

# POLITICO

## **What's next for Obamacare subsidies? - Will it go to SCOTUS? - States may have workarounds if subsidies struck**

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**OBAMACARE'S OOPS MOMENT**— When I forget to fix an error in PULSE, I'm a little embarrassed. When Democrats forget to fix a wording mistake in the Affordable Care Act, 7.3 million low-to-moderate-income people's health care coverage is jeopardized.

Yesterday's conflicting rulings on whether Obamacare subsidies can be obtained through the federal exchange emerged from vague language in the ACA that got through the Senate and then couldn't be fixed under reconciliation, POLITICO's David Nather and Pro's Jennifer Haberkorn report. The sloppy language says that health insurance subsidies can be obtained by anyone who gets coverage from "an Exchange established by the State." That lack of specifics about the federal exchanges came back to bite Democrats Tuesday. The administration plans to seek a ruling from the full D.C appeals court and predicts the full court will uphold the subsidies.

But the split decision ups the odds that the subsidy question could end up before the Supreme Court. If subsidies are struck down, it could cripple both the employer and individual mandates, essentially unraveling the health law. The story: <http://politico.pro/WC1V0J>

**ADMINISTRATION TO BROADEN CONTRACEPTION ACCOMODATION** — The Obama administration said in a court brief filed Tuesday that it will create a new option for certain religious nonprofits that object to both the Obamacare contraception mandate and the earlier administration efforts to find accommodation for them. Some religious nonprofits like Wheaton College have objected to filling out a form that would trigger the accommodation process. This will provide an alternative, although an administration official said it would take about a month to issue a new rule. These nonprofits are different from the for-profit businesses affected by the *Hobby Lobby* ruling, and their cases are still before the courts.

Welcome to PULSE, where my brain is so health care news fried by midweek that all I have to say is thank you, health care gods, for keeping me employed. Readers, buckle up.

"Vacation all PULSE ever wanted."

**IF SUBSIDIES GO, STATES MAY HAVE PLAN B** — For one, states could build their own exchange websites, writes Pro's Brett Norman. Though there's little appetite for that given the costly flops of several state-run exchanges. Another option is changing the definition of what constitutes a state-run exchange, while still letting them contract to use HealthCare.gov IT. Then there's the Maryland alternative of contracting with Connecticut to use its technology. Any effort to side step the court rulings is bound to draw more legal challenges, but that may not necessarily stop federal or state health officials from trying. The Pro story:

<http://politico.pro/1rIqG5E>

**OBAMA'S COURT STRATEGY COULD SAVE OBAMACARE** — POLITICO's Josh Gerstein writes that President Barack Obama's aggressive campaign to put three liberal judges on the D.C. circuit appeals court is paying off. The full court now has seven judges appointed by Democrats and four by Republicans, which forecasts a decision in favor of the administration if the entire bench reviews the subsidy question. The Obama administration's legal strategy appears to be to keep the issue out of the Supreme Court, as a ruling in the White House's favor would do away with the circuit split. But if the conflicting rulings stand, "it's virtually certain the Supreme Court would take the case to prevent Obamacare from being interpreted differently in different parts of the country," Gerstein writes. Even without a split, the high court may wade in. The POLITICO story: <http://politi.co/1lsoxGj>

**COURT RULINGS PROMPTS MIDTERM SKIRMISHES** — The conflicting rulings became immediate fodder in campaign rhetoric in some of the nation's tightest Senate and gubernatorial races, Pro's Kyle Cheney reports. Read up on how the rulings could affect the gubernatorial contests in Wisconsin, Florida and Maine and Senate races in Arkansas and North Carolina:

<http://politico.pro/Wyvujv>

**UNDERCOVER PROBE FINDS HEALTH LAW VULNERABILITIES** — Ruh-Roh. The Government Accountability Office will testify today that its undercover investigators were able to get subsidized health care under fake names in 11 out of 18 attempts. An advance copy of the testimony to be delivered today at a House Ways and Means Committee hearing was obtained by the Associated Press. This should make tomorrow's hearing interesting... More:

<http://politico.pro/1ncNnhY>

**SESSIONS INTRODUCES RESOLUTION TO INITIATE SUIT AGAINST OBAMA** — Rep. Pete Sessions (R-Tex) introduced a resolution Tuesday giving House Speaker John Boehner authority to file that lawsuit against President Obama for delaying the employer mandate.

"Through this lawsuit, the House of Representatives will take a crucial step to rein in the President and defend our Constitution so that it endures for generations to come," Sessions said in a statement. The resolution: <http://1.usa.gov/1A3GRiy>

**FIRST IN PULSE: THE CONSUMER PARADOX** — Health care costs are rising at historically low rates, so why do consumers feel they're spending more? That's what a report released by the Federation of American Hospitals today sought to discover. The answer has to do with the design of health plans — which have increasingly higher out-of-pocket and premium costs. And wage growth can't keep up: premiums for employer-based coverage are growing four times as fast as workers' incomes. But this consumer paradox doesn't mean that the structural changes should be

halted, the authors assert. Eventually, the benefits will reach consumers. The report: <http://bit.ly/1pCOeqi>

**DOOR REVOLVES A LITTLE FASTER FOR SLAVITT:** When HHS Secretary Sylvia Mathews Burwell named Andy Slavitt to help revamp CMS with a more corporate organization, his private sector experience as the head of Optum was part of the appeal. It was also a pitfall, with Obama administration ethics rules requiring a year off before taking a position that affects a former employer. But, the Project on Government Oversight last week, Slavitt has been granted a waiver to get started sooner, but he has to back off for certain issues. <http://bit.ly/1yXgXvE> And ICYMI, POLITICO looked at Slavitt's ACA role while at Optum after his HHS appointment last month: <http://politico.pro/1ucb3HP>

**HOBBY LOBBY COULD BE POTENT FOR DEMOCRATS' GOTV:** Democracy Corps' latest poll of voters in 12 Senate battlegrounds finds that overall opinion is evenly split on SCOTUS's Hobby Lobby decision. But Millennials and unmarried women said they would be less likely to voter for a candidate who supported the decision by a double-digit margin. Beyond women's health, however, Obamacare seems to put Democrats at a disadvantage. Repealing and replacing the law was favored by 51 percent of the respondents — and with greater intensity — compared to 47 percent who preferred to implement and improve. The polling memo: <http://bit.ly/1nb0wbn>

**FIRST IN PULSE: THE WEDDING BELLS PHASE OF SPECIAL ENROLLMENT** — It's wedding season! So Young Invincibles is targeting young adults who are engaged to be married in its second phase of outreach about special enrollment periods. Today the group will begin running advertisements on Twitter and Facebook inviting lovebirds to check out health coverage options. They'll also be leaving information at bridal salons and county clerk offices. Warning, Young Invincibles, my sister just got engaged and all she wants to do is talk about dresses, bands and flower arrangements. Good luck getting in a word about health care.

**MINERS' ADVOCATES CALL FOR TRANSPARENCY ON BLACK LUNG CLAIMS** — Miners' advocates told a Senate HELP subcommittee Tuesday that they want the Labor Department to require lawyers representing coal companies to disclose all medical evidence related to a black lung claim. The proposal stems from media reports that attorneys have withheld medical records that could help afflicted workers qualify for benefits. The Pro Energy story: <http://politico.pro/1mBx9K6>

**MILITARY SUICIDES SLIGHTLY UP SO FAR IN 2014** — Pentagon documents obtained by the AP reveal there were 161 confirmed or suspected suicides among active-duty members of the military as of July 14, a slight increase over the 154 during the same time frame last year. The uptick was in the Air Force and Navy, while soldiers and Marine suicides declined. Things could still change, but these early numbers represent a reversal in the declines observed last year: 259 from 319 in 2012. But the Defense Department is encouraged by service members increased usage of help programs like the military crisis line.

**MGMA PRESIDENT RESIGNS** — Susan Turney, president and CEO of the Medical Group Management Association announced her resignation Tuesday, effective Sept. 1. She has accepted a position as CEO the Marshfield Clinic Health System in Wisconsin.

GALLUP: AMERICANS SAY DON'T DISCRIMINATE AGAINST SMOKERS AND OBESE— Few Americans think employers should be able to reject job applicants because they're very overweight or smokers. Apparently Americans are growing more tolerant — just 12 percent think it's okay for companies to refuse to hire people who are significantly overweight compared to 16 percent in 2005. But many Americans are fine with charging smokers and the significantly overweight more for their health insurance. The full July 7-10 poll results: <http://bit.ly/WBP7rg>

WHAT WE'RE READING by Sarah Wheaton

Two key developments already this week — the mapping of 108 locations on the human genome related to schizophrenia risk and a \$650 million donation to study the biology of mental illness — could lead to major breakthroughs, The Los Angeles Times reports. <http://lat.ms/1lt6qQr>

State attorneys general are eying e-cig advertising as their next target on the 20<sup>th</sup> anniversary of the historic lawsuit that states filed against tobacco companies, The New York Times reports. <http://nyti.ms/1rzMqmC>

Jonathan Adler and Michael Cannon take a Halbig victory lap in The Wall Street Journal opinion section, writing that case isn't just about Obamacare, but also “determining whether the president, like an autocrat, can levy taxes on his own authority.” <http://on.wsj.com/1r5wtB3>

Halbig might be a victory for Obamacare opponents, but The Journal looks at the political liability that could result from spiking premiums for the mostly Republican governors and legislators in states that used the federal exchange. <http://on.wsj.com/1pDgeKi>

The pharmaceutical industry's lack of motivation for creating new antibiotics is the “canary in a coal mine” for problems with investment in medical innovation, writes Eduardo Porter in The Times's Economic Scene column. <http://nyti.ms/1o8JieN>

Kaiser Health News and NPR look at health savings accounts for Medicaid, which supporters think could help improve both health and spending habits among the poor. <http://n.pr/1nzuoiG>

About a third of kids and a quarter of teens don't have an accurate awareness of whether they are underweight, healthy or overweight, USA Today reports, based on U.S. government data. <http://usat.ly/1yZGHHx>

Have a friend or relative who keeps bugging you to explain Halbig, King, etc., without all the wonky nitty gritty? Send 'em to Kaiser's inimitable Mary Agnes Carey. <http://bit.ly/1sOfO91>