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Millions at risk of losing coverage as justices take up challenge to Obamacare

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Erin Meredith, a fifth-generation Republican who lives in Austin, was no fan of President Obama's Affordable Care Act, which she considered just another wasteful government handout. She didn't sign up for a health plan until late last year, when she felt she had no other choice.

By then, Meredith, who is 37 and has two children, had gotten divorced and lost the insurance provided through her husband. Her new job, as an office manager for a roofing company, didn't offer benefits. About the same time, she learned that her headaches and fatigue were the result of a rare condition that affects the oxygen level in her blood. She couldn't afford to spend thousands of dollars on doctor's visits, and her desperation slowly turned to panic.

In November, at a friend's urging, Meredith looked for a health plan on the federal online marketplace. With an income of about \$30,000 a year, she discovered she qualified for a government subsidy of \$132 a month. Her premium would be \$89 a month.

Now that she has coverage, she doesn't want to lose it. "I can still feed my kids and put gas in my car," she said. "I'm not trying to go to Cancun or carry a Michael Kors bag. I drive a 2009 Mazda, and I'm just trying to make it in my little apartment and not be on government assistance."

Meredith is one of about 6 million people whose subsidized insurance hangs in the balance as the Supreme Court takes up a case that poses the most serious challenge to the Affordable Care Act since the court found the law constitutional more than two years ago.

The plaintiffs in [*King v. Burwell*](#) insist that people who buy coverage on the federal exchange are not entitled to subsidies, noting that the law says financial help is available for those who enroll through exchanges "established by the State." The Obama administration argues that Congress clearly intended to help everyone who qualifies for it. The oral arguments are scheduled for March 4.

About the only thing both sides agree on is that the subsidies are critical to the health-care law, whose second open enrollment season ended Sunday. If the Supreme Court bars subsidies for

people in 34 states, some say, the law will unravel and the number of uninsured will soar. Others say that the White House and Congress may come up with a solution. And still others say that at least some states will rush to set up exchanges. But any alternative would raise a host of legal and practical questions and could be difficult to implement.

Sixteen states and the District of Columbia have created their own exchanges, but three of them — Nevada, New Mexico and Oregon — are having technical problems, so they are using the federal exchange and Web site, HealthCare.gov. The remaining 34 states, including Texas, rely to varying degrees on the federal exchange. Eighty-seven percent of people who have signed up in these states are eligible for subsidies, according to the administration. The average amount is \$268 a month, which lowers the premium by 72 percent.

“If they’re not going to participate in Obamacare and I’m not going to have these financial benefits, which will force me to pay \$220 a month for coverage, do you know if Greg Abbott, our governor, has any plan to offer something comparable?” Meredith asked in an e-mail. “I understand and support his efforts to put Washington back in its place. I just don’t want that to come at the cost of hard-working Texans and their ability to maintain medical coverage.”

Like Meredith, many of the people who receive subsidies through the federal exchange are white and live in the South, according to a recent [Urban Institute analysis](#). Half have full-time jobs. Many live in states such as Florida, Georgia, Louisiana, North Carolina and Texas — states led by Republican officials who oppose the health-care law and have balked at setting up their own exchanges. Another big group lives in the Midwest, in states such as Illinois, Indiana, Ohio and Wisconsin.

The health law offers subsidized private insurance to people who can’t get coverage through their job, Medicaid or Medicare. In many cases, people receiving subsidies work as day-care aides, waiters, bartenders and retail clerks. Some are self-employed or early retirees. To qualify for subsidies, they must earn between \$11,500 and \$46,680 a year as individuals, or between \$25,850 and \$95,400 for a family of four. In most cases, the payments, which are referred to as tax credits, go directly from the federal government to insurance companies.

Lori Zietlow, 52, of Rosendale, Wis., was laid off from a graphic-design job and makes about \$16,000 a year selling hand-painted wooden signs of cows and pigs to livestock shows and state fairs. For years, Zietlow could not afford health insurance and put off seeing a doctor.

She enrolled in a plan under the health law last year for \$30 a month; the government picked up the remaining \$357 a month. When she finally had a physical, she received a diagnosis of breast cancer that had spread to her lymph nodes, and she underwent surgery and chemotherapy. She will need daily medication for the next 10 years and must regularly see her doctors. “They’re more concerned now of it popping up somewhere else,” she said of the cancer.

Without the subsidy, she said, there is no way she could afford insurance.

Ripple effects

If the Supreme Court disallows subsidies for people who were enrolled through the federal exchange, another part of the law will probably go by the wayside — the individual mandate that requires almost all Americans to have insurance or face a penalty. Many more people would qualify for an exemption from the mandate because the insurance would not be affordable.

“You’re left in a situation where insurers are lacking the carrot to help people afford health insurance and lacking the stick to get people to go buy it,” said Larry Levitt, senior vice president at the Kaiser Family Foundation.

There’s another potential ripple effect: If people drop coverage because it is too costly without subsidies, the individuals who choose to remain in the health plans could be sicker, driving up prices. That could prompt even more people to drop their plans, creating havoc in the Affordable Care Act’s insurance market.

Many consumers worry that they’ll lose access to vital medical services if the subsidies end. Kate Connell, a 27-year-old resident of Atlanta, said she needs the subsidized insurance to afford her weekly sessions with a psychologist for treatment of depression and anxiety. Her annual income of \$27,000 qualified her for a \$170 monthly subsidy, so she pays \$50 a month for her medical plan and \$17 for dental. Her co-pay is \$10 for her therapy sessions.

Recently laid off, she is looking for a full-time job while pursuing a graduate degree in business at Georgia State University. Her treatment “helps me to lead a normal lifestyle where I can function on a daily basis,” she said. “It really does affect my ability to work and be in school.”

But conservative critics say consumers ultimately would be better off without the health law, which they consider a dangerous overreach by the federal government and a threat to the American health-care system.

“This lawsuit highlights more evidence that Obamacare is a broken law that is bad for patients, doctors and taxpayers,” John Wittman, a spokesman for Texas Gov. Greg Abbott (R), said in an e-mail. Wittman declined to say whether Abbott would refuse to set up an exchange if the Supreme Court invalidates subsidies in states such as Texas.

Other critics say that focusing on the impact of lost subsidies misses the larger point — that the administration deceived the public by ignoring the text of the law and providing the subsidies even as they were being challenged in court.

People who left jobs with insurance to strike out on their own “took a leap based on this promise, a promise that the president knew he might not be able to keep. And now they’re worse off as a result,” said Michael Cannon, director of health policy studies at the libertarian Cato Institute. Cannon and Jonathan Adler, a professor at the Case Western Reserve University School of Law, have been leaders of the legal efforts to challenge the law.

Republicans weigh options

Republican politicians and others see in the case an opportunity to greatly reshape the health-care law and are engaged in a public debate about how to do so. Just this month, Louisiana Gov. Bobby Jindal (R) and a trio of congressional Republicans — Sens. Richard Burr (N.C.) and Orrin G. Hatch (Utah) and Rep. Fred Upton (Mich.) — each promoted their own replacement plans. At the same time, conservative editorial boards and free-market proponents have been weighing in online and in print on the changes they support.

Meanwhile, on the state level, it's not clear whether some might set up their own exchanges.

Republicans control the legislature or the governor's mansion in 33 of the 34 states that would be affected if the Supreme Court bars subsidies on the federal exchange. In many states, they control both. Still, only seven states — Alabama, Georgia, Indiana, Nebraska, Oklahoma, South Carolina and West Virginia — have filed [friend-of-the-court briefs](#) arguing that subsidies for their residents and others in the federal exchange are illegal. State officials in Florida and Texas, which have the most consumers eligible for these tax credits, have remained largely silent.

That leaves some supporters of the law to speculate that some Republicans may realize the loss of subsidies could hurt their constituents.

“It's a lot easier to say, ‘Oh, we don't like the Affordable Care Act’ when it was a hypothetical thing,” said Michael Miller, policy director for Community Catalyst, a nonprofit that works with community groups to enroll people in ACA coverage. “It's another thing to say affirmatively . . . ‘We want to inflict a lot of financial pain, not only on the citizens who have gotten tax credits but also on insurers and delivery systems.’ ”

Republican Govs. John Kasich of Ohio and Chris Christie of New Jersey may find themselves in especially tough spots. Their states have expanded Medicaid, which provides assistance to the poor, and if they were to refuse to set up state exchanges, critics could accuse them of helping the poor but not low- and moderate-income people.

If the court were to strike down the subsidies in two-thirds of the states, some analysts say, the effective date might be delayed until the end of the year to give the states some time to respond. In any case, it wouldn't be easy; state exchanges have taken years to set up, and they relied on tens of millions of dollars in federal grants, which are no longer available.

The administration may have some limited options to help, experts say, but it has been tight-lipped about contingency plans even as Obama and supporters pushed consumers to enroll in health insurance.

Danny Friedman, 28, a bar manager in downtown Chicago, already knows what he will do if subsidies are barred: He will rush to have surgery to repair his torn ACL and then drop his health coverage. He pays \$184 a month because he receives an \$83 subsidy. Without it, he would not be able to pay for insurance.

Tom and Linda Tart don't want to risk going without coverage. They recently retired to Ocean Isle Beach along the coast of North Carolina and have an annual income of \$62,000. Tom, 63, has had several medical issues, including heart and kidney problems.

Their monthly insurance premium is \$1,600, but their subsidy cuts that cost almost in half. If they lose the subsidy, they are not sure what they will do. They are too young for Medicare, don't have pensions and are living on their savings.

"It would be really tight," said Linda, who just turned 60. "You can imagine, \$1,600 is a lot of money. The money we saved for retirement, we have to make that last for the rest of our lives."