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What Ruth Bader Ginsburg's death could mean for more than 800,000 Illinois residents with Obamacare

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The future of the Affordable Care Act — under which hundreds of thousands of Illinois residents gained health insurance — has become more uncertain with the death of Supreme Court Justice Ruth Bader Ginsburg.

The U.S. Supreme Court is scheduled to hear a case challenging the law, also known as Obamacare, Nov. 10. In the past, the court has upheld the law by a narrow margin, with Ginsburg voting to support it. Her death increases the chance that the court could rule in a way that would invalidate or weaken the law.

“This really, in some ways, puts a bull’s-eye on the Affordable Care Act,” said Audra Wilson, president and CEO of the Shriver Center on Poverty Law in Chicago. “The timing could not be worse because there’s so much at risk for the average American.”

Many Illinois residents rely on programs created under the law, especially amid the COVID-19 pandemic, as **many people have lost their jobs and their accompanying health insurance.**

Under the Affordable Care Act, Illinois expanded Medicaid to low-income able-bodied adults. Previously, only low-income people with disabilities, children or certain circumstances qualified for Medicaid coverage. Now, it’s available to people without children or disabilities, with incomes up to 138% of the federal poverty level.

As of last year, **570,000 Illinois adults had coverage** because of the Medicaid expansion.

The health care law also led to the creation of healthcare.gov, a marketplace where people can buy health insurance plans that must cover items including maternity care, prescription drugs, hospital stays and mental health services. Most people who buy plans on the marketplace qualify for tax credits, based on their incomes, to help offset the often high costs of those plans.

About 288,000 people in Illinois bought health insurance through the marketplace last year.

A storefront of Sunshine Health and Life Advisors, a Florida insurance enrollment company, is seen in Miami on Nov. 16, 2016. (Angel Valentin/The New York Times)

The wide-ranging law led to changes for people with employer-based health insurance, such as allowing children to stay on their parents' plans until the age of 26 and **prohibiting insurers from capping the amounts** they'll pay to cover medical expenses. The law also made preventive care, such as health screenings, flu shots, breastfeeding supplies and contraception, free to those with insurance.

And it prohibited plans offered under the Affordable Care Act from refusing coverage based on preexisting conditions.

Illinois has its own law prohibiting health insurers from denying coverage because of preexisting conditions, but that law doesn't apply to many plans offered by large employers.

"I think it's really important to understand it's not just the marketplaces, it's the entire health care system," said Timothy Jost, a professor emeritus at Washington and Lee University in Virginia and an expert on the ACA, of what's at stake in the court case. "There isn't a single part of the health care system, I don't believe, that hasn't been affected by the Affordable Care Act."

The case going before the Supreme Court in November looks at the questions of whether the requirement that everyone buy insurance or pay a penalty is now unconstitutional, and, if it is unconstitutional, whether the rest of the law is invalid. In 2017, Congress erased that penalty, and a group of states and two individuals argue the entire law is invalid without it.

The Trump administration has declined to defend the law after spending years trying to get rid of it. Instead, the U.S. House of Representatives and a different group of 20 states and the District of Columbia, including Illinois, are defending the Affordable Care Act before the Supreme Court. They argue that the law should stand, even without the penalty in place.

Before the matter arrived at the Supreme Court, the U.S. Court of Appeals for the 5th Circuit said the mandate to buy insurance is unconstitutional and sent the case back to a district court to decide which parts of the ACA can't stand without the penalty in place.

Ginsburg's death makes it more likely that the Supreme Court might side with the states that want to see the entire law struck down, Jost said. It's also possible, if a new justice is not in place by Nov. 10, that the eight remaining justices might reach a tie vote. If there's a tie, the 5th Circuit's decision to send the case back to the district court would stand.

It's also possible that the Supreme Court might uphold the law, he said. Or, if Joe Biden wins the presidency and Democrats take the Senate, they could make changes to the law that would render the case moot, he said.

Regardless of any court decision, people need not worry about losing their coverage immediately, experts say.

By contract, insurance companies must continue to cover people who signed up for coverage through [healthcare.gov](https://www.healthcare.gov) for certain amounts of time, said Michael Cannon, director of health policy studies at the Cato Institute, a libertarian think tank. Medicaid expansion also wouldn't disappear immediately, as states would have to take action to decide what to do if the ACA were invalidated, he said.

Illinois law requires that the state's Medicaid expansion end within three months of federal funding dropping below a certain level

"ACA supporters are also going overboard by acting like it's going to be immediate chaos if the court strikes down the ACA," Cannon said. Cannon is a longtime opponent of the Affordable Care Act, but he believes the case going before the Supreme Court is meritless.

People who need coverage for 2021 should still sign up for plans at [healthcare.gov](https://www.healthcare.gov), said Stephani Becker, associate director for health care justice at the Shriver Center.

“When people enroll for 2021 insurance, they will still have that insurance regardless of the law because what they’re buying is a contract for a year,” Becker said.

Open enrollment on [healthcare.gov](https://www.healthcare.gov) usually begins Nov. 1 and runs through mid-December.