

TO: Interested Parties
FROM: West Virginians for Affordable Health Care
DATE: June 26, 2019
RE: **Impact of Lawsuit on ACA and Dangers to West Virginians' Health Care**

Texas v. United States Lawsuit Would Devastate West Virginians' Health Care

During the first two years of the new administration, the fight to preserve and protect the Affordable Care Act (ACA) dominated headlines and deadlocked Congress for two years. Despite Americans' overwhelming approval of the legislation and the failure to repeal the law through the legislative process, opponents of the ACA, in particular a group of Republican attorneys general, including West Virginia's own Patrick Morrisey have sought to use the judicial system to invalidate the law. Filing suit in the Northern District of Texas, opponents of the law cited that previous U.S. Supreme Court (SCOTUS) decisions protecting the law were now invalid due to changes passed by Congress. The case was decided in the plaintiffs' favor invalidating the law and throwing the future of health care into disarray. The case, now appealed to the Fourth Circuit, will be heard on July 8.

Repeal of the ACA would have a devastating impact on the delivery of health care services for West Virginia and the country at large. The dangers to West Virginia health consumers include:

- 162,000 West Virginians could lose health care coverage.
- Loss of health care protection for West Virginians with pre-existing conditions.
- Huge potential insurance rate increases for West Virginia families.
- Eradication of the Medicaid expansion which provides 159,000 West Virginians with health care
- The loss of hundreds of millions to West Virginia's rural hospitals for uncompensated care.

About the Lawsuit

Texas v. United States, the lawsuit to enjoin the enforcement of the ACA, was filed on February 26, 2018 by Republican state attorneys general and governors from 20 states in the Northern District of Texas, including West Virginia's Attorney General Patrick Morrisey. The Trump Administration initially declined to defend the case, attorneys general from 16 states and the District of Columbia stepped in to defend the ACA. The basis for the plaintiffs' challenge to the constitutionality of the individual mandate is that the individual mandate "penalty" will be reduced to \$0 starting in 2019 as part of the 2017 Tax Cuts and Jobs Act.

The ACA had originally been upheld by the U.S. Supreme Court back in 2012 in National Federation of Independent Businesses (NFIB) v. Sebelius, on the grounds that the individual mandate was a legitimate exercise of congressional taxing power. Now, plaintiffs argue that now that the penalty is \$0 and no longer raises revenue for the government, the individual mandate is no longer a tax and therefore is unconstitutional. The plaintiffs further argue that, at a minimum, the private market provisions of the ACA rely on the continued existence of the individual mandate (including the pre-existing condition provisions and other consumer protections as well as the premium and cost-sharing financial assistance). They also go further to present a case that the individual mandate is inseparable from the rest of the ACA. Thus, the plaintiffs allege, the individual mandate being unconstitutional makes the entire ACA unconstitutional.

In December of 2018, judges from the Northern District of Texas ruled in favor of the ACA opponents case to strike down the entire ACA. The case was immediately appealed to the United States Fourth Circuit Court of Appeals in New Orleans, where the case is expected to be heard on July 9, 2019.

The Trump Justice Department has now announced that it agrees with the federal district court decision striking down *the entirety of the law* and filed a supportive brief on April 24. In filing the brief, the administration

abandoned [an earlier position](#) — that some portions of the law, including the provision allowing states to expand their Medicaid programs, should stand.

Prominent legal scholars, including some who have not supported the ACA, have rightly [questioned the merits of this case](#), and nearly every part of the health system -- physicians, hospitals, insurers and consumer advocates -- strongly oppose it.

Republican Attorneys General Dave Yost (OH) and Timothy Fox (MT) [filed briefs opposing the federal district court's ruling](#) that the ACA is unconstitutional, arguing "the District Court's ruling *is* wrong, and its errors threaten harm to millions of people in the Buckeye and Treasure states."

If the Texas lawsuit prevails at SCOTUS, 162,000 West Virginians Could Lose Their Coverage

- **162,000 West Virginians could lose coverage** . According to [The Urban Institute](#), 162,000 West Virginians would lose coverage by repealing the Affordable Care Act, leading to a 176 percent increase in the uninsured rate .

Protections For The 130 Million People Nationwide With A Pre-Existing Condition Would Be Eradicated

- According to an [analysis](#) by the Center for American Progress, roughly half of nonelderly Americans, or as many as 130 million people, have a pre-existing condition. This includes:
 - ✓ 44 million people who have high blood pressure
 - ✓ 45 million people who have behavioral health disorders
 - ✓ 44 million people who have high cholesterol
 - ✓ 34 million people who have asthma and chronic lung disease
 - ✓ 34 million people who have osteoarthritis and other joint disorders
- **737,900 West Virginians have a pre-existing condition** , [including 90,600 West Virginia children , 358,000 West Virginia women , and 188,500 West Virginians between ages 55 and 64.](#)

Insurance Companies Would Have The Power To Deny, Drop Coverage, And Charge More Because Of A Pre-Existing Condition

Before the Affordable Care Act, insurance companies routinely denied people coverage because of a pre-existing condition or canceled coverage when a person got sick. If the lawsuit is successful, insurance companies will be able to do this again.

- A 2010 congressional report found that the top four health insurance companies [denied coverage to 1 in 7 consumers on the individual market over a three-year period.](#)
- A 2009 congressional report found that the largest insurance companies had retroactively canceled coverage for [20,000 people](#) over the previous five-year period.
- An analysis by [Avalere](#) finds that "102 million individuals, not enrolled in major public programs like Medicaid or Medicare, have a pre-existing medical condition and could therefore face higher premiums or significant out-of-pocket costs" if the lawsuit is successful.

Insurance Companies Would Have The Power To Charge West Virginians More For Health Coverage

- **772,905 West Virginians Could Once Again Have To Pay For Preventive Care.** Because of the ACA, health plans must cover preventive services — like flu shots, cancer screenings, contraception, and mammograms — at no cost to consumers. This [includes nearly](#) 772,905 West Virginians, most of whom have employer coverage.
- **Insurance Companies Could Charge Premium Surcharges in the Six Figures.** If the lawsuit is successful, insurance companies would be able to charge people more because of a pre-existing condition. The health repeal bill the House

passed in 2017 had a similar provision, and an analysis by the Center for American Progress found that insurers could charge up to [\\$4,270 more for asthma](#) , [\\$17,060 more for pregnancy](#) , [\\$26,180 more for rheumatoid arthritis](#) and [\\$140,510 more for metastatic cancer](#).

- **Women Could Be Charged More Than Men for the Same Coverage.** Prior to the ACA, women were often charged premiums on the nongroup market of [up to 50% higher](#) than they charged men for the same coverage.
- **People Over the Age of 50 Could Face a \$4,000 “Age Tax,” Including \$4,886 in West Virginia.** Because Judge O'Connor sided with Republican lawmakers, insurance companies would be able to charge people over 50 more than younger people. The Affordable Care Act limited the amount older people could be charged to three times more than younger people. If insurers were to charge five times more, as was proposed in the Republican repeal bills, that would add an average “age tax” of [\\$4,124 for a 60-year-old in the individual market, including \\$4,886 in West Virginia](#), according to the AARP.
- **20,727 West Virginians in the Marketplaces Would Pay More for Coverage.** If the lawsuit is successful , consumers would no longer have access to tax credits that help them pay their marketplace premiums, meaning roughly [nine million people](#) who receive these tax credits to pay for coverage will have to pay more, [including 20,727 in West Virginia](#).
- **42,416 West Virginia Seniors Could Have to Pay More for Prescription Drugs.** If the lawsuit is successful , seniors could have to pay more for prescription drugs because the Medicare “donut” hole would be reopened. From 2010 to 2016, “More than 11.8 million Medicare beneficiaries have received discounts over \$26 billion on prescription drugs – an average of \$2,272 per beneficiary,” according to a [January 2017 CMS report](#). In West Virginia, 42,416 seniors each saved an average of \$1,302.

Insurance Companies Would Have the Power to Limit the Care You Get, Even If You Have Insurance Through Your Employer

- **Insurance Companies Do Not Have to Provide the Coverage You Need.** The Affordable Care Act made comprehensive coverage more available by requiring insurance companies to include “essential health benefits” in their plans, such as maternity care, hospitalization, substance abuse care and prescription drug coverage. Before the ACA, people had to pay extra for separate coverage for these benefits. [For example, in 2013, 75 percent of non-group plans did not cover maternity care, 45 percent did not cover substance abuse disorder services, and 38 percent did not cover mental health services. Six percent did not even cover generic drugs.](#)
- **Reinstate Lifetime and Annual Limits On 581,000 Privately Insured West Virginians.** Repealing the Affordable Care Act means insurance companies would be able to impose [annual and lifetime limits](#) on coverage for those insured through their employer or on the individual market.
- **Large Employers Could Choose to Follow Any State’s Guidance, Enabling Them Put Annual and Lifetime Limits on Their Employees’ Health Care.** Without the ACA’s definition of essential health benefits (EHB) in even some states, states could eliminate them altogether. Large employers could [choose to apply](#) any state’s standard, making state regulations essentially meaningless. Because the prohibition on annual and lifetime limits only applies to essential health benefits, this change would allow employers to reinstate annual and lifetime limits on their employees’ coverage.

West Virginia Medicaid Expansion Would Be Repealed

- **159,300 West Virginians are Currently Enrolled Through Medicaid Expansion Could Lose Coverage.** [Seventeen million](#) people in 2017 across the nation have coverage through the expanded Medicaid program.
- **Access to Treatment Would Be In Jeopardy For People With Opioid Use Disorder.**
 - ✓ In 2017, nearly two million nonelderly adults in the United States had an opioid use disorder (OUD), and of these adults, nearly four in ten were covered by Medicaid.
 - ✓ People with Medicaid were nearly twice as likely as those with private insurance to have received needed drug and/or alcohol treatment (44% vs. 24%).

- ✓ In 2017, 617,000 nonelderly adults with OUD reported receiving treatment during the previous year. Of these individuals, 54% had Medicaid coverage.

- **Key Support for Rural Hospitals Would Disappear**, leaving West Virginia hospitals [with \\$420 million more in uncompensated care.](#)