

Louisiana has a lot at stake in reckless health care lawsuit

Louisiana Attorney General Jeff Landry has signed Louisiana onto a dangerous federal lawsuit that threatens health care coverage and access for hundreds of thousands of Louisiana residents and who depend on the Affordable Care Act. The suit, *Texas v. United States*, also could eliminate vital consumer protections that benefit everyone.

The lawsuit, heard in a U.S. District court in Texas in early September, has the potential to overturn the entire Affordable Care Act (ACA), including provisions that are vastly popular among Louisianans and the American people. Twenty states are party to the lawsuit, including Louisiana, thanks to the unilateral decision made by Landry.

The states argue that the ACA's requirement that everyone have health insurance, known as the individual mandate, was rendered unconstitutional when Congress in 2017 repealed the penalty for noncompliance. If the court rules in Landry's favor, the landmark federal health care law would be thrown out.

Here's what that could mean for Louisiana:

- [483,000](#) low-income Louisiana adults who have gotten health coverage through Medicaid expansion could become uninsured.
- [93,726](#) low to moderate-income Louisiana families who receive federal subsidies to purchase insurance in the individual marketplace could lose that assistance.
- [849,000](#) people with pre-existing conditions in Louisiana could lose protections that prohibit discrimination by insurance companies in the event they need to purchase their own health insurance.
- Women and adults over 50 in the state could lose the federal protections that prevent insurance companies from charging them more for their health care coverage ([state law](#) currently includes protections similar to this ACA provision)
- Insurance companies would no longer be required to cover the "[essential health benefits](#)" including maternity care, hospitalization, and prescription drugs.
- The Medicare Part D coverage gap (known as the [Medicare donut hole](#)) could be reopened.

While states that brought the lawsuit are asking the judge to overturn the entire ACA, they more specifically targeted the law's consumer protections and regulations of the private insurance markets. Recognizing that they likely do not have a strong enough argument to overturn the whole

law, the plaintiffs have a secondary argument that is aimed at overturning Title I of the ACA, which includes the popular provisions known as “guaranteed issue” and “community rating:”

Here’s what those provisions do:

- 1) Guaranteed issue - requires insurance companies to allow a person to enroll regardless of health status.
- 2) Community rating- prohibits insurance companies from charging premiums based on a person's age, gender or health status.

In their [original complaint](#), the plaintiff states specifically asked the judge to find the individual mandate unconstitutional and with it, overturn the guaranteed issue and community rating provisions. But in oral arguments before the court, they took their reasoning a step further. The states specifically argued that the ACA’s individual mandate is so intertwined with the *all* of the insurance market regulations and consumer protections in Title I, that if the mandate is deemed unconstitutional, all of the other Title I provisions must also be reversed.

Katie Keith with Health Affairs [explains](#):

They asked the court to “strongly consider” also striking “the other insurance regulations which are of a very similar character to guaranteed issue and community rating” that result in “improved insurance products” under the ACA. They ask that this injunction apply in only the 20 plaintiff states. The plaintiffs did not explicitly define what provisions they would include as related to “improved insurance products.” But, at a minimum, this appears to mean the benefit-related provisions of the ACA such as coverage of the essential health benefits package, coverage of preventive services without cost-sharing, coverage of dependents up to age 26, the ban on annual and lifetime dollar limits, and the medical loss ratio standards, among others.

The Department of Justice has [sided with the plaintiff states](#) on guaranteed issue and community rating, and has refused to step in to defend those key provisions of the law. The Justice Department asked the court for a “declaratory judgment” that the individual mandate, guaranteed issue and community rating are invalid beginning on Jan. 1.

The Justice Department’s refusal to support patients has left it up to a group of 17 states to defend the legal protections for people with pre-existing conditions. [Keith explains](#):

Given the Trump administration’s position, it will be up to the 17 intervenor states, led by California, to defend these provisions of the ACA. Also on June 7, these states filed a brief opposing the motion for a preliminary injunction. They argue that the mandate itself remains constitutional and, even if the court finds otherwise, it is severable from the rest of the ACA.

The stakes in this lawsuit are incredibly high. The risk is especially high in Louisiana, where Landry recently [acknowledged in an interview](#) that he has no plan for replacing the consumer protections or coverage options that would be lost should he prevail in the lawsuit.

Louisianans should let Landry know that they disagree with his decision to make Louisiana a part of this reckless lawsuit. Louisiana residents should also reach out to their representatives in Congress and call on them to act in the best interest of their constituents. Specifically, Democrats in Congress have filed [resolutions](#) that would give Senate and House legal counsel the authority to intervene on their chambers' behalf in the Texas v. United States suit, further bolstering defenses for the ACA. Louisiana's congressional delegation should sign on to the resolutions to preserve Louisianans' access to health care and the protections they need.

By Jeanie Donovan
October 2018