

Publications

Benefits Alert: The Impact on Health & Welfare Plans in the New Year based on the Fifth Circuit's ACA Ruling and the Further Consolidated Appropriations Act, 2020

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Fifth Circuit Decision in *Texas v. U.S.*

On December 18, 2019, the U.S. Court of Appeals for the Fifth Circuit held in *Texas v. U.S.* that the provision in the Affordable Care Act (ACA) that requires individuals to maintain health insurance or pay a "shared responsibility payment" (i.e., the individual mandate) is unconstitutional. The Fifth Circuit found that the central attributes that once saved the individual mandate as a valid exercise of Congress' taxing authority no longer existed after Congress set the shared responsibility payment to zero effective January 1, 2019.

The Fifth Circuit stopped short of upholding the lower court's decision declaring the ACA unconstitutional in its entirety. Instead, the Fifth Circuit remanded the case to the district court to provide more specific recommendations for the remaining parts of the law. The panel also asked the district court to consider limiting the relief to enjoining the enforcement of those provisions that injure the plaintiffs or declaring the ACA unconstitutional only as to the individuals and 18 states who are plaintiffs in the case.

Until the district court decides the case on remand (or, if earlier, the U.S. Supreme Court decides to grant review and decides the case), all of the provisions of the ACA other than the individual mandate remain enforceable and employers and plan sponsors should continue to comply with the ACA. The ruling does not affect coverage for individuals who have ACA plans in the Marketplace.

The Further Consolidated Appropriations Act, 2020

The annual budget/spending law, The Further Consolidated Appropriations Act, 2020 (Act), signed by President Trump late in the evening on December 20, 2019, contains several provisions that affect employee benefit plans. We will describe the provisions of the Act affecting retirement plans in a separate alert. The remainder of this

alert describes the provisions of the Act that affect health and welfare benefit plans.

PCORI Fee Extended by 10 years

The Act re-instituted the Patient-Centered Outcomes Research Institute (PCORI) fee for an additional 10 years. While many plan sponsors and health insurers believed they had paid their last PCORI fee this past summer, it does not expire now until the plan year ending after September 30, 2029. Because the PCORI fee is imposed under the ACA, the enforceability of the fee will depend on the outcome of the severability analysis described above. Employers should continue to pay the fee but may want to indicate that it is being paid conditionally.

Repeal of ACA Taxes

Even if the courts ultimately determine that the individual mandate is severable from other parts of the ACA, significant revenue sources designed to fund the ACA were completely repealed in the Act:

- **Cadillac Tax** – the Act repealed the excise tax on high cost employer-sponsored health coverage. The tax was equal to 40 percent of the value of health benefits exceeding certain statutory amounts. The implementation of the Cadillac tax, originally to be effective in 2018, has been delayed several times by Congress, and was last scheduled to take effect in 2022.
- **Medical Device Tax** – the Act repealed the excise tax on medical devices which went into effect in 2013 before being suspended from 2016-2019. The tax was equal to 2.3 percent on the value of certain medical devices and was last scheduled to take effect in 2020.
- **Annual Fee on Health Insurance Providers** – the Act repealed the fee imposed on health insurance providers and applies to fully insured plans. The fee was suspended in 2017 and in 2019. It will apply in 2020 and then be permanently repealed effective January 1, 2021.

If you have any questions about how the Act applies to your health and welfare benefits in 2020, please contact your Vorys benefits attorney.