



# BENEFITS BULLETIN

January 7, 2020

## ACA Developments

Legislative and judicial activities during the week of December 16, 2019 produced significant developments with the Affordable Care Act (ACA). On **December 18**, the United States Court of Appeals for the Fifth Circuit issued a ruling in *Texas v. United States* finding the ACA's **individual mandate to be unconstitutional**, and on **December 19**, Congress passed a spending bill that contains the **full repeal of three ACA taxes** and an **extended timeline** for the Patient Centered Outcomes Research Institute (PCORI) fee.

### Repealed Taxes

The spending deal approved by Congress and later signed by President Trump provides government funding and addresses numerous policy initiatives. One part of the spending package contains the repeal of three ACA taxes: the Cadillac tax, the medical device tax, and the health insurance tax. While the repeals are unsurprising, they signal a considerable loss of funding intended to help pay for health coverage expansion under the ACA.

#### Cadillac Tax

Designed to discourage high-cost employer-sponsored health plans, the Cadillac tax imposes a 40% excise tax on coverage in excess of certain premium thresholds. Largely unpopular, implementation of the Cadillac tax was delayed several times, with its most recent implementation date scheduled for 2022. As a result of the passage of the spending bill, the **Cadillac tax will be repealed as of January 1, 2020**, without ever having taken effect.

#### Medical Device Tax

The medical device tax is a 2.3% excise tax on the gross sales of medical devices, such as pacemakers, x-ray machines, and other hospital equipment. The tax took effect in 2013 and was shortly thereafter suspended by Congress. The tax has not been in effect since 2016 and will be **repealed as of January 1, 2020**.

## **Health Insurance Tax**

The health insurance tax applies to health insurers that offer individual and group medical insurance policies, as well as public programs like Medicaid and Medicare. Though the tax applies directly to insurers, most carriers build the amount of the tax into insurance policy premiums, effectively passing the cost on to employers and individuals. Because of this adverse impact on premiums, the tax was twice suspended in 2017 and 2019. Unlike the Cadillac and medical device taxes, repeal of the **health insurance tax will not take effect until 2021**. Consequently, insurance premiums for 2020 will continue to reflect the cost of this tax.

## **PCORI Fee Extension**

Under the ACA, the PCORI fee was established to provide funding for research on the clinical effectiveness of various medical treatments. The fee, imposed on **insurance carriers and sponsors of self-funded health plans**, was originally scheduled to expire for plan years ending on or after October 1, 2019. Through the spending bill, **Congress extended the life of the fee for an additional ten years**. As a result, the fee will continue to apply for plan years ending on or before September 30, 2029, with the last PCORI fee **payment due on July 31, 2029**. The fee will continue to be due by July 31 each year and the rate will be adjusted annually for inflation.

**10 yrs.**

## **Appellate Court Decision**

In the case of *Texas v. United States*, the United States Court of Appeals for the Fifth Circuit upheld the district court's 2018 ruling that the ACA's individual mandate is unconstitutional. The plaintiffs argued that because the **individual mandate penalty was reduced to \$0**, it is no longer a tax as originally characterized by the U.S. Supreme Court and therefore violates the Constitution.

The appellate court declined to rule on other issues previously raised by the district court, including the question of whether the individual mandate can be severed from the rest of the ACA or whether the entirety of the law will be invalid without it. Instead, the appellate court sent the case back to the district court to determine if any other provisions of the ACA should be struck down along with the individual mandate.

**\$0**

## What this Means for Employers

Employers may experience some relief from the repeal of the ACA taxes, though it will likely be limited. Sponsors of insured health plans can anticipate potentially lower premiums beginning in 2021 due to the absence of the built-in cost of the health insurance tax, and sponsors of high-value coverage can continue to offer rich plans free from imposition of an excise tax into 2022. However, the extension of the PCORI fee means that sponsors of both insured and self-funded plans will continue to pay this cost in the form of either higher premiums or direct payment to the IRS.



However, the impact of the court decision in ***Texas v. United States*** will take longer to become clear. Though the ruling does deem the individual mandate unconstitutional, **all other aspects of the ACA remain in full effect pending further analysis – including the employer shared responsibility provisions and reporting obligations under Internal Revenue Code Sections 6055 and 6056.** Additionally, the defendants in the case have signaled that they are prepared to take the unfavorable ruling to the U.S. Supreme Court, which would dramatically lengthen this judicial process.

Importantly, the court's ruling on the constitutionality of the ACA's individual mandate has no impact on similar laws enacted by some states, such as **California, Massachusetts, and New Jersey.** Employers (and individuals) in these states should be mindful of the requirements that will continue to be imposed under such laws.



### Additional Resources



[H.R.2009 – Consolidated Appropriations Act, 2016](#)



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