ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- A federal appeals court ruled that the individual mandate is unconstitutional due to the elimination of the penalty.
- The lower court will determine whether the rest of the ACA may remain in place without the individual mandate provision.
- This ruling is expected to be appealed to the Supreme Court.

IMPORTANT DATES

December 18, 2019
An appeals court invalidated the individual mandate due to the elimination of the penalty

January 1, 2019
Individuals are no longer penalized under the ACA for failing to obtain acceptable health insurance coverage

Provided By:
Aebly & Associates Insurance Services, Inc.

FEDERAL APPEALS COURT ISSUES ACA RULING

OVERVIEW

On Dec. 18, 2019, a federal appeals court ruled in *Texas v. Azar* that the Affordable Care Act's (ACA) **individual mandate is unconstitutional** due to the elimination of the individual mandate penalty in 2019. The appeals court remanded the case to the lower court to determine whether the rest of the ACA can remain in place without the individual mandate.

This lawsuit was filed in 2018 by 18 states as a result of the 2017 tax reform law that eliminates the individual mandate penalty. In 2012, the U.S. Supreme Court upheld the ACA on the basis that the individual mandate is a valid tax. With the penalty's elimination, the appeals court in this case determined that the individual mandate is no longer valid under the U.S. Constitution.

ACTION STEPS

The lower court is now tasked with determining whether the rest of the ACA may be severed from the individual mandate provision. However, this ruling is expected to be appealed to the Supreme Court. As a result, a final decision is not expected to be made until that time. In addition, it is likely that any ruling eliminating the ACA will be stayed pending appeal.

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Background

The ACA imposes an "individual mandate" beginning in 2014, which requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. In 2012, the U.S. Supreme Court upheld the constitutionality of the ACA in its entirety, including the individual mandate provision, as a valid use of Congress's power to impose taxes. However, the 2017 Tax Cuts and Jobs Act reduced the ACA's individual mandate penalty to zero, effective beginning in 2019.

Texas v. Azar

In its 2012 ruling, the Supreme Court indicated (and both parties agreed) that the individual mandate is an essential element of the ACA, and that the remainder of the law could not stand without it. Following the 2017 tax reform law's enactment, 18 Republican-controlled states filed a lawsuit arguing that the elimination of the individual mandate penalty rendered the remainder of the ACA unconstitutional.

Because the court determined that the individual mandate is no longer a valid tax, but is an essential element of the ACA, it ultimately ruled that the ACA is invalid in its entirety.

In December 2018, a federal judge agreed, ruling that the individual mandate could no longer be considered a valid exercise of Congressional tax power. Because the court also found the individual mandate to be an essential element of the ACA, it determined that the entire law was invalid without it. However, the ruling was appealed, and the White House announced that the ACA would remain in place until a final decision is made.

Appeals Court Ruling

The U.S. Court of Appeals for the Fifth Circuit ultimately agreed with the lower court's ruling, determining that the individual mandate is no longer constitutional without the penalty attached, but did not rule as to whether the individual mandate may be severed from the remainder of the ACA. Instead, it sent the case back for the lower court to make this determination. The appeals court instructed the lower court to determine:

- ✓ Which ACA provisions are actually inseverable from the individual mandate; and
- ✓ Whether the court's ruling should apply only in the states that sued in this case.

Impact of the Appeals Court Ruling

This ruling is expected to be appealed to the Supreme Court, which means that a final decision will not be made until that time. Until then, it is likely that any ruling eliminating the ACA in its entirety will be stayed pending appeal. In December 2018, the Department of Health and Human Services confirmed that it will administer and enforce all aspects of the ACA.

While these appeals are pending, all existing ACA provisions will continue to be applicable and enforced. This ruling does not impact the 2020 Exchange enrollment, the ACA's employer shared responsibility (pay or play) penalties and related reporting requirements, or any other applicable ACA requirement.