenge the ruling and once a final order is issued by Judge O'Connor, an appeal may be pursued by representatives of states with Democratic leadership. It's important to note that the ACA has been challenged many times and in 2012 the Supreme Court upheld the law, including the individual mandate. Congress may also take action to stabilize the health insurance market through legislation.

Judge O'Connor's decision may be reversed through the appeals process. Nevertheless, the long-term implications of the decision are dire. If subsequent court decisions agree that the ACA is unconstitutional, all of the provisions in the law will end and millions of people will be at risk of losing their health insurance coverage. The consequences apply to both public and private health insurance, and include ending: 1) protection against discrimination for pre-existing conditions, 2) Medicaid expansion, 3) the ability of youth to stay on family insurance until age 26, and 4) subsidies that have made health insurance more affordable.

Social workers can help ease uncertainty for consumers as the legal process continues and encourage clients to secure health insurance coverage for 2019. Social workers and their clients can also become engaged by following Congressional activities on health insurance and communicating with their elected representatives about the importance of affordable, accessible health care. NASW will continue to advocate for the Affordable Care Act and provide updates to its members.