

Anxiety over Supreme Court's latest dive into health care

February 4 2015, byRicardo Alonso-Zaldivar



In this March 28, 2012 file photo, Janis Haddon of Atlanta holds her glove high outside the United States Supreme Court in Washington, Wednesday, March 28, 2012, as the court concludes three days of hearing arguments on the

constitutionality of President Barack Obama's health care overhaul, the Patient Protection and Affordable Care Act. Nearly five years after President Barack Obama signed his health care overhaul into law, the Supreme Court will again get to decide its fate. (AP Photo/Carolyn Kaster)

Nearly five years after President Barack Obama signed his health care overhaul into law, its fate is yet again in the hands of the Supreme Court.

This time it's not just the White House and Democrats who have reason to be anxious. Republican lawmakers and governors won't escape the political fallout if the court invalidates insurance subsidies worth billions of dollars to people in more than 30 states.

Obama's law offers subsidized private insurance to people who don't have access to it on the job. Without financial assistance with their premiums, millions of those consumers would drop coverage.

And disruptions in the affected states don't end there. If droves of healthy people bail out of HealthCare.gov, residents buying individual policies outside the government market would face a jump in premiums. That's because self-pay customers are in the same insurance pool as the subsidized ones.

Health insurers spent millions to defeat the law as it was being debated. But the industry told the court last month that the subsidies are a key to making the insurance overhaul work. Withdrawing them would "make the situation worse than it was before" Congress passed the Affordable Care Act.

The debate over "Obamacare" was messy enough when just politics and ideology were involved. It gets really dicey with the well-being of

millions of people in the balance. "It is not simply a function of law or ideology; there are practical impacts on high numbers of people," said Republican Mike Leavitt, a former federal health secretary.

The legal issues involve the leeway accorded to federal agencies in applying complex legislation. Opponents argue that the precise wording of the law only allows subsidies in states that have set up their own insurance markets, or exchanges. That would leave out most beneficiaries, who live in states where the federal government runs the exchanges. The administration and Democratic lawmakers who wrote the law say Congress' clear intent was to provide subsidies to people in every state.

While predicting a victory, the White House has not prepared consumers for the consequences of a reversal. Health and Human Services Secretary Sylvia M. Burwell repeatedly said that "nothing has changed," even as other supporters of the law grew alarmed when the Supreme Court unexpectedly took the case. Burwell has dodged questions about contingency planning.

With oral arguments set for March 4 and a decision expected early in the summer, here's what's at stake:

RED STATES IN THE PATH

Insurance losses would be concentrated in Republican-led states, many of which have resisted "Obamacare."

Florida, Texas, North Carolina, Georgia, Michigan, and New Jersey are among those with the most to lose. Residents of blue states that are running their own markets, including California and New York, would continue to receive benefits.



In this March 28, 2012 file photo, supporters of health care reform rally in front of the Supreme Court in Washington on the final day of arguments regarding the health care law signed by President Barack Obama. Nearly five years after Obama signed his health care overhaul into law, the Supreme Court will again get to decide its fate. (AP Photo/Charles Dharapak, File)

Because the [health law](#)'s 2015 sign-up season is still underway, it's unclear how many millions of people could become uninsured. Two independent studies put the number at around 8 million. That includes consumers who bought individual policies outside of HealthCare.gov, but would drop coverage if premiums jump.

The federal government is currently running the insurance markets in 37 states, but not all may be affected. Some states have made progress toward setting up their own exchanges.

INSURER ESCAPE CLAUSE?

Even if the Obama administration has no Plan B, insurers appear to have been thinking ahead.

The [federal government](#) acknowledges in contract language that insurers "could have cause to terminate" their agreements with HealthCare.gov if the subsidies cease.

TIME TO SCRAMBLE

If the Supreme Court rules in late June, that would leave about three months before the start of the next sign-up season for coverage.

If the ruling goes against the subsidies, it's unclear whether the courts can delay the effects for more than a few weeks, and most state legislatures are not in session during the summer. Meanwhile, insurers are supposed to have their rates for 2016 locked down.

There's speculation that the White House could quickly roll out an administrative fix, but Obama could also toss the whole mess into the lap of the GOP-led Congress.

Technically, a few tweaks from Congress would fix the problem. But after repeated votes to repeal "Obamacare," would any Republicans be willing to facilitate its rescue?

"We don't see fixes the administration can make and we don't see Congress acting to fix this," said Neera Tanden, president of the Center for American Progress, a public policy center aligned with the White House.

REPUBLICAN vs. REPUBLICAN?

Faced with constituents at risk of losing coverage, some congressional Republicans may be willing to make fixes to the subsidies in exchange for concessions from Obama. Republicans have a long hit list of health law provisions, including employer requirements to cover workers, a tax on medical devices and a Medicare cost-control board.

But other Republicans will not want to lift a finger to bail out the program they've railed against.

"The president will say, 'With one line of legislation, you could save 5 million people from losing their [health insurance](#),' and the Republicans need to have a unified response," said Leavitt, the former HHS secretary. "If they don't, then it creates a problem for them."

Yet in the five years since the health law passed, Republicans have failed to find consensus on an alternative, and remain hard-pressed to do so. The GOP's 2016 presidential hopefuls will be hounded for answers.

To complicate matters, budget experts say a congressional fix restoring some or all of the [subsidies](#) would have to be paid for with either spending cuts or tax increases.

The last time the Supreme Court ruled on the [health care law](#), the result was a 5-4 decision upholding its central requirement that virtually all Americans must carry health insurance. This time, it won't just be political junkies holding their breath before the announcement, but many consumers as well.

The case is King v. Burwell, docket No. 14-114.

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Citation: Anxiety over Supreme Court's latest dive into health care (2015, February 4) retrieved 1 May 2024 from <https://medicalxpress.com/news/2015-02-anxiety-supreme-court-latest-health.html>

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