

Modern Healthcare

Gruber and Tavenner face Capitol Hill drubbing

By Paul Demko
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Jonathan Gruber has served as a Republican political piñata for weeks. Ever since a series of videos surfaced of the MIT economist speaking in extremely impolitic terms about Obamacare, critics of the federal healthcare law have been beating him with rhetorical sticks.

On Tuesday, Republican legislators will get an in-person opportunity to grill Gruber, who played a research role in designing both Obamacare and Romneycare in Massachusetts. He will testify before the House Committee on Oversight and Government Reform. It's expected to be the final hearing chaired by Rep. Darrell Issa, the notoriously combative California Republican who's leaving the post because of term limits.

Gruber has become such an outcast that CMS Administrator Marilyn Tavenner, who's also slated to testify on Tuesday, reportedly doesn't want to be seated at the same table.

Tavenner is likely to face questions at the hearing about her own credibility. In a previous appearance before Issa's committee, she testified that 7.3 million Americans had enrolled in coverage through the state and federal exchanges. But last month, HHS revealed that the Obama administration had padded exchange enrollment figures by including roughly 400,000 stand-alone dental plans. HHS Secretary Sylvia Mathews Burwell said it was a mistake and called it "unacceptable." Republican legislators will undoubtedly be seeking an explanation for how those figures were misconstrued or manipulated.

Most observers expect both witnesses to be cautious and contrite. There is little to gain from tussling with House Republicans on their own turf.

"I don't see any big revelations made by Dr. Gruber," said Christopher Condeluci, who served as a top Republican staffer on the Senate Finance Committee at the time the Patient Protection and Affordable Care Act was passed. "I expect him to apologize for his comments. I expect him to stick to the script that what he said should not be attributed to the administration, that they were only his personal views."

Republicans will undoubtedly seize on Gruber's most notorious statement, that the healthcare bill's backers relied on the "stupidity of the American voter" to hide the costs of the legislation and win its passage.

“He said some things in ways that he shouldn't have for public consumption,” said Mark Pauly, a healthcare economist at the University of Pennsylvania who's sympathetic to Gruber's plight. “But I think the general observation that there is such a thing as political spin or political constraints shouldn't come as a surprise to anyone in Washington.”

However, it's another, less inflammatory Gruber statement that could prove more significant: “If you're a state and you don't set up an exchange, that means your citizens don't get their tax credits,” Gruber said in 2012.

That's potentially significant because it gets to the heart of the *King v. Burwell* case that the U.S. Supreme Court is slated to hear. The outcome could invalidate subsidies for millions of low-income households that accessed insurance subsidies through the federal marketplace. In September, a federal judge in Oklahoma cited Gruber's statement in ruling that subsidies shouldn't be available in states that don't operate their own exchange.

“His attempts to explain that away just don't wash,” said Michael Cannon, director of health policy studies at the libertarian Cato Institute, and a chief backer of the *King* litigation.

Cannon believes the hearing could lead to questions about that touchy subject for Tavenner, too. He questions why the CMS isn't telling potential exchange customers about the possibility that subsidies could disappear if the Supreme Court rules in favor of the plaintiffs.

“Their premiums could quadruple and their plans could disappear and they would have nowhere to buy insurance,” Cannon said. “They're selling products that are supposed to protect people from risk, and there's this huge risk involved, and they're not even telling anyone about it.”

But John Gorman, a Washington-based consultant who served in the Clinton administration, dismisses the substantive significance of the hearing. He compares it to repeated Republican attempts to demonize the Obama administration's handling of the 2012 killing of the U.S. ambassador to Libya.

“This is domestic Benghazi,” Gorman said. “It's just all Republican smoke and no fire.”