Nov. 13, 2020: Judicial Advocacy Update

7 major downsides if the ACA is overturned by Supreme Court

The U.S. Supreme Court heard arguments in the case of California v. Texas on Nov. 10, and in the coming months will consider legal points pertaining to whether the Affordable Care Act (ACA) can remain in force without the individual mandate. What really is at stake, however, is health insurance coverage for more than 20 million people.

The issue before the court is whether Congress intended to invalidate the entire ACA when it zeroed-out the tax for failure to comply with the law's individual mandate to purchase health insurance and if the district court acted correctly when it ruled the ACA was invalid in its entirety without the tax. If the high court upholds the district-court ruling, the following would happen:

- Patients would no longer have guaranteed coverage for pre-existing conditions, including COVID-19.
- Young adults would no longer have coverage under their parents' health insurance plan until age 26.
- Insurers would be allowed to generate higher profits and provide even less coverage for patient care.
- 100% coverage for certain preventive services would cease.
- Individual marketplace and premium subsidies based on income would be eliminated.
- Medicaid eligibility expansion would end, as would federal funding for Medicaid expansion.
- Annual and lifetime caps on coverage could be reinstated, leading to more bankruptcies due to health care costs.

While the court originally declared the ACA constitutional in 2012, three new justices have been added to the court since then, most recently Amy Coney Barrett, who was appointed to replace the late Ruth Bader Ginsburg.

Last December, the 5th U.S. Circuit Court of Appeals agreed partially with the district court. It ruled that the individual mandate was unconstitutional but sent the case back to the district court for further analysis on whether the mandate can be severed from the rest of the ACA.

Earlier this year, 20 leading physician organizations joined the AMA in filing an amicus brief arguing why the Supreme Court should declare the ACA constitutional with or without the tax.

The brief also explains why it would be unwise to strike down a law "serving as the backbone of the safety net for the millions of Americans facing sudden unemployment" due to the COVID-19

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pandemic.
"Invalidating provisions that have expanded access to health insurance coverage such as the
guaranteed-issue and community rating provisions—or the entire ACA—would have a devastating
impact on doctors, patients, and the American health care system in normal times," the amicus brief
says. "However, striking down the ACA at a time when the system is struggling to respond to a
pandemic ... would be a self-inflicted wound that could take decades to heal."
The ruling is expected to be issued in June 2021.Read the full story.

Eviction moratorium key weapon in pandemic fight, physicians say

If landlords are allowed to evict people by the same rules they did before COVID-19 hit, the nation's
health will be put at even further risk than it already is during this deadly pandemic, physicians tell a
federal court that will decide whether a CDC order to prevent certain residential evictions is
constitutional.
Eviction moratoriums help prevent overcrowded living situations, homelessness and housing
instability. These are all scenarios that make it difficult for people to comply with some of the best
tools the nation has to slow COVID-19's spread now: physical distancing, self-quarantining and hand
hygiene, says a brief that the AMA filed with nearly two dozen other national associations and experts
"Eviction moratoriums are a critical public health tool that should be employed now," the brief tells the
court.
Evidence suggests that earlier eviction moratoriums effectively slowed COVID-19's spread and
reduced deaths. When protection under the CARES Act expired in August for renters affected by
COVID-19, evictions rose quickly. The evictions tapered off after the CDC's September order banning
certain evictions.
"There is a close, proven connection between eviction and public health," the brief tells the court,
citing a study that showed lifting moratoriums was associated with 1.4 times higher COVID-19
mortality after seven weeks. "The CDC order may be able to help control the pandemic, protect the
public health and prevent severe harm for millions of adults and children especially in communities of
color."
This case is being heard in the U.S. District Court for the Northern District of Georgia Atlanta, but it is
one of several cases filed in federal courts challenging the CDC's order.
"Without a nationwide, uniformly adopted eviction moratorium, evictions will likely increase to unseen
heights. This would place families and individuals at risk of contracting COVID-19, as well as related
and severe health harms," the AMA brief tells the court, noting that 34% of households with children
in Georgia, North Carolina, South Carolina and Virginia told U.S. Census Bureau pollsters in
September that they had slight or no confidence in their ability to pay next month's rent as the
economy's downturn as hit lower income families especially hard. People who face the greatest risk of eviction are the same ones likelier to have chronic illnesses and disabilities that already put them at higher risk for serious complications or death if they contract COVID-19, the AMA brief tells the court. In other words, nullifying the CDC order would have the biggest impact on the same people hardest hit by the pandemic: low-income essential workers and those in communities of color. It would force people into transiency and crowded residential environments and increase the chances of "couch surfing" and staying with relatives and friends who may be at high risk for COVID-19. Read the full story.

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