

The Detroit News

Jacques: At 5, Obamacare faces major growing pains

By Ingrid Jacques

March 27, 2015

President Barack Obama just held a 5th birthday party for his landmark health care law. But he probably wasn't much in a celebratory mood.

There's a good chance Obamacare will receive a damaging blow from the U.S. Supreme Court by summer. And that could force key elements of the law back to the drawing board.

Of course, Obama and his administration are refusing to acknowledge they may have seriously screwed up.

When the Supreme Court decides the latest Obamacare case before it, it will be a make or break moment for the health care law. The court heard oral arguments early this month and will make its ruling in June, if not before.

Some GOP members in Congress are putting together contingency plans, in the event that a major subsidy provision of the Affordable Care Act is struck down. It's the right thing to do. Without the subsidies, insurance on the federal exchanges suddenly becomes very unaffordable for those relying on the financial assistance.

Congress needs to be prepared. After all, it's partly lawmakers' fault this is even up for discussion. And the White House is offering no solutions.

In 2010, when Obamacare became law, Congress and Obama were under the impression that states would gladly create the health care exchanges required under the new law. So the law specifically states that federal subsidies would be granted through state-run exchanges.

But in more than 30 states, including Michigan, governors and lawmakers said "no thanks" to that responsibility. That meant the federal government stepped in and ran the exchange instead.

Yet the law doesn't extend subsidies to federal exchanges. That, however, is how the Internal Revenue Service interpreted it even though the language of the law is not ambiguous.

"The statute is clear," says Michael Cannon, the Cato Institute's director of health policy studies. "The government has a problem."

Several lawsuits were brought against these subsidies, and the one that made it to the Supreme Court is *King v. Burwell*.

The plaintiffs in the case are concerned that the IRS can act so boldly on its own, without authority from Congress.

In Michigan, 300,000 individuals receive a subsidy to help pay for their coverage through the exchange.

One of the better GOP plans was introduced earlier this year to prepare for the possibility that many people could lose their assistance. And it's not their fault. Obamacare mandates that everyone be insured — or face a penalty.

The group of House Republicans includes the chairs of three influential committees. Michigan's Fred Upton, R-St. Joseph, and chairman of the Energy and Commerce Committee, is taking part.

Reps. John Kline, chairman of the Education and Workforce Committee, and Paul Ryan, chairman of the Ways and Means Committee, are also on board. A few weeks ago, they outlined their ideas in a piece for the Wall Street Journal. Calling their plan an "off-ramp" from Obamacare, they offered how they would go about transitioning impacted enrollees.

Their plan has two parts. They would make insurance more affordable by ending many of the federal mandates and giving choices back to states and individuals. And they'd continue some support in the form of tax credits for those who need it.

While the proposal has merit, the Republicans may be getting ahead of themselves. No one knows for sure how the court will rule. Also, the president could step in with some short-term executive solutions to help people who may be at risk of losing their subsidies.

But Obama isn't likely to do that, since the administration has tried its best to argue striking down these subsidies would be catastrophic. Offering alternatives would soften that blow.

"The administration is being irresponsible," Cannon says.

The president wants Obamacare to succeed. But for that to happen, he's going to have to acknowledge its shortfalls.