



July 10, 2019

House Oversight and Reform Committee  
2157 Rayburn House Office Building  
Washington D.C. 20515

Re: Statement for the Record: *Hearing on "The Trump Administration's Attack on the ACA (Affordable Care Act): Reversal in Court Case Threatens Health Care for Millions of Americans"*

Dear Members of the House Oversight and Reform Committee,

The Pennsylvania Insurance Department (the Department) appreciates the opportunity to submit this statement for the record regarding the Fifth Circuit Court of Appeals' impending decision in Texas v. United States, No. 19-10011 (5th Cir.). In mid-December of 2018, a federal judge in the Northern District of Texas affirmed the plaintiffs' arguments and declared the entire Patient Protection and Affordable Care Act (ACA) to be invalid (see Texas v. United States, No. 4:18-CV-00167-O (N.D. Tex. Dec. 14, 2018)). If upheld by higher courts, the consequences of such a conclusion are of unquantifiable magnitude: undoing the ACA would have severe immediate consequences for millions of Americans, particularly the most vulnerable, and would negate the promise made by the ACA that America's health care system can be relied upon to provide comprehensive coverage to all that need it. Moreover, it would have grave, destabilizing effects on the entire insurance market. Pennsylvania would not be immune from the chaos that would ensue if the district court's Texas v. United States decision is affirmed. Our statement will focus on the impact the district court's decision would have on Pennsylvania consumers and the operations of the insurance market in Pennsylvania if the prior decision is upheld. Our top priority every day is to ensure that Pennsylvania's health insurance market is stable and provides affordable and comprehensive coverage to Pennsylvanians.

### Consumer Harm

Striking down the ACA would create a surge in the number of uninsured and undo the increased access to affordable health insurance and health care services afforded by the ACA (see Brief for Economic Scholars as Amici Curiae Supporting Intervenor-Defendants California et al., Texas v. United States, No. 4:18-CV-00167-O (N.D. Tex. Dec. 14, 2018), at 7). Devastatingly, community rating and guaranteed issue provisions would be revoked, so that those with pre-existing conditions, if they are able to purchase coverage at all, would be charged much higher premiums, likely making coverage unaffordable. There is no reason to impose these harms on consumers, including those in my state of Pennsylvania, considering millions would face the prospect of shorter, sicker, less productive lives (*Id.* at 4).

In addition to striking down protections for those with pre-existing conditions, access to comprehensive care would also decrease. This would deprive individuals of access to services that typically were not covered by private health insurance prior to the standards established by the ACA, such as those related to prescription drugs, maternity, mental health, substance use disorder, and autism. (*Id.* at 9).

The opioid epidemic is a tragic illustration of the importance of both protecting those with pre-existing conditions and ensuring that health care services provided are comprehensive. Like other states across the

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nation, Pennsylvania has been fighting to combat one of the most devastating public health crises in our country's history. Removing protections that ensure access to mental health and substance use disorder coverage would undermine Pennsylvania's, and our nation's, progress towards assuring that those with opioid use disorder (OUD) and other mental health and substance use disorders are able to access effective treatment. Comprehensive, affordable insurance coverage for OUD, like all the coverages required by the ACA, is critical to securing access to and utilization of treatment resources and services. As a direct result of the ACA, Pennsylvania was able to open treatment doors for tens of thousands of individuals needing mental health or substance use disorder services. However, without pre-existing condition protections or essential health benefits, individuals with mental health and substance use disorders could be refused coverage because of their condition or health insurance plans could choose not to cover these services at all. This would effectively undo a decade of progress made towards ensuring those with mental health and substance use disorders have access to crucial, effective, evidence-based treatment services. There is no reason to re-institute barriers to accessing these still limited, yet much-needed, services.

In short, affirming the district court's decision may cause hundreds of thousands of Pennsylvanians to lose their coverage completely or be able, at best, to obtain significantly less comprehensive coverage.

### Insurance Market Turmoil

In addition to the extensive consumer harm that would be caused if the Fifth Circuit affirms the district court's decision, it would also cause chaos in Pennsylvania's health insurance markets, as well as health insurance markets across the nation, where tremendous investments have been made in reliance on the continuation of the ACA (*Id.* at 4). First, health insurers who have been dedicated to serving the needs of the individual and small group markets would face immense coverage disruption, financial losses, and uncertainty. For example, suddenly cutting advanced premium tax credits (APTCs) and cost-sharing reductions (CSRs) would make premiums and out-of-pocket costs unaffordable, and all but those who most need coverage will maintain it. Those individuals left with coverage would be negatively affected by the deterioration of the market risk pool and likely face unaffordable premiums. Simultaneously, faced with this changing pool of customers in the risk pool, insurers may be compelled to withdraw from the market or face insolvency (*see* Brief for America's Health Insurance Plans as Amici Curiae Supporting Intervenor-Defendants California et al., Texas v. United States, No. 4:18-CV-00167-O (N.D. Tex. Dec. 14, 2018), at 13).

Second, the risk adjustment program would end. This program incentivizes insurers to compete based on value and efficiency and dissuades plans from competing based on health status of enrollees, and its demise would negatively impact rates and sustainability (*Id.* at 14). Third, many states have passed laws and enacted regulations impacting insurers' day-to-day operations that rely upon the continued enforcement and viability of the ACA. Finding the ACA in its entirety unconstitutional would raise complicated questions as to the continued application of states' laws and regulations (*Id.* at 15). These sudden and impactful changes would cause immense uncertainty both from an actuarial perspective and a regulatory one, creating devastating levels of disruption to insurers' operations and, consequently, turmoil for consumers served by the marketplace.

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In sum, a decision by the higher courts concluding that the entire ACA should be overturned would cause significant consumer harm and disrupt health insurance markets. It would undermine concrete gains in insurance coverage: an estimated 32 million people could become uninsured and average premiums in the individual market could double by 2026 without the stabilizing effects of the ACA (*see* Brief for Economic Scholars as Amici Curiae Supporting Intervenor-Defendants California et al., Texas v. United States, No. 4:18-CV-

July 10, 2019

Page 3 of 3

00167-O (N.D. Tex. Dec. 14, 2018), at 7); Brief of the American Medical Association et al. as Amici Curiae Supporting Intervenor-Defendants California et al., Texas v. United States, No. 4:18-CV-00167-O (N.D. Tex. Dec. 14, 2018), at 24-25)). This would cause disruptive disorder and confusion in the insurance marketplace, not only in Pennsylvania, but across the entire country.

We appreciate and thank you for the opportunity to share Pennsylvania's perspective on the implications of this important decision. If you should have any questions or would like more information, please do not hesitate to contact Megan Barbour, Policy Director for the Department, at [megbarbour@pa.gov](mailto:megbarbour@pa.gov).

Sincerely,



Jessica K. Altman  
Commissioner