

# Latest supreme court ruling on Obamacare looms

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At issue: eligibility of 6.4 million people in 34 states for tax credits for insurance premiums.

(HealthDay)—Millions of Americans who bought health insurance under Obamacare will soon learn the fate of billions of dollars in federal tax credits that keep their monthly health plan premiums affordable.

The U.S. Supreme Court will decide this month whether the tax credits offered to low- and middle-income Americans who buy coverage through HealthCare.gov—the federal online health insurance marketplace—are legal.

The tax credits are a linchpin of the health-reform law that's considered President Barack Obama's signature domestic achievement—and has been broadly criticized by most Republicans and conservatives. They

view the legislation as a gross example of federal intrusion into people's lives. The main reason: Obamacare requires most Americans to have health insurance or pay a penalty.

The [tax credit](#) showdown—known as *King v. Burwell*—is the latest in a string of court cases contesting core elements of Obamacare, whose formal name is the Patient Protection and Affordable Care Act.

If the Supreme Court sides with the Obama administration in the case, nothing changes.

But, if it sides with the plaintiffs—who enjoy broad support from Obamacare critics—at least 6.4 million Americans in 34 states could lose tax credits worth \$2 billion a month that help pay for their health plan premiums.

A ruling against the tax credits—sometimes referred to as subsidies—also could have a potential ripple effect, jeopardizing other key provisions of the health-reform law, legal experts say.

The key point of contention in the pending case is whether people in states that failed to set up their own health marketplaces, or exchanges, to buy insurance under Obamacare can qualify for the tax credits if they use the federal HealthCare.gov online exchange.

Opponents of Obamacare insist that, as the 2010 law was written, the tax credits may only be offered with insurance purchased through online exchanges operated by individual states. But only 13 states and the District of Columbia created their own exchanges. Most of the states that chose not to create exchanges are run by Republicans opposed to Obamacare.

The Obama administration insists Congress intended to make the tax

credits available to all eligible buyers, whether they use the federally run HealthCare.gov exchange or a state-established exchange.

## **Tax credits reduce monthly premiums by 72 percent: HHS**

The Supreme Court's ruling could further entrench Obamacare or seriously cripple it. And how it all plays out is anyone's guess.

"Everybody agrees it'll be messy," said Paul Keckley, a managing director with Navigant Consulting's Center for Healthcare Research and Policy Analysis.

Under the health-reform law, individuals making up to \$47,080 and families of four earning as much as \$97,000 a year may qualify for tax credits to make their health insurance more affordable.

Tax credits for insurance premiums reduce monthly premiums of federal marketplace enrollees by 72 percent, on average. People who qualify for those credits pay an average of just \$105 a month for health insurance, according to the U.S. Department of Health and Human Services.

A recent Avalere Health analysis found that consumers' monthly premium contributions could jump by 255 percent, on average, in 2015 if the tax credits are stripped away.

"It's hard to imagine someone who is young and healthy, who was getting three-quarters of their premium paid for by somebody else, is going to continue to foot that bill," said Elizabeth Carpenter, an Avalere Health director in Washington, D.C.

If younger, healthier people drop coverage, "individual" or "non-group"

health insurance rates in the affected states—those that didn't create their own exchanges—could surge in 2016, affecting even non-subsidized buyers. (Younger enrollees are considered a key to the success of Obamacare because they tend to be healthier and their premiums are designed to help offset the expenses of older Americans, who are more likely to be sick.)

If nothing is done to help the people who lose tax credits, "everybody in that market [those forced to buy insurance on their own] is going to be in for a rough ride," said Katherine Hempstead, director of [health insurance coverage](#) at the Robert Wood Johnson Foundation in Princeton, N.J.

Further complicating matters, 20 states using the federal HealthCare.gov exchange haven't expanded Medicaid, the government-run insurance program for the poor, leaving consumers with even fewer coverage options. Some 9.8 million people in those states would be uninsured in 2016 if the tax credits disappear, according to a recent Urban Institute analysis funded by the Robert Wood Johnson Foundation.

"It's kind of a one-two punch," Hempstead said.

## **Court's decision could affect much more than tax-credit subsidies**

The loss of tax credits could have a huge ripple effect.

For starters, there are the 6.4 million Americans in the 34 states who would lose tax credits worth \$2 billion a month toward their health plan premiums.

What's more, millions of people would become exempt from the law's

controversial "individual mandate"—which requires most Americans to maintain "minimal essential coverage" or pay a penalty.

The court's decision could also potentially weaken the Obamacare mandate requiring employers with 50 or more full-time employees to provide health insurance coverage.

Large employers would likely continue to offer health insurance. But, experts said, smaller businesses might consider dropping coverage. The way the Affordable Care Act is written, employers only face penalties when workers receive tax credits through the federal and state insurance marketplaces. So no tax credits, no penalty for not offering coverage.

If the two mandates were designed to increase the percentage of Americans with health insurance, "this kind of slows that down, if not derails it completely," Navigant Consulting's Keckley said. Instead of reducing the nation's uninsured rate to 7 percent by 2025, as Obamacare is projected to do, the number could double to 14 or 15 percent, he said.

Obamacare opponents see a potential silver lining in a Supreme Court decision that would end tax credits for many of those using the federal marketplace.

To fill the coverage gap, insurance companies might look to sell bare-bones "limited-benefit" plans that don't meet Obamacare's minimum coverage requirement but are less expensive, suggested Merrill Matthews. He is a resident scholar with the Lewisville, Texas-based Institute for Policy Innovation, which opposes Obamacare.

"Yes, millions will lose the [tax-credit] subsidy, but that also means they may be able to go out and buy a much more affordable policy," he said.

And without the threat of penalties, some businesses that previously cut

worker hours to avoid the [health insurance](#) mandate for full-time employees might restore full-time positions, Matthews added.

## Politics continues to lurk in background

Depending on how the Supreme Court rules, the tax-credit subsidies could stop as soon as the end of July. People in the affected states who fail to pay the full premium could lose coverage 30 days later, according to some legal experts.

Economist Doug Holtz-Eakin, former director of the Congressional Budget Office and now president of the conservative American Action Forum in Washington, D.C., thinks there's a good chance the subsidies won't actually cease in 2015.

If the Supreme Court stayed the ruling for, say, 90 days, and the U.S. Treasury Department issued tax credits for the final quarter of the year, "that would get everyone through calendar year 2015," he said.

But Boston University law professor Abigail Moncrieff, who wrote an "amicus" brief in favor of upholding the tax credits, said the justices probably would allow the decision to take effect on the "normal clock"—meaning 25 days later. The court hasn't stayed—delayed—a ruling in a while, she said, and some members of the high court oppose the exercise of that discretion.

If the court strikes down the tax credits, what happens next will depend in large part on politics.

Polls show Americans are slightly more accepting of the Affordable Care Act, which remains unpopular with much of the nation.

"Unbending opposition to Obamacare might not be the winning position it once was, even for Republicans," said Christopher Karpowitz, co-

director of Brigham Young University's Center for the Study of Elections and Democracy in Provo, Utah.

While the Obama administration has said there's no backup plan should the *King v. Burwell* challenge prevail, Senate Republicans have offered several proposals.

One includes a plan by Wisconsin Sen. Ron Johnson that would keep tax-credit subsidies for existing [health plan](#) enrollees through August 2017. It would also repeal the individual and employer mandates and allow states to eliminate Obamacare's essential health benefits requirement and open the door for more limited-benefit plans.

Ron Pollack, founding executive director of the health advocacy group Families USA, called Johnson's plan "inadequate—and harmful." It fails to solve problems created by an adverse court ruling, and it creates problems "that would make health coverage unaffordable for most families," he wrote in a recent *Health Affairs* blog.

Affected states could conceivably set up their own exchanges. But that would require a buy-in from state governors and legislators—an unlikely prospect with Republican lawmakers. And most state legislatures will be out of session by the summer.

"I think what consumers should expect is a period of some confusion," Holtz-Eakin, the American Action Forum president, said.

**More information:** The Henry J. Kaiser Family Foundation examines the state-by-state effects of a decision to [end the tax-credit subsidies](#).

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