



Subject: 1) Supreme Court Rules on Affordable Care Act; and 2) Annual PCORI Fee and Filing
Date: June 18, 2021

Supreme Court Rules on Affordable Care Act

In a 7-2 decision issued on June 17, the U.S. Supreme Court upheld the Affordable Care Act (ACA). The multi-state lawsuit, *California v. Texas*, was the third challenge to the ACA to reach the Supreme Court.

A group of 20 states led by Texas, (“Plaintiffs”), alleged that because the ACA’s monetary penalty for failure to obtain minimum essential coverage was reduced to \$0 in 2017, the minimum essential coverage provision was thereby unconstitutional. Plaintiffs sought the following:

1. A finding that Plaintiffs had standing to file this lawsuit;
2. A finding that the minimum essential coverage provision was unconstitutional;
3. A finding that the minimum essential coverage provision was not severable from the rest of the ACA (thereby rendering the whole ACA unconstitutional); and
4. An injunction against enforcement of the ACA.

A Texas federal district court agreed with the Plaintiffs as to points 1, 2, and 3. The 5th Circuit Court of Appeals agreed with the Plaintiffs as to points 1, and 2, but disagreed as to point 3. A group of 21 states led by California sought the Supreme Court’s review.

In their decision, the Supreme Court found that the Plaintiffs did not have standing to bring the lawsuit in the first place, “because they have not shown a past or future injury fairly traceable to” the enforcement of the minimum essential coverage mandate. As such, the ACA remains in place, in full force and effect.

It’s important to note that by finding that the Plaintiffs did not have standing to bring the lawsuit, the Court did not make any determination regarding the constitutionality of the minimum essential coverage mandate, or whether the mandate renders the entire ACA unconstitutional.

Annual PCORI Fee and Filing Reminder

Payment of the annual PCORI fee together with the Form 720 filing deadline is approaching. The PCORI fee is assessed on the average number of lives covered under the policy or plan. For policy and plan years ending between October 1, 2020 and December 31, 2020, the fee is \$2.66 per covered life (for policy and plan years ending between January 1, 2020 and September 30, 2020, the fee is \$2.54 per covered life). The fee is to be paid in connection with filing the IRS Form 720, Quarterly Federal Excise Tax Return. For plan years ending in 2020, the fee is to be paid by August 2, 2021.



As background, the PCORI fee is assessed on the average number of lives covered under the policy or plan. Virtually, all health plans, whether insured or self-funded are subject to the PCORI fees. With regard to reimbursement type plans, health reimbursement arrangements (HRA) and medical flexible spending account (FSA) plans are subject to these fees. However, FSA plans that qualify as HIPAA-excepted plans are not subject to these fees. The PCORI fee does not apply to stand alone dental or vision plans. The IRS provides a [chart](#) for determining the applicability of the PCORI fee to types of insurance coverage or arrangements and whether such coverage or arrangement is subject to the fee, and the person or entity responsible for paying the fee.

The PCORI fees are assessed on the insurer of an insured plan. For a self-funded plan, the plan sponsor is required to pay the fee on behalf of its plan. Because the law provides that the PCORI fees are to be paid by the plan sponsor, at least for plans subject to ERISA, the fees cannot be paid from plan assets.

Additional information about the PCORI fee is available on the IRS' dedicated [PCORI webpage](#) and [Questions and Answers](#).

About the Author

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