



Statement for the Record
American College of Physicians
Hearing before the Energy and Commerce Health Subcommittee
On
“Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans with Pre-Existing
Conditions”
February 6, 2019

The American College of Physicians (ACP) is pleased to submit this statement for the record and appreciates the efforts of Chairwoman Eshoo and Ranking Member Burgess in convening this hearing on the ruling handed down in Texas v. the United States and its impact on those with pre-existing conditions. We appreciate the subcommittee inviting input from relevant stakeholders, and we are pleased to offer our clinician perspective on this critical issue, especially in how it impacts the patients for whom we provide care.

ACP is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 154,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

For many patients, primary care physicians are the first point of contact with the healthcare system. That means they are often the first to see depression, early signs of cancer or chronic disease, and help manage care for those with pre-existing conditions. They ensure patients get the right care, in the right setting, by the most appropriate health professional, in a coordinated way. The two specialties that provide the majority of adult primary care in the United States are family medicine and internal medicine.

Texas v. the United States

On December 14, 2018, a federal judge in Texas ruled that the entire Affordable Care Act (ACA) is unconstitutional. The judge's ruling stated that since the ACA's "individual mandate" – a requirement that most Americans maintain "minimum essential" coverage or face a tax penalty -- is unconstitutional, the rest of the law cannot stand without it. The ACA will remain in place pending appeal.

ACP asserts that the ruling from this Texas judge is putting the health of millions of patients at risk. If this ruling stands, patients could once again be turned down or charged more for pre-existing conditions, and insurers would no longer be required to cover essential benefits like prescription drugs, maternity care, doctor visits, and mental health and substance use disorder treatment. The latter benefit is especially crucial as our nation confronts an opioid overdose epidemic that takes 130 lives every day. Additionally, premium subsidies to make coverage affordable would end; high-quality preventive services would be subject to cost-sharing; and annual and lifetime limits on coverage would return. Federal funding for Medicaid expansion would also be terminated, and seniors would no longer have access to no-cost preventive services. We urge the courts on appeal to consider the legal and patient protection arguments made by ACP, together with the American Medical Association, the American Academy of Family Physicians, the American Academy of Pediatrics, and the American Academy of Child and Adolescent Psychiatry, in an [amicus curiae](#) brief filed in this case. Our groups together represent more than 560,000 physicians and medical students and we stand united in our belief that protections established by the Affordable Care Act that prohibit insurance companies from denying or discontinuing coverage for individuals with pre-existing conditions or other factors such as gender or race are vital to patient care and wellbeing.

Improving Patients' Lives under the Affordable Care Act

Before the Affordable Care Act (ACA), almost 50 million people went without any health insurance coverage. Many could not afford coverage because they had a pre-existing condition,

and plans sold in the individual market often had skimpy benefits that left people vulnerable to high out-of-pocket costs. The ACA addressed these problems in several ways. It established marketplaces (also called exchanges) where individuals could, during an annual open enrollment period, purchase one of four levels of coverage as well as receive *progressive* income-based premium subsidies (meaning the lower one's income, the higher the subsidy) if their incomes fall between 100 and 400 percent of the federal poverty level (FPL), and cost-sharing subsidies for persons with income up to 250 percent of the FPL. The ACA also established basic consumer protections including: no lifetime or annual dollar limits on coverage; prohibits insurers from denying, cancelling or charging higher premiums to people with pre-existing conditions; requires all health plans to cover 10 categories of essential health benefits; and prohibits insurers from charging higher premiums to women based solely on their gender.

Ensuring Protections for those with Pre-existing Conditions

A 2017 report by the HHS' Office of the Assistant Secretary for Planning and Evaluation found that up to 133 million non-elderly Americans have a pre-existing condition, including common conditions like high blood pressure, high cholesterol, and diabetes. According to a [study](#) by the Kaiser Family Foundation, 52 million people (27 percent of the nonelderly population) have a pre-existing condition that would have been deniable in the pre-ACA individual market. For that patient population, the ACA represented a sea change in their ability to access affordable medical care, and even a saving grace in helping to avoid catastrophic medical debt. That all could change if the Texas decision is allowed to stand.

Those with pre-existing conditions also face a further threat in the wake of the administration's 2018 proposal to allow Short-Term, Limited-Duration Insurance Plans to be sold as full-year substitute coverage for Affordable Care Act plans. ACP expressed its [opposition](#) to this proposal in April of last year. Short-term insurance plans are intended to provide temporary insurance during gaps in coverage, such as when a person is between jobs and does not have access to employer-based health insurance. Since they are not required to comply with the ACA's

insurance market regulations, they may not include coverage typical of comprehensive, major medical insurance. As noted in the administration's proposal, these policies "would be unlikely to include all the elements of PPACA-compliant plans, such as pre-existing condition exclusion prohibition, coverage of essential health benefits without annual or lifetime dollar limits, preventive care, maternity and prescription drug coverage, rating restrictions, and guaranteed renewability."

A new [study](#) also revealed that patients are being led to believe they are purchasing insurance policies that provide comprehensive coverage when in fact they do not, and that states are limited in their ability to police this type of marketing. This means that patients who purchase those plans may find themselves with significant and unexpected financial liability if they need health care services.

Action Needed on the Federal and State Level

This administration, as well as members of Congress and state governors, Attorneys General, and lawmakers from both political parties, have repeatedly promised citizens that essential patient protections, especially for persons with pre-existing conditions, will be protected. Now is the time to act on this promise by continuing all of the ACA's current law protections as this ruling makes its way through the courts, and to urge the higher courts to overrule the Texas judge's decision that jeopardized health care access for millions. We also urge Congress to take appropriate action to ensure that all patient protections afforded by the ACA are preserved, including but not limited to persons with pre-existing conditions.

Conclusion

ACP greatly appreciates the subcommittee convening this hearing and for its desire to hear from stakeholders on the impact of this court ruling on those with pre-existing conditions. ACP hopes and anticipates that this decision by a single federal judge in Texas will be reversed on appeal, but we take nothing for granted and will be doing all that we can to ensure that

patients do not lose current law protections. Please contact Jonni McCrann at jmccrann@acponline.org with any questions or if additional information is needed.