

**MEDICAL**

# Supreme Court dismantling of health care law could hit Texans hard

By **Jenny Deam** | June 15, 2015

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Photo: Claudette Newsome

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**IMAGE 1 OF 2**

Claudette Newsome of Houston and her daughters, Zoe and Alexandria, traveled to Washington D.C. to rally March 4 in front of the Supreme Court. The justices heard oral arguments in King v. Burwell, the lawsuit challenging whether millions of people who bought health insurance through the federal marketplace are entitled to subsidies.

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With a U.S. Supreme Court decision looming this month on a point of law that could dismantle the Affordable Care Act, a series of new reports offer a grim glimpse at the toll on Texas should the court decide against the Obama administration.

An estimated 1 million in Texas could lose their health insurance if the high court strikes down a provision in the Affordable Care Act that allows people to get tax subsidies that make their premiums more affordable through the federal insurance exchange, according to a study commissioned by the Texas Association of Community Health Centers and the Texas Academy of Family Physicians.



Those people could soon rejoin the millions in Texas who are already without health care coverage. Texas leads the nation in the number of uninsured with a rate of about 17 percent. Before the implementation of the health care law, the rate was 24.6 percent.

The pain is especially acute in Texas, the report says, because state leaders chose not to expand Medicaid, which left another 1.5 million people who were eligible without coverage.

"This is unconscionable. ... What do you tell the million people in Texas who about to lose their coverage? That they didn't deserve it in the first place?" said Ken

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Jandra, president and CEO of Community Health Choice, a HMO with 300,000 members is Houston.



**Supreme Court dismantling of health care law could hit Texans**

In 2012 the Supreme Court upheld the constitutionality of the individual mandate provision requiring nearly all to obtain health insurance. At the same time, the court left it up to the states the option to expand Medicaid.



**2 mosquito-borne viruses could spread in Texas this summer**

Currently, 87 percent of people nationwide who have signed up for health insurance through the Affordable Care Act qualify for a subsidy in the form of a tax credit. Should those subsidies disappear, 8 million people in the U.S. could lose coverage.



**Houston teen provides laptops, training to HIV+ teens in Malawi**

In Texas, 85 percent of those insured through the federal marketplace receive an average tax credit of \$247 a month.



**State Senate approves 'Scarlet Letter' bill for Obamacare clients**

Without the subsidy, premiums could climb 305 percent, according to a study released last week by the Kaiser Family Foundation.



**After floods, expect more mosquitoes**

The case before the Supreme Court, *King v. Burwell*, argues that the federal law as written allows subsidies only in states that established their own insurance marketplaces. In states like Texas that did not set up exchanges, enrollees who now rely on the federal exchange should be ineligible for subsidies, the plaintiffs allege.

Without subsidies insurance quickly becomes unaffordable for people like Claudette Newsome, a 42-year-old Houston single mother of two daughters. For nearly two decades she went without health insurance for herself and relied on CHIP, Children's Medicaid, for her girls, ages, 10 and 14.

She enrolled for insurance online in 2014 and again this year through the federal exchange. She pays \$183 per month due to a hefty subsidy. Without the subsidy she would pay \$720 per month. Her take home pay is \$3,500 per month. With a monthly mortgage payment of \$1,180, she will be back to being uninsured because she cannot afford the premium if she loses her subsidy.

"By law you have to have car insurance. A car is a material thing. You have to have homeowners insurance. A house is a material thing. But our lives, our health, those are not material things. We shouldn't have to fight for those," Newsome says.

At the heart of the issue, legal watchers say, are four words in the 900-page law - "established by the state."

The plaintiffs in the case, four Virginia residents, contend those words show that Congress intended to limit to subsidies only to states with state exchanges. All other states would be ineligible.

Tevi Troy, president of the American Health Policy Institute in Washington and former deputy secretary of Health and Human Services under President George W. Bush, is skeptical of the doomsday scenarios. The Affordable Care Act is flawed as written, and a decision in favor of the plaintiffs could be positive for the nation, he said.

Studies have shown 237,000 new jobs could be created nationwide without the burden of the employer mandate and health insurance prices could go down if insurance companies were unshackled from requirement of coverage currently part of the law, Troy said. People will also have "more choices" in types of policies to buy, he said, though he acknowledged people could lose coverage if they lose subsidies.

"I'm not going to be high-fiving that. I don't think that is a good thing," Troy said in an interview on Monday. The subsidies only masked the true cost of insurance and were part of the deception of a law that needs to be overhauled, he added.

The Obama administration argues that the while the wording of the bill may be sloppy its

intent was clear. The framers of the law, from both parties, have said it was always understood subsidies would be given whether enrolled in a state or federal exchange.

But during oral arguments in March, justices' remarks suggested the outcome would come down to choosing between a strict reading of the language of the law and the law's overall intent.

"It seems extremely harsh all over four little words. We're talking about a million people in Texas alone," says Jose Comancho, executive director and general counsel for the Texas Association of Community Health Centers which operates 350 sites around the state and serves about 1 million people.

The loss of subsidies is only the first domino falling in what many call the total collapse of the Affordable Care Act. Phrases like "death spiral" are now popping up in conversations about the fall-out, especially in Texas.

Many are now watching Washington with worry as the days tick by, scrambling for contingency plans. Ken Jandra says he is simultaneously urging his staff to prepare for another round of enrollees in 2016 while also preparing for shutting it all down depending on how the court rules.

Of the 39,000 members enrolled in the marketplace, 90 percent receive subsidies.

If health insurance becomes unaffordable by gobbling too much of a person's income, they become exempt from the law's individual mandate requiring coverage. Once that happens, "the young and the healthy will ditch insurance because it is too expensive. This is the insurance industry's worst nightmare," predicts Tiffany Hogue, policy director at Texas Organizing Project, an advocacy group that promotes social and economic equality for those with low to moderate income.

The premiums paid by the healthy help offset the expense of those who use health care more frequently. Without that balance rates will skyrocket because under remaining provisions in the law insurance companies are still required to accept people with pre-existing conditions

and remove lifetime caps.

Opponents of the Affordable Care Act have hinted they have back-up plans should the Supreme Court rule against the White House. One measure would keep the subsidies until 2017 – after the presidential election – and then perhaps come up with a replacement law. That plan, backed by Republicans, would repeal the individual mandate to the law as well as knocking out the requirement for larger employers to cover employees.

Still, Sen. Ted Cruz, the Republican presidential hopeful from Texas, remains categorically opposed to any subsidies.

Meanwhile the Obama administration has dug in its heels and said it would not offer any Plan B, chiding Congress to fix the wording in the law.

"This is politics at its worst," says Hogue.

There has been some speculation that states worried about the appearance of federal overreach could set up exchanges in name only but then subcontract with the federal exchange.

Jessica Roberts, director of the Health Law and Policy Institute and associate professor at the University of Houston Law Center, remains worried that the refusal of Texas to expand Medicaid is a predictor of how it would handle exchanges.

"I don't see Texas scrambling to create an exchange to help the poor," Roberts said. "Medicaid expansion became a state's rights issue when it should've been about poverty. I fear this will be the same."

## **Jenny Deam**

Reporter

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