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With ACA ruling near, health insurance for millions hangs in the balance



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Marilyn Lynch of Kansas City could lose her health insurance this year. So could Kristine and Kenny Cloughley of Pleasant Hill. So could tens of thousands more in Missouri and Kansas, and millions nationwide.

It all depends on an upcoming U.S. Supreme Court decision that will either help cement the legal foundations of the Affordable Care Act or so destabilize the ACA that it sends shock waves through the nation's health care system and the 2016 election campaign.

The court is expected to rule on the case, *King v. Burwell*, sometime this month, maybe as early as Monday.

At stake is whether 6.4 million of the low- and middle-income people who signed up for insurance plans through the Affordable Care Act's federal exchange will keep receiving the generous federal premium subsidies that make their coverage truly affordable. The subsidies of people living in the 16 states and the District of Columbia that chose to create their own marketplace exchanges, rather than rely entirely on the federal system as Missouri and Kansas did, aren't in jeopardy.

The reason for this legal distinction, and the case before the court, is a single sentence in the voluminous ACA that seemingly authorizes the subsidies just for people in states with their own exchanges. Lawmakers who drafted the legislation say it was never their intent to deny that benefit in states using the federal exchange.

If the court rules against the subsidies, it could severely disrupt health insurance markets in federal exchange states, such as Kansas and Missouri, as people drop their coverage and premiums rise. Safety-net hospitals, already struggling with razor-thin margins, would be faced with more uninsured patients unable to pay for their care.

Researchers at the Urban Institute, a Washington-based think tank, have been looking at the current upward trajectory in ACA insurance plan enrollment. They estimate that about two-thirds of the 9.3 million people who would have been eligible for premium subsidies in the affected states next year would no longer be able to afford their coverage. About 81 percent of these people work full- or part-time; a similar number have modest incomes but aren't poor.

They include Lynch and the Cloughleys.

Lynch is an actor — she'll be appearing later this summer in the Kansas City Actors Theatre production of "The Gin Game" — who works part time at a marketing firm to make ends meet. She used to be able to afford health insurance but had to give it up.

"Every year I got older, and the premiums rose exponentially," she said. "It was that or eat."

Lynch stopped seeing her doctor. She stopped taking medication prescribed for her high blood pressure. It was an anxious time.

"I don't want anything to come raging back at me," she said. "I want to stay in good health. I don't want to be a burden to my children."

When the ACA exchange opened, she immediately signed up for a 2014 plan and again for coverage this year. She receives a subsidy that covers nearly half her \$800 monthly premium. Now she sees her doctor regularly and is back on her medications.

The subsidy is "absolutely crucial," said Lynch, 64. Without it, she'd have to drop her insurance. "I'd just have to hope I'm OK until Medicare kicks in."

Kristine Cloughley, 40, said she and her husband, Kenny, 36, make a modest income from his construction business. Their children from previous marriages are covered by their former spouses' health insurance plans. Their youngest, 3-year-old daughter Georgia, is covered by Missouri's Medicaid program.

Kristine and Kenny have been getting their insurance through the ACA exchange, paying about \$300 out of pocket each month, after a subsidy of about \$250.

"We have deductibles that are reasonable, co-pays that are reasonable," Kristine Cloughley said. "I can't fathom what my cost of insurance will be without the subsidy."

Kristine has a thyroid condition that requires regular medication. She was diagnosed a couple of years ago with a form of colitis. It's under control now but could flare up again.

"I'm scared. I'm not sure what plan we could afford, but we wouldn't be able to stay on the same one. I'm priced out of that."

Experts say that cutting off subsidies could precipitate what the insurance industry calls a "death spiral" in federal exchange states. States that retained their subsidies would be largely unaffected.

Young and healthy people would drop their coverage when their premiums no longer were subsidized. “They won’t think it’s a value deal,” said Ron Pollack, executive director of Families USA, an advocacy group that supports the ACA.

Left in the plans would be larger proportions of older and chronically ill people who run up high medical bills. Insurers would raise their rates to cover those costs. More young people would drop out, and the downward spiral would continue.

And because premiums for individual health plans sold outside the exchange are tied to exchange rates, people in those plans also would see their premiums rise.

The Urban Institute projects that such death spiral increases would make insurance unaffordable in 2016 for about 1.2 million people who would buy insurance without subsidies.

Eliminating the subsidies also would blunt the ACA’s mandate that people carry health insurance in affected states. When out-of-pocket costs reach about 8 percent of income, the ACA exempts people from the tax penalty for not being insured.

“You’re left with a system with no carrots or sticks,” said Cynthia Cox of the Henry J. Kaiser Family Foundation.

In 2012, the Supreme Court narrowly upheld the constitutionality of the ACA. But politically conservative groups continued to look for other ways to scuttle the law. They came upon a section that says monthly premium subsidies shall be calculated for health plans in the individual market “which were enrolled in through an Exchange established by the State...,” suggesting that only people in state exchanges would receive the assistance.

But elsewhere in the law is a section stating that if a state doesn’t set up its own exchange, “the Secretary (of Health and Human Services) shall ... establish and operate such Exchange within the state ... and take such actions as are necessary to implement such requirements.”

“I don’t ever recall any distinction between federal and state exchanges in terms of the availability of subsidies,” Olympia J. Snowe, a former Republican senator from Maine, told The New York Times. Snowe, who helped write the finance committee’s version of the bill, called the wording “inadvertent language.”

If the court decides to end the subsidies, it could stay its ruling for a time to allow federal and state governments, insurance companies and consumers to look for alternatives. But legal experts say that’s an unlikely scenario and subsidies could be discontinued as early as

Aug. 1, Cox said.

Jay Angoff, a former Missouri insurance commissioner who helped implement the ACA, is optimistic that the Supreme Court will uphold the government's interpretation of the law.

"I don't think we'll have catastrophic consequences," he said. "I just can't see the court striking the subsidies. The government has a much stronger case on the law."

President Barack Obama has said his administration doesn't have a "Plan B" in case the court rules against the subsidies.

But recently, HHS has shown a willingness to ease its rules and speed approvals of new state exchanges. Pennsylvania, Arkansas and Delaware just received provisional approval for exchanges that will let them use federal technology, such as healthcare.gov, rather than have to build a website from scratch as other states have.

Republican governors with presidential ambitions may be reluctant to cross party hardliners by creating exchanges in their states, some observers say.

"Louisiana is a perfect example of that," said Pollack of Families USA. Louisiana Gov. Bobby Jindal hasn't formally declared himself a candidate but is widely considered a possible entrant into the Republican presidential race.

But even in states such as Missouri and Kansas, where presidential politics aren't in play, action to create exchanges looks doubtful.

Missouri voters have been vocal in their opposition to the ACA. In a 2012 referendum, they forbade the governor from creating a state exchange without prior approval by the legislature or voters. Democratic lawmakers introduced a measure this year to give the governor that authority, but it didn't get very far in the heavily Republican legislature.

In Kansas, Gov. Sam Brownback has the authority to seek approval on his own from HHS to create a state exchange, but "that would be a huge change in policy from what he's expressed in the past," said Linda Sheppard, a senior analyst with the Kansas Health Institute and former special counsel to the Kansas Insurance Department.

"Given that the governor has been very open about his dislike of the ACA, given the current political climate, would that be even considered? The perception is probably not."

At the federal level, political gridlock, or at best a temporary fix, may be in the offing.

Voters may blame Republicans in Congress, who have consistently opposed the ACA, if millions of people lose their health insurance. The party appears to be coalescing around plans, such as a bill introduced by Sen. Ron Johnson of Wisconsin and co-sponsored by Sen. Roy Blunt of Missouri, that would continue the subsidies in some form well into 2017, providing time to find a way out of the predicament and keeping it from becoming a major issue during the 2016 election season.

But the measures would strip the ACA of its key requirements that individuals have health insurance and employers provide it. Obama has indicated he would veto such measures. He wants Congress to pass a bill that simply clarifies the wording in the ACA.

Angoff predicted that there will be a solution.

“What a bonanza, what riches this law has created for the insurance industry,” he said. “The government and industry will find a way to make the law work.”

Kristine Cloughley hopes so.

The nation’s health care system needs improvements, she said, but “I know that taking peoples’ subsidies away is not the solution. It’s only going to exacerbate the problem.”



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