

Despite Biden win, Obamacare's future is uncertain. Here's what to know about today's Supreme Court case

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On the heels of a tense election week, the U.S. Supreme Court will hear a case Tuesday that could change the face of health care in America.

The justices will hear arguments about the validity of the Affordable Care Act, also known as Obamacare. About 800,000 people in Illinois receive health insurance under the law, and Obamacare advocates worry many people will become uninsured, amid the COVID-19 pandemic, if the law is struck down. Critics of the law, however, have long argued it's made coverage too expensive and limited insurance choices.

What Is This?

When the Affordable Care Act first took effect, people had to pay a penalty if they did not have health insurance. In 2017, Congress erased that penalty. Now, in the case before the Supreme Court, a group of states and two individuals argue the requirement that people have health insurance is unconstitutional without the penalty, and that, in turn, invalidates the law as a whole.

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 the law should stand, even without the penalty.

What's at stake in Illinois?

In Illinois, about 570,000 people received insurance coverage through Obamacare's expansion of Medicaid, state- and federal-funded health insurance for low-income people. Before the Affordable Care Act, 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 in Illinois.

Another 293,000 people in Illinois obtained health insurance through the Obamacare marketplace at [healthcare.gov](https://www.healthcare.gov) for this year, according to the Kaiser Family Foundation.

The law also 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 made preventive care, such as health screenings, flu shots, breastfeeding supplies and contraception, free to those with insurance.

It also generally prohibited plans from refusing coverage based on preexisting conditions.

It's possible insurers may no longer have to follow those rules if the law is struck down.

How might the Supreme Court rule?

The court likely won't issue a decision in the case before the inauguration of President-Elect Joe Biden in January, said MaryBeth Musumeci, associate director of the program on Medicaid and the uninsured with the Kaiser Family Foundation, during a web briefing Monday. The justices will, however, issue a decision by the end of the term in the summer.

The court could rule a number of ways, including in favor of the law. It could also invalidate the entire law or just parts of it, or send parts of the case back to the lower courts.

In the past, the court has upheld the law by a narrow margin, but that was when Ruth Bader Ginsburg served. Now, with Amy Coney Barrett in her place, the chances are greater the court could undo or weaken the law.

What happens if the law is struck down?

Many people with exchange plans and Medicaid expansion coverage could lose their insurance, but experts have mixed views on how quickly that might happen.

The Supreme Court could put off when such a ruling would take effect, so people wouldn't be left without coverage midyear. Also, 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, Michael Cannon, director of health policy studies at the Cato Institute, a libertarian think tank, has said.

"This would take some time to play out," said Larry Levitt, executive vice president for health policy at the Kaiser Family Foundation, during the web briefing. "Typically insurance companies need to give several months notice before they cancel insurance contracts."

Some experts, however, say it's possible people could suddenly become uninsured. Though insurance companies may continue coverage for people with exchange plans, the federal subsidies most people receive to offset the cost of those policies could disappear, making that coverage unaffordable, said Nicholas Bagley, a law professor at the University of Michigan.

"The question is not about whether they can keep it," Bagley said. "The question is whether they can afford to."

States would have to take action to decide what to do about Medicaid expansion if the ACA were invalidated, Cannon has said. Illinois law requires that the state's Medicaid expansion end within three months of federal funding dropping below a certain level.

What can Joe Biden do as president?

Biden cannot make the case go away without Congress, experts say.

Though the House remains controlled by Democrats, two Georgia runoff elections in January will likely determine which party will take the Senate.

If Democrats take control, Biden and Congress can work together to change the law to make the case moot. They could, for example, repeal the mandate that everyone buy insurance, or reimpose a small penalty.

“It’s an easy one-sentence fix,” Bagley said. “The challenge is political, not legal.”