

Current Status of the ACA

SOURCE 1:

2020 Affordable Care Act Health Plans: What's New

<https://www.npr.org/sections/health-shots/2019/11/21/781224043/2020-affordable-care-act-health-plans-whats-new>

- The Affordable Care Act is still the law of the land.
- The GOP-led Congress gutted a key part of the law — the penalty for the individual mandate — that required everyone to have coverage. But other key tenets of the ACA remain in place, including the individual marketplace it created where people can shop for health coverage.
- The Trump administration has dramatically scaled back its outreach and marketing budget for open enrollment — allotting about \$10 million for such efforts, compared with the more than \$100 million the Obama administration spent. Lack of outreach, combined with Republican efforts to overturn or undermine the law, could give consumers a wrong impression, says Katie Keith, a health policy consultant who frequently writes about the health law.
- So far, about 930,000 people have signed up for coverage. That's still slightly lower than where things were last year — and first-day website glitches may have played a role, suggests Sabrina Corlette, a research professor at Georgetown University's Center on Health Insurance Reforms.
- In the second week of the sign-up period, enrollment was about 10% below what it was in last year's second week — but the number of new customers has gone up.
- On average, premiums are down 4% nationally over last year for silver-level plans sold through the federal marketplace. In some states, they're even cheaper.
- People who bought coverage last fall and don't shop around will be automatically reenrolled in those health plans — which may not be the best for their needs and may be more expensive than other options.
- Federal courts recently blocked a rule that would have penalized recent legal immigrants who use those subsidies. Known as the "public charge" rule, it would have counted that subsidy against people looking to stay longer in the United States. The court ruling means that, at least for now, legal immigrants should also be able to purchase subsidized health insurance with no penalty, Corlette says.
- The Trump administration has loosened restrictions on non-ACA policies — "short-term plans" — so that they can last up to 12 months. (Previously they lasted only three months and were treated as bare-bones, stopgap insurance.)

- Pitched as a cheaper alternative to ACA coverage, they are allowed to factor in preexisting medical conditions — and can deny insurance to people because of their medical history. They also generally cover a much narrower range of benefits. Some have lifetime caps on benefits, and they typically don't cover prescription drugs. These plans are not eligible for federal subsidies.
- A group of Republican attorneys general and governors filed a lawsuit in 2018 that argues that since the Supreme Court upheld the ACA in 2012 specifically because its individual mandate was deemed a valid exercise of Congress' taxing power, reducing that tax to zero — as Congress did — makes the entire law unconstitutional. It's an argument that many legal experts say is shaky, but a federal judge in Texas agreed with those who brought the suit. The case, known as *Texas v. Azar*, is awaiting a ruling from the 5th Circuit Court of Appeals. The Trump administration, meanwhile, has declined to defend the federal health law. A group of Democratic attorneys general has stepped in, in its stead. If the appellate court sides with the trial judge to overturn the ACA, the decision would likely be stayed and the case appealed to the Supreme Court. That could drag things out until next summer at the earliest. The administration hasn't indicated what it might do if the health law is struck down — a scenario that would gut the individual marketplace and eliminate the ACA's consumer protections. But most experts agree it is also not likely to affect the 2020 coverage year.

Obamacare Lawsuits

SOURCE 1:

Obamacare Lawsuits

https://ballotpedia.org/Obamacare_lawsuits

Zubik v. Burwell

Pursuant to the US Supreme Court's 2014 decision in *Burwell v. Hobby Lobby*, religious organizations and closely-held for-profit companies became eligible for an exemption from the Affordable Care Act's contraception mandate. Under the exemption, organizations could notify the government of their religious objections to contraception, which would then make an arrangement with the insurance company to provide contraceptive coverage to the employees. However, some religious organizations objected to the accommodation, arguing that they would still be complicit in providing contraception to their employees.

On May 21, 2012, 43 different Catholic organizations filed 12 lawsuits against the Department of Health and Human Services, including *Zubik v. Burwell*, *Priests for Life v. Health and Human Services*, *East Texas Baptist University v. Burwell*, *Southern Nazarene University v. Burwell*, *Eternal Word Television v. Burwell*, *Little Sisters of the Poor v. Burwell*, *Geneva College*

v. Burwell, Ave Maria University v. Burwell, Wheaton College v. Burwell, and University of Notre Dame v. Burwell.

In February of 2014, the Seventh Circuit Court of Appeals upheld a lower court ruling against the University of Notre Dame in *University of Notre Dame v. Burwell*. In March of 2015, the U.S. Supreme Court ordered the Seventh Circuit to reconsider the case in light of the court's holding in *Burwell v. Hobby Lobby* (2014).^[4] While the case was pending a rehearing, on May 20, 2015, the Seventh Circuit denied Notre Dame's petition for injunctive relief. The circuit court's denial of Notre Dame's petition meant that the university would have to comply with the law while awaiting the Seventh Circuit's final decision.

On July 14, 2015, the Tenth Circuit Court of Appeals ruled in *Little Sisters of the Poor v. Burwell* that the accommodation provided sufficient protection for religious liberty, and that the Little Sisters of the Poor would have to comply with it.^[6]

On November 6, 2015, the Supreme Court granted certiorari in seven of the cases, consolidating argument under *Zubik v. Burwell*. The date for oral arguments was set for March 23, 2016.^[8]

During oral arguments, counsel for the Little Sisters of the Poor accused the government of wanting to "hijack" health plans in order to provide contraceptive coverage. Chief Justice John Roberts repeated the charge, stating "the petitioner has used the phrase 'hijacking,' and it seems to me that that's an accurate description of what the government wants to do." During the government's argument in response, Justice Anthony Kennedy also used the term, asking the government why it was "necessary to hijack the plans." Justice Sonia Sotomayor further asked the government's counsel, "The hijacking analogy has been mentioned. Can you explain why you don't see this as a hijacking?"

On March 29, the Supreme Court issued an order asking all the parties in the lawsuit to file additional briefs by April 20. In the briefs, the parties were to discuss additional ways in which employees of the religious organizations could obtain contraceptive coverage without the involvement of the organizations themselves.

Decision:

On May 15, 2016, the court issued a per curiam opinion in which the judgments in each the seven consolidated cases were vacated and remanded. The cases were sent back to each of the courts from which the case was appealed for further consideration. Relying on the supplemental briefs submitted by both parties, the justices determined that a solution could be reached that would provide employees with contraception coverage without action on the part of their religious employers. The Supreme Court, in vacating and remanding the cases, left open the possibility of hearing arguments on this provision in the future.

King v. Burwell: Background

The Affordable Care Act stated that individuals were eligible for tax credits to help pay for plans "which were enrolled in through an Exchange established by the State."^[15] However,

the Internal Revenue Service (IRS) granted the tax credits regardless of whether the exchange was established and operated by a State (including a regional exchange or subsidiary exchange) or by HHS.^[16]

Many states objected to the IRS rule granting tax credits to individuals purchasing plans on the federal exchange. States objected to the tax because individuals who received tax credits could trigger tax penalties for their employers. Furthermore, the availability of tax credits made it harder for individuals to opt out of purchasing insurance on the basis of hardship. In order to shelter their residents from these penalties, many states opted not to establish exchanges at all—at the time of the lawsuits, only 16 states and the District of Columbia had exchanges.

A number of lawsuits were filed against the IRS interpretation, claiming that the Affordable Care Act only allowed the IRS to grant tax credits to individuals who purchased insurance through state exchanges. Lawsuits were filed in Indiana (*Indiana v. IRS*), Oklahoma (*Pruitt v. Burwell*), the District of Columbia (*Halbig v. Burwell*), and Virginia (*King v. Burwell*). The defendant in the latter three cases was originally Kathleen Sebelius in her capacity as Health and Human Services (HHS) Secretary; Sylvia Burwell became the named defendant in the cases when she replaced Sebelius as head of HHS in 2014.

King v. Burwell

King v. Burwell was filed in Virginia with the intention of nullifying the advanced premium tax credits on the same grounds as in *Halbig*.^[17] On July 22, 2014, the same day the D.C. Circuit ruled in *Halbig v. Burwell*, the U.S. Court of Appeals for the Fourth Circuit ruled unanimously in favor of the government in *King v. Burwell*, upholding the legality of the tax credits.^[18]

The petitioners appealed, asking the U.S. Supreme Court to make a decision on the tax credits awarded through the federal exchange. The coordinator of the petitioners' case, Sam Kazman, said in a statement, "From the time these cases were first filed, we've tried to get this issue resolved as quickly as possible for the plaintiffs and the millions of individuals like them. A fast resolution is also vitally important to the states that chose not to set up exchanges, to the employers in those states who face either major compliance costs or huge penalties, and to employees who face possible layoffs or reductions in their work hours as a result of this illegal IRS rule. Our petition today to the Supreme Court represents the next step in that process."^[19]

Indiana v. IRS

The State of Indiana filed a suit against the IRS on October 13, 2013, in an attempt to nullify the tax credits given to those using the federal exchanges to purchase healthcare plans.^[20] In particular, school districts and local governments in Indiana objected to paying tax penalties if their employees received tax credits for the federal government. As of August 2016, this litigation was still ongoing in the United States District Court for the Southern District of Indiana.

Pruitt v. Burwell

On January 7, 2011, Oklahoma Attorney General Scott Pruitt announced that the state of Oklahoma would file its own lawsuit in federal district court. Pruitt stated that because Oklahoma amended its constitution to prevent citizens from being forced to obtain health insurance, the state had good reasons for filing independently. In a press release stating his intention to sue, Pruitt commented on his decision to file within the state, saying, "The most logical way to defend our state Constitution is in an Oklahoma federal court not in another state."^[21] The case was then filed as *Oklahoma v. Sebelius* on January 21, 2011.

On September 19, 2012, Attorney General Pruitt filed an amended complaint with the U.S. District Court for the Eastern District of Oklahoma that challenged the federal government's implementation of certain parts of the act, especially the tax credit for insurance purchased on the federal exchange. The complaint alleged that this IRS rule, called the "Final Rule," violated the Administrative Procedures Act and asked the court to declare it invalid.^{[22][23]}

In September of 2014, the district court ruled against the IRS in *Pruitt v. Burwell*. The court held that, under the Affordable Care Act, the tax credits applied to the state exchanges only.

Halbig v. Sebelius

Halbig v. Sebelius was filed with the intention of nullifying the tax credits obtained through the federal exchange.^[24] On July 22, 2014, the United States Court of Appeals for the District of Columbia Circuit ruled in favor of Halbig in *Halbig v. Burwell*. The court determined that the law's language granting tax credits to those using exchanges "established by the State" meant that only those using the state exchanges were eligible for tax credits, but not those using the federal exchange. Judge Thomas Griffith, who wrote the opinion of the court, explained the discrepancy, writing, "On its face, this provision authorizes tax credits for insurance purchased on an Exchange established by one of the fifty states or the District of Columbia. See 42 U.S.C. § 18024(d). But the Internal Revenue Service has interpreted section 36B broadly to authorize the subsidy also for insurance purchased on an Exchange established by the federal government under section 1321 of the Act." The decision came in at 2-1.^[25]

A U.S. Department of Justice spokeswoman quickly stated that the department would seek an *en banc* review of the *Halbig* decision, claiming, "We believe that this decision is incorrect, inconsistent with congressional intent, different from previous rulings, and at odds with the goal of the law: to make health care affordable no matter where people live."^[26]

Due in part to the use of the "nuclear option" in the Senate in December 2013, President Obama was able to appoint three judges to the D.C. Circuit. While the initial ruling in the court went 2-1 in favor of Halbig, an *en banc* review placed the case before the entire D.C. Circuit. Seven of those judges were appointed by Democratic presidents while only four were appointed by Republicans.^[27] However, the court agreed to suspend judgment until after the U.S. Supreme Court decision in *King v. Burwell*.^[28]

U.S. Supreme Court

The Supreme Court granted certiorari in *King v. Burwell* on November 7, 2014. On June 8, 2015, President Barack Obama was asked at a press conference about the impending ruling. He

replied: "This should be an easy case. Frankly, it probably shouldn't even have been taken up . . . [Overruling the tax credits is] not something that should be done based on a twisted interpretation of four words in -- as we were reminded repeatedly -- a couple-thousand-page piece of legislation."^[29]

On June 25, 2015, the Supreme Court ruled 6-3 to uphold the tax credits for purchasing on the federal exchange. Chief Justice John Roberts delivered the opinion of the Court, joined by Justices Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. Justices Antonin Scalia, Clarence Thomas, and Samuel Alito dissented.^[30]

In the opinion, the Court applied a two-part test in interpreting the Affordable Care Act: "we ask whether the statute is ambiguous and, if so, whether the agency's interpretation is reasonable." The Court found that, when taken in context, the phrase "established by the State" was ambiguous, because other parts of the Affordable Care Act treated the federal and state exchanges as equivalent and assumed that tax credits would be available through either. The Court then turned to the issue of whether the IRS interpretation was reasonable. The Court described the Affordable Care Act as "a series of interlocking reforms" and noted that its other reforms would enter "a death spiral" without the tax credits. Thus granting tax credits to those purchasing on the federal exchange was not only reasonable but "necessary" in order to accomplish Congress' goals in passing the Affordable Care Act.^[31]

In his dissenting opinion, Justice Scalia criticized the Court's interpretation of the statute: "The Court holds that when the Patient Protection and Affordable Care Act says 'Exchange established by the State' it means 'Exchange established by the State or the Federal Government.' That is of course quite absurd, and the Court's 21 pages of explanation make it no less so."^[32] The dissent went on to criticize the entirety of the Court's jurisprudence regarding the Affordable Care Act:

"Today's opinion changes the usual rules of statutory interpretation for the sake of the Affordable Care Act. That, alas, is not a novelty. In *National Federation of Independent Business v. Sebelius*, 567 U. S. ___, this Court revised major components of the statute in order to save them from unconstitutionality. The Act that Congress passed provides that every individual "shall" maintain insurance or else pay a "penalty." 26 U. S. C. §5000A. This Court, however, saw that the Commerce Clause does not authorize a federal mandate to buy health insurance. So it rewrote the mandate-cum-penalty as a tax. . . . The Act that Congress passed also requires every State to accept an expansion of its Medicaid program, or else risk losing all Medicaid funding. 42 U. S. C. §1396c. This Court, however, saw that the Spending Clause does not authorize this coercive condition. So it rewrote the law to withhold only the incremental funds associated with the Medicaid expansion. . . . Having transformed two major parts of the law, the Court today has turned its attention to a third. The Act that Congress passed makes tax credits available only on an "Exchange established by the State." This Court, however, concludes that this limitation would prevent the rest of the Act from working as well as hoped. So it rewrites the law to make tax credits available everywhere. We should start calling this law SCOTUScare."

National Federation of Independent Business v. Sebelius: Background

A federal lawsuit was filed in Florida, with 26 states, two individuals, and an independent organization named as plaintiffs. The following plaintiffs joined: The Attorneys General of Arizona, Indiana, Mississippi, Nevada, North Dakota, Alabama, Colorado, Florida, Idaho, Louisiana, Michigan, Nebraska, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Washington, Georgia, Alaska, Ohio, Wisconsin, Kansas, Maine, Iowa, and Wyoming; Mary Brown and Kaj Ahlburg; and the National Federation of Independent Business.^[34] The lawsuit was brought to the federal District Court for the Northern District of Florida by Florida state Attorney General Bill McCollum on March 23, 2010.^[35]

This lawsuit challenged the Affordable Care Act on the grounds that the individual health insurance mandate exceeded Congress' authority to regulate interstate commerce under the Commerce Clause of Article I and did not fall within its power to tax. The complaint further alleged that the Act violated the Tenth Amendment by compelling states to follow federal regulations.^[36]

A federal district court held on January 31, 2011, that the individual mandate of the Affordable Care Act exceeded Congress' authority. The court also held that the individual mandate could not be severed from the rest of the Affordable Care Act, thus striking the entire Act. The federal government appealed the ruling, which then went to the Eleventh Circuit Court of Appeals. The circuit court found the individual mandate to be unconstitutional, but denied that the individual mandate provision could not be severed from the law, thus preserving the rest of the Affordable Care Act.^[37]

U.S. Supreme Court decision

On November 14, 2011, the United States Supreme Court granted certiorari in *National Federation of Independent Business et al. v. Sebelius*. The Supreme Court decided the case on June 28, 2012. In a 5-4 decision, the court upheld the Affordable Care Act's individual mandate as a legitimate exercise of Congress' Article I power to lay and collect taxes. Chief Justice John Roberts, delivering the opinion of the court, wrote, "The court today holds that our Constitution protects us from federal regulation under the Commerce Clause so long as we abstain from the regulated activity. But from its creation, the Constitution has made no such promise with respect to taxes." The Court declined to rule whether the Affordable Care Act was also a legitimate exercise of Congress' Article I power to regulate interstate commerce.^{[38][39]}

The court also considered whether the Affordable Care Act's expansion of Medicaid was a constitutional exercise of federal power. The court concluded that, by cutting off all Medicaid funding to states that refused to expand the program, the federal government was engaging in coercion. The court stated that the law transformed the original Medicaid program into "an element of a comprehensive national plan to provide universal health insurance coverage."^[39] Thus, the court struck that particular aspect of the Affordable Care Act.

Dissent

Justices Scalia, Kennedy, Thomas, and Alito dissented. The dissenting opinion argued that the individual mandate was not a legitimate regulation of interstate commerce, because it compelled people to engage in particular transactions rather than regulating existing transactions: "the mere fact that we all consume food and are thus, sooner or later, participants in the 'market' for food, does not empower the Government to say when and what we will buy. That is essentially what this Act seeks to do with respect to the purchase of health care."^[39] The dissenters argued that the individual mandate represented an unprecedented abuse of federal power, for the federal government has "never before used the Commerce Clause to compel entry into commerce."^[39] The dissenting opinion also argued that the individual mandate was not a legitimate exercise of the power to tax, because the statute described the fine as a penalty rather than a tax. The opinion concluded that the Affordable Care Act should be overturned in its entirety, as it could not function as intended without the individual mandate.

Burwell v. Hobby Lobby / Conestoga Wood Specialties: Background

The Affordable Care Act mandated that insurance plans must cover certain essential benefits—which HHS later interpreted to include contraceptive coverage. Employers that didn't provide this benefit in their health insurance plan would face hefty fines. Several organizations argued that being required to cover birth control violated religious freedoms. Hobby Lobby, a company owned by an evangelical Christian family, sought exemptions from coverage of four different contraceptives—two emergency morning after pills and two intrauterine devices (IUDs)—on the basis that those contraceptives were forms of abortion according to their religious beliefs. The company did not argue against providing most common forms of birth control.^[40] In July of 2013, Hobby Lobby was granted an injunction to temporarily protect it from the contraceptive mandate.^[41]

Conestoga Wood Specialties was a company owned by a Mennonite family, who objected to contraceptives that could potentially cause an abortion. In July of 2013, the Third Circuit Court of Appeals ruled against Conestoga Wood Specialties on the grounds that for-profit corporations cannot engage in religious exercise.^[42]

Supreme Court decision

In November of 2013, the U.S. Supreme Court granted certiorari and consolidated both cases. Both companies' appeals were heard together during a one-hour oral argument.^[43] The Supreme Court ruled in favor of Hobby Lobby in *Burwell v. Hobby Lobby* on June 30, 2014.^[44]

The 5-4 decision allowed closely-held companies to opt out of offering contraceptives on the basis of religious beliefs. The case hinged on the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act (RFRA) passed by Congress in 1993.^[45] RFRA stated that the federal government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability."^[46] Justice Samuel Alito, writing the court's opinion, turned to Title I of the United States Code. Since Title I defined "person" to include "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals," the court held that

for-profit corporations qualified as persons for the purposes of RFRA. The opinion concluded, "We doubt that the Congress that enacted RFRA — or, for that matter, ACA — would have believed it a tolerable result to put family-run businesses to the choice of violating their sincerely held religious beliefs or making all of their employees lose their existing healthcare plans."^[47]

Dissent

The dissenting justices claimed the ruling would allow companies to "opt out of any law (saving only tax laws) they judge incompatible with their sincerely held religious beliefs." Likewise, the Obama administration argued that companies that did not wish to provide the contraceptive coverage or other areas of coverage due to religious beliefs could decide not to provide any company-wide options.^[47]

Although the decision expanded the notion of corporate personhood to include religious rights "to provide protection for human beings," members of the public found it highly divisive in nature as it reaffirmed the court's "pro-business" stance.^[48] Senate Majority Leader Harry Reid (D-Nev.) pledged to restore the Affordable Care Act's contraception coverage, stating, "If the Supreme Court will not protect women's access to health care, then Democrats will. We will continue to fight to preserve women's access to contraceptive coverage and keep bosses out of the examination room."^[49]

U.S. House of Representatives v. Burwell

Claiming President Obama "changed the healthcare law without a vote of Congress, effectively creating his own law by literally waiving the employer mandate and the penalties for failing to comply with it," Speaker of the House John Boehner (R-Ohio) announced a lawsuit focusing on the president's failure to enforce the employer mandate as written in the ACA.^[50] A draft resolution to form a Bipartisan Legal Advisory Group (BLAG) was introduced on July 10, 2014, by House Rules Committee Chairman Pete Sessions (R-TX).^{[51][52]} The case would also focus on the executive branch's payments to insurance companies, totaling about \$3 billion dollars, without express appropriation by Congress.^[53] On July 30, 2014, the House voted 225 to 201 in favor of a resolution to file the lawsuit.^[54] The case was filed as *U.S. House of Representatives v. Burwell* on November 21, 2014.^[55] In September 2015, the United States District Court for the District of Columbia ruled that the House could proceed with its lawsuit challenging the use of unappropriated funds for new healthcare subsidies; however, the House could not sue the executive branch for delaying implementation of the employer mandate.^[56] In May 2016, the same district court ruled that the executive branch could not use unappropriated funds to subsidize insurance companies.^[57] The ruling was stayed to allow for appeal.

State-Level Lawsuits

State of Texas v. United States of America

On February 24, 2016, the states of Texas, Kansas, Indiana, Nebraska, Louisiana and Wisconsin filed a lawsuit against the U.S. Department of Health and Human Services over the health insurance providers fee. The health insurance providers fee was established by the Affordable Care Act and was a fee charged to insurers to fund the advanced premium tax credits that assisted individuals with purchasing insurance on the health insurance exchanges. Although Congress passed a law in December 2015 that lifted the fee for one year in 2017, the fee was collected for 2014, 2015 and 2016.^{[58][59]}

In March 2015, the Actuarial Standards Board, a private entity which sets standards for actuaries, notified states that they would be required to "pay a portion of the fee to their Medicaid managed care organizations to then pay to the federal government." If they did not, their accounting practices would not be considered sound and they would not receive matching federal Medicaid dollars. The lawsuit challenged the legality of this rule, stating that it came from a private entity with no legislative authority and that the Affordable Care Act did not contain language notifying states that they would be responsible for the fee. The lawsuit asked that the rule be eliminated and states be reimbursed for the fees that were already collected.^[60]

Commonwealth of Virginia v. Sebelius

On March 22, 2010, Virginia Attorney General Ken Cuccinelli (R) announced that the state would be filing suit against the federal government as soon as the act was signed; it did so on March 23, in the District Court for the Eastern District of Virginia. Cuccinelli stated that he believed the state of Virginia to be in a unique position to sue because in 2010 the state passed a statute, Virginia Code 38.2-3430.1:1, declaring that no resident of Virginia would be required to have insurance or be penalized for not having it.^{[61][62]} The case was filed as *Commonwealth of Virginia v. Sebelius*.

In the complaint filed, the state argued that the individual mandate exceeded powers granted to Congress by the commerce clause of Article I. It further asked that the entire act be declared invalid because the individual mandate is an "essential, non-severable" provision. Cuccinelli also asked the court to declare Virginia Code 38.2-3430.1:1 a valid exercise of state power.^[63]

Commonwealth of Virginia v. Sebelius was dismissed by the Fourth Circuit on September 8, 2011 due to lack of standing.^[64]

Liberty University v. Lew

On July 30, 2010, a lawsuit was filed by Liberty University and several individuals challenging the act under Virginia law, much like the Virginia state lawsuit. The original filing of the suit takes issue with the potential for public funds to be used for abortion and claims that the act shows preference for certain religion over others by being selective about those for which it offers exemptions. The suit also alleged that the act violates the constitutional guarantee of a Republican form of government.^[65] The suit was originally

filed against Timothy Geithner, Secretary of the Treasury, but was changed when he was replaced by Jacob Lew.

Though the original suit was dismissed by the United States Court of Appeals for the 4th Circuit in 2011, the Supreme Court ordered that the court reopen the case. The Supreme Court issued the order explaining that the suit remained active following its *National Federation of Independent Business v. Sebelius* ruling because Liberty University's challenges were to the employer mandates rather than the individual one. Since its original filing, the lawsuit expanded to include a challenge to HHS contraception mandate.^{[66][67]} However, the case was dismissed again and the Supreme Court denied certiorari for an appeal.^[68]

SOURCE 2:

Defending the Affordable Care Act

<https://www.justice.gov/archives/healthcare>

- US Department of Justice Archives:
 - The Affordable Care Act was enacted on March 23, 2010. This comprehensive health care reform law makes health insurance affordable for millions of Americans and protects them against potentially catastrophic medical expenses. This law has become the subject of several lawsuits challenging the constitutionality of the provision requiring Americans who can afford it to maintain basic health insurance coverage. The Department is vigorously defending the law in these cases.

SOURCE 3:

Affordable Care Act Cases

<https://www.uscfc.uscourts.gov/aca>

- US Court of Federal Claims:
 - Currently hearing 72 Affordable Care Act cases
 - *See attached link for comprehensive list of all cases.*

Obamacare Timeline

SOURCE 1:

History and Timeline of the Affordable Care Act (ACA)

<https://www.ehealthinsurance.com/resources/affordable-care-act/history-timeline-affordable-care-act-aca>

Key events leading up to the passage of Obamacare (The Affordable Care Act):

- **July 2009:** Speaker of the House Nancy Pelosi and a group of Democrats from the House of Representatives reveal their plan for overhauling the health-care system. It's called H.R. 3962, the Affordable Health Care for America Act.
- **August 25, 2009:** Massachusetts senator Ted Kennedy, a leading supporter of health-care reform, dies and puts the Senate Democrats' 60-seat supermajority required to pass a piece of legislation at risk.
- **September 24, 2009:** Democrat Paul Kirk is appointed interim senator from Massachusetts, which temporarily restores the Democrats' filibuster-proof 60th vote.
- **November 7, 2009:** In the House of Representatives, 219 Democrats and one Republican vote for the Affordable Health Care for America Act, and 39 Democrats and 176 Republicans vote against it.
- **December 24, 2009:** In the Senate, 60 Democrats vote for the Senate's version of the bill, called America's Healthy Future Act, whose lead author is senator Max Baucus of California. Thirty-nine Republicans vote against the bill, and one Republican senator, Jim Bunning, does not vote.
- **January 2010:** In the Senate, Scott Brown, a Republican, wins the special election in Massachusetts to finish out the remaining term of US senator Ted Kennedy, a Democrat. Brown campaigned heavily against the health-care law and won an upset victory in a state that consistently votes in favor of the Democratic party.
- **In January 2010,** eHealth research conducted by Opinion Research highlighting public perceptions of healthcare reform.
- **March 11, 2010:** Now lacking the 60th vote needed to pass the bill, Senate Democrats decide to use budget reconciliation in order to get to one bill approved by the House and the Senate. The use of budget reconciliation only requires 51 Senators to vote in favor of the bill in order for it to go to the president's desk for signature.
- **March 21, 2010:** The Senate's version of the health-care plan is approved by the House in a 219-212 vote. All Republicans and 34 Democrats vote against the plan.
- **March 23, 2010:** President Obama signs the Affordable Care Act into law.

Changes Required by the Affordable Care Act Immediately:

- **March 23, 2010: Grandfathered health plans:** Anyone who had an individually purchased health insurance plan in place had a health insurance plan with

“grandfathered status,” which meant that, by-in-large, the plan could stay the same as long as their insurer continued to offer that plan.

- **March 23, 2010: Non-grandfathered health plans:** Anyone who bought a health insurance plan after March 23, 2010 would eventually have to enroll in a new plan that met all of the new standards of the Affordable Care Act. The original deadline for this transition was January 1, 2014 or on a plan’s renewal date within the 2014 plan year.
- **On April 7, 2010:** eHealth publishes a list of FAQs and tips for consumers and small business owners who buy their own health insurance.

Changes Required by the Affordable Care Act After 90 Days:

- **June 23, 2010:**
 - **Small business tax credits:** For certain small businesses, there are tax credits of up to 35% of premiums.
 - **Access to the federal high-risk pool for the uninsured with pre-existing conditions:** There are \$5 billion allocated for individuals who cannot qualify for insurance. These funds allow them to buy insurance from the government; but this coverage is not free.
 - **Reinsurance for retiree health benefit plans:** This is a temporary reinsurance program that provides reimbursement to participating employment-based plans for a portion of the cost of providing health insurance coverage to early retirees.
- **July 1, 2010:**
 - **Pre-Existing Condition Insurance Plan (PCIP):** This program is designed to make health insurance available to those that have been denied coverage by private insurance companies because of a pre-existing condition.¹ Forbes Report: Obamacare’s High-Risk Pool Spending Doubles Government Estimates (<http://www.forbes.com/sites/theapothecary/2012/02/25/report-obamacares-high-risk-pool-spending-doubles-government-estimates/#8f7db334a6e5>)

Pre-Existing Condition Insurance Plans	Projections	Actual
2010: Medicare Actuary	375,000 enrollments ¹	48,879 ¹
By 2013: Congressional Budget Office	700,000 enrollments ²	56,257 ³
Cost Per Enrollee	\$13,026 ¹	\$28,994 ¹

Changes Required by the Affordable Care Act After 180 Days:

- **September 23, 2010 (Within six months of the ACA’s enactment):**

- **Closing the coverage gap in Medicare Part D (prescription drug coverage):** Seniors are entitled to receive a \$250 rebate to close the coverage gap.
- **Health insurance consumer information:** A government website is created to allow people to search for information about health insurance companies, available plans, and so on.
- **No pre-existing conditions coverage exclusions for children:** The law indicates that insurers are not permitted to exclude pre-existing conditions from coverage.
- **October 19, 2010:** eHealth publishes its first in a series of resources to help uninsured children navigate differences in individual states.

Changes Required by the Affordable Care Act in 2011:

- **Patient protections for all new plans:** This provision protects patients' choice of doctors by allowing plan members to pick any participating primary care provider, prohibiting insurers from requiring prior authorization before a woman sees an obstetrician/gynecologist (ob/gyn), and ensuring access to emergency care.
- **Extension of dependent coverage for young adults:** Young adults can stay on their parents' insurance until age 26, even if they are not full-time students. This extension applies to all new plans.
- **"First-dollar" prevention benefits:** All new health insurance policies must cover preventive care and pay a portion of all preventive care visits.
- **No lifetime limits on coverage:** This eliminates any maximum dollar amount that a health insurance company agrees to pay on behalf of a member for covered services during the course of his or her lifetime.
- **Restricted annual limits on coverage:** This eliminates any limits or maximum payouts from the health insurance company.
- **Prohibits rescission:** The ACA prohibits rescission when a claim is filed, except in the case of fraud or misrepresentation by the consumer.
- **Appeals process:** When a consumer has a problem with his or her coverage, the insurance company must provide a process for customers to make an appeal.

NOTE: In January, 2011: eHealth publishes 11 guides on the top child-only health insurance coverage that examined differences in implementation in numerous states.

Changes Required by the Affordable Care Act in 2014:

- **October 1, 2013: Health insurance exchanges scheduled to open for 2014 enrollment:** Begin writing policies that go into effect January 1 of the coming year.
- **January 2014: Federal subsidies for health insurance coverage:** People buying insurance on their own get subsidies to help them pay their monthly insurance premiums. Premiums are allocated on a sliding scale, as determined by income. Any individual earning over 400% of the poverty level (\$43,320 in 2009) doesn't qualify for subsidies.

- **January 2014: Small business tax credits:** When health insurance exchanges are operational, tax credits are up to 50% of premiums.
- **January 2014: No restrictions on pre-existing conditions:** Insurance companies are required to provide health insurance to any adult aged 19 to 64 who applies for coverage.
- **January 2014: Requirement to buy health insurance:** To prevent people from waiting until they get sick to buy health insurance, the ACA requires all Americans to buy health insurance or pay a fine. The fine starts at \$95 for an individual in 2014 and goes up each year until 2016, when the fine is the largest of the following two: \$695 or 2.5% of a person's annual income.
- **January 2014: High-Risk Insurance Pools Expire:** Pre-Existing Condition Insurance Plans (PCIPs), established in 2010 are scheduled to expire on January 1, 2014 once all of the major ACA reforms were in effect.

Actual Events That Occurred as A Result of the Affordable Care Act – 2011 to 2014:

- **January, 2011: Medical Loss Ratio Requirements:** In 2011, insurance companies must ensure the value for premium payments. If insurance companies don't spend at least 80% to 85% of premiums on care (for individual, small group markets and large group) the difference is sent to customers in a refund.
- **January 2011:** A Florida judge rules that elements of the Affordable Care Act are unconstitutional.
- **November 14, 2011:** The US Supreme Court agrees to hear arguments in the Obamacare case brought by 26 states and the National Federation of Independent Business. It argues that elements of the Affordable Care Act are unconstitutional.
- **June 28, 2012:** The US Supreme Court upholds the major provisions of the Affordable Care Act.
- **August 2012:** The White House confirms the ACA's "contraceptive mandate" for women's preventive services without cost-sharing: HIV screening, contraception counseling, and domestic violence support services.
- **November 6, 2012:** President Obama is re-elected, effectively ensuring the ACA will survive.
- **January 2013:** The limit on pre-tax contributions to flex spending accounts is capped at \$2,500 annually.
- **July 2, 2013:** The White House agrees to a one-year delay for large businesses to provide workers with affordable health care.
- **October 1, 2013:** Healthcare.gov, the federal exchange serving 36 states, experiences technical difficulties and eventually goes offline before reopening on December 2, 2013.
- **October 1, 2013:** Several state-run exchanges experience enrollment hurdles, including the exchanges in California, Oregon, Washington, and Maryland. Ultimately, some perform better than others.
- **October, 2013:** Republicans led by Senator Ted Cruz shut down the US federal government and curtail most routine operations after Congress fails to enact legislation

appropriating funds for fiscal year 2014 or to enact a continuing resolution for the interim authorization of appropriations for fiscal year 2014.

- **October 17, 2013:** Regular government operations resume after an interim appropriations bill is signed into law.
- **November 26, 2013:** Eight Senate Democrats tell the Obama administration that they're "troubled by the ongoing technical difficulties" with healthcare.gov and want an alternative way for insurers and web-based brokers to enroll subsidy-eligible consumers.
- **December 2, 2013:** Healthcare.gov, the federal exchange serving 36 states, reopens after experiencing technical difficulties and eventually going offline for several weeks.
- **January 1, 2014:** The bulk of remaining regulatory changes in the Affordable Care Act go into effect.
- **January, 2014: Medical Loss Ratio Requirements:** Health Affairs published its most recent analysis of Medical Loss Ratio performance by major insurers.
- **March, 2014: The New York Times** reports that the U.S. Census Bureau, the authoritative source of health insurance data changed its annual survey so thoroughly that it became difficult to measure the effects of President Obama's health care law.
- **March 6, 2014:** The federal government extends the two-year grace period for individuals enrolled in non-grandfathered health insurance plans.
- **May 1, 2014:** The US Department of Health and Human Services announces that more than 8 million people enrolled in a health insurance plan during the first Open Enrollment Period (OEP).
- **March 4, 2015 – King v. Burwell:** The U.S. Supreme Court (SCOTUS) hears oral arguments for *King v. Burwell*, a lawsuit challenging U.S. Treasury regulation, 26 C.F.R. § 1.36B-2(a)(1), issued under the Patient Protection and Affordable Care Act (ACA). King argues that the ACA only allows subsidies to be distributed through state-run exchanges, and that regulations implemented by the IRS exceed the authority granted to it by Congress. (Read eHealth's white paper on King vs. Burwell.)
- **June 25, 2015 – King v. Burwell:** The Supreme Court ruled 6-3 that subsidies could be distributed through Healthcare.gov, the Federal Exchange, if a state did not set up its own exchange.
- **January 1, 2016:** The threshold for itemizing medical expenses on taxes increases from 7.5% to 10% for seniors.
- **May 12, 2016:** U.S. District Judge Rosemary Collyer ruled that the ACA's cost-sharing reduction (CSRs) subsidies, which pay a portion of an enrollee's deductibles, do not have permanent funding in the legislation. This makes them subject to appropriations, which means they must be approved by the Congress. The ruling was placed on hold, pending an appeal.
- **Tuesday, November 8, 2016: Donald Trump is elected to be the next president of the United States.**
- **November 20, 2016:** Vice President-elect, Mike Pence, says "President-elect Donald Trump will prioritize repealing President Barack Obama's landmark health care law right "out of the gate" once he takes office.

Obamacare Key Metrics

Subject	2010 Projected	2016 Actual
<i>Exchange Enrollees without subsidies</i>	25% ²	17% ²
Spending on Subsidies in 2016	\$59 billion ³	\$56 billion ³
<i>Medicaid Enrollments</i>	16 million ¹¹ (CBO by 2016)	14.1 million ¹² (Kaiser Family Foundation 2016)
<i>Census Uninsured</i>	20.3% in 2012	11.5% in 2016
<i>Old Way:</i>	12.5% uninsured	
<i>New Way</i>	10.6% uninsured	
Prices	2013	2016
Individual Premiums	\$197 ⁹	\$321 ¹⁰
Individual Deductibles	\$3,319 ⁹	\$4,358 ¹⁰
Family Premiums	\$426 ¹⁰	\$833 ¹⁰
Family Deductibles	\$4,230 ¹⁰	\$7,983 ¹⁰

SOURCE 2:

Timeline: Affordable Care Act

<http://affordablehealthca.com/timeline-obamacare/>

- **Fall 2008:** Presidential candidate Barack Obama says, “On health care reform, the American people are too often offered two extremes — government-run health care with higher taxes or letting the insurance companies operate without rules. ... I believe both of these extremes are wrong.” Obama wins the presidency a week later.
- **March 2009:** President Obama convenes a “health summit” with doctors, insurers, drug companies, consumers advocates and lawmakers. “The status quo is the one option that is not on the table,” the new president says. He appoints Kansas Gov. Kathleen Sebelius, who has a history of clashes with the insurance industry, to run the federal Health and Human Services agency. She also heads the White House Office for Health Reform.

- **July 2009:** House Democrats unveil their 1,000-page plan for overhauling the health care system. House Speaker Nancy Pelosi (pictured), an ally of Obama's, says: "When I take this bill to the floor, it will win. This will happen." House committees begin crunching the details and voting on provisions.
 - **August 2009:** Lawmakers go home to find walls of worry erected over "Obamacare." One lawmaker says citizens are "shell-shocked" over the many changes in the first eight months of Obama's administration.
 - **Nov. 7, 2009:** The House approves its version of health care reform in a 220-215 vote. One Republican votes for the bill. Passage was far from certain — a last-minute compromise limiting federal funding for abortion services cleared the way.
 - **Dec. 24, 2009:** The Senate approves its version of the health care overhaul in a 60-39 party-line vote. Democrats have to break a GOP filibuster. The bill's passage confirms majority agreement in both chambers of Congress.
 - **January 2010:** Obama, in his first State of the Union address, says the health overhaul will "protect every American from the worst practices of the insurance industry." ... In a major upset, Massachusetts state Sen. Scott Brown, a Republican, wins the special election to finish the remaining term of U.S. Sen. Ted Kennedy. It gives the GOP a key vote and is seen as a major rebuff to Obama. Brown works actively against Obamacare. Meanwhile, the GOP-controlled House votes to repeal the Affordable Care Act, but the effort fails in the Senate.
 - **February 2010:** Anthem Blue Cross of California informs many members they'll be paying a 39 percent increase in premiums. The move, under investigation by the White House and in Congress, galvanizes Democrats on the health care issue. Obama calls a bipartisan health care meeting for leaders of both parties on Feb. 25. He later says "the Republican and Democratic approaches to health care have more in common than most people think."
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- **March 2010:** President Obama and House Speaker Nancy Pelosi keep up pressure on Democrat lawmakers to ensure passage of the health care act. "We are this close to the summit of the mountain," Obama tells staffers. A New York Times analysis calls it "the most riveting cliffhanger of the Obama presidency so far."
 - **March 21, 2010:** The Senate's version of the health care plan is OK'd by the House in a 219-212 vote. All Republicans voted against it. "The American people are angry," House Republican leader John Boehner said. "This body moves forward against their will."
 - **March 23, 2010:** President Obama signs the Affordable Care Act into law. "We did not fear our future, we shaped it," he says.
 - **June 2010:** The first major provision of the Affordable Care Act go into effect, allowing adults with existing conditions to join temporary high-risk pools that expire when the Act takes effect.
 - **September 2010:** More elements of the Affordable Care Act go into effect: No lifetime dollar limits on health care coverage; dependent children allowed to stay on parents'

insurance until age 26; no pre-existing exclusions for those under age 19; insurers barred from requiring co-payments for preventive care and vaccinations.

- **Sept. 30, 2010:** The California Patient Protection and Affordable Care Act is signed into law by the governor. It creates the California Health Benefit Exchange, which goes by the name Covered California. The legislation was AB 1602. Read the California Act (PDF)
- **January 2011:** A Florida judge rules that elements of the Affordable Care Act are unconstitutional.
- **September 2011:** Health insurers are required to go public with rates increases of 10 percent or more.
- **Nov. 14, 2011:** The U.S. Supreme Court agrees to hear arguments in the Obamacare case brought by 26 states and the National Federation of Independent Business. It argues that elements of the Affordable Care Act are unconstitutional.
- **June 28, 2012:** The U.S. Supreme Court upholds the major provisions of the Affordable Care Act. Twenty-six states and the National Federation of Independent Business had brought suit in federal court challenging the individual mandate and the Medicaid expansion. “In the end, the Affordable Care Act survives largely unscathed,” one justice wrote. Republicans and the Tea Party pin their hopes on presidential hopeful Mitt Romney, who responds to the ruling saying: “Obamacare was bad law yesterday; it’s bad law today.”
- **August 2012:** The White House confirms the Act’s “contraceptive mandate” for women’s preventive services without cost sharing: HIV screening, contraception counseling, domestic violence support services.
- **Nov. 6, 2012:** Obama re-elected, effectively ensuring the Act will survive another five years.
- **January 2013:** Limit on pretax contributions to flex spending accounts capped at \$2,500 annually.
- **May 23, 2013:** The California health insurance exchange unveils a preview of its plans, with key insurers including Blue Shield, Anthem, Health Net and Kaiser Permanente.
- **June 27, 2013:** Gov. Jerry Brown signs into law two sweeping California health reform bills that are key to implementing the Affordable Care Act.
- **July 2, 2013:** The White House agrees to a one-year delay in the requirement that large businesses must provide workers with affordable health care. Reporting requirements get the blame. California officials shrug off the large-business health care delay.
- **Oct. 1, 2013:** Health insurance exchanges are scheduled to open, writing policies that go into effect Jan. 1.
- **Jan. 1, 2014:** The bulk of Affordable Care Act changes go into effect with the new year.
The Act:
 - Opens Health Benefit Exchange sales of coverage.
 - Prohibits denial of coverage to adults with pre-existing conditions.
 - Requires large employers to provide coverage to those who work at least 30 hours per week.
 - Expansion of eligibility for the Medi-Cal program.
 - Tax credits for small business that provide coverage.

- Tax credits for individuals and families with incomes up to \$94,200 (for a family of four) who buy their insurance through the Health Benefit Exchange.
- **January 2016:** Threshold for itemizing medical expenses on taxes increases from 7.5 percent to 10 percent for seniors.
- **November 2016:** Donald Trump is elected president. One of his major campaign promises is to “repeal and replace” the Affordable Care Act.
- **March 2017:** GOP leaders pull their proposed American Health Care Act after failing to win over Republican conservatives and moderates. “Obamacare is the law of the land,” a disappointed House Speaker Paul Ryan says.
- **January 2018:** Under the Affordable Care Act, all existing health insurance plans must cover preventative care and checkups without co-pays.
- **January 2020:** Medicare Part D donut hole (coverage gap) phased out.