



## ObamaCare official: Creating state exchange is 'very, very complex'

By [Sarah Ferris](#)

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The CEO of HealthCare.gov on Monday said states would not be able to immediately set up their own insurance marketplaces if the Supreme Court rules against ObamaCare this summer.

Kevin Counihan, the director of HealthCare.gov, told an audience at the National Health Insurance Exchange Summit that creating an exchange is a “very, very complex activity” that could not be achieved in just a few months.

“It would not be something that folks could do for this next open enrollment period,” he said during a question-and-answer session, referring to the sign-up period that begins in November.

Counihan did not speak directly in response to the looming Supreme Court case, known as *King v. Burwell*, which involves tax subsidies flowing to state and federal exchanges. If the court rules against the Obama administration, 37 states that do not have their own exchanges could lose their subsidies.

Still, the federal marketplace director's comments serve as a warning for Republicans who are working to draft a *King v. Burwell* response, which could give power to the states.

Many court watchers have said that states could be forced to set up their own exchanges if the justices decide that subsidies were not intended for people using HealthCare.gov. That is even more likely if Republicans in Congress and President Obama can't agree on a legislative fix to prevent 7.5 million people from losing their subsidies.

When asked how the administration would respond to the case, Counihan repeated the department's previous talking points, deferring to Health and Human Services (HHS) Secretary Sylvia Mathews Burwell.

“Fortunately, they've given me enough to do to keep the trains running that I don't need to worry about that stuff,” Counihan said, joking that the issue was “way above” his pay grade.

*King v. Burwell* received several hours of attention during the day-long panel for health insurance exchange representatives.

Michael Cannon, health policy director at the CATO Institute who helped spur the lawsuit, told attendees that he doesn't believe Congress will be able to create a gameplan for *King v. Burwell* until after the ruling comes down, in late June.

"I actually think it's a little silly for Republicans to try to put together a response at this point," Cannon said, adding that they don't know how the administration is going to respond.

Tim Jost, an ObamaCare supporter and professor at Washington and Lee University Law School, also stressed the difficulty for states to set up the exchanges.

"A marketplace is more than a website," he said. "There's a lot of stuff that an exchange is supposed to do."

Joel Arrio, the former director of HHS's Office of Health Insurance Exchanges, said he believes the issue will largely "devolve to the states."

He said even red states could find a politically possible solution by relying on private companies to help create exchanges as opposed to letting the federal government "do the heavy lifting."

"It really is going to come down to not whether states have wherewithal to do this ... but really whether states want to do this," he said.