

SUPREME COURT SCENARIOS AND IMPLICATIONS FOR THE AFFORDABLE CARE ACT

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ENTIRE LAW IS UPHELD: All changes in the Affordable Care Act will move forward (e.g., Medicaid and private coverage expansions, insurance reforms, and cost containment), and the federal and state governments will have a great deal of work to do to get ready for 2014. People with preexisting conditions will no longer be denied coverage, and those with low and moderate incomes will receive financial assistance. Some states may still resist movement in hopes of a Romney victory in the presidential election and repeal of the law.

ENTIRE LAW IS OVERTURNED: Uninsurance will continue to rise, and there will be no new policies aimed at controlling costs. We will be back to the drawing board with little expectation of further congressional action. Those with health problems and those with low or modest incomes will be most adversely affected if the law is completely overturned. Small employers and their workers will also be harmed. Under the ACA, workers in small firms would have access to affordable, adequate coverage through the insurance exchanges. Exchanges would give employees an attractive alternative to large employer coverage, thus making employment in small firms significantly more appealing.

Some states may continue to try building exchanges, but the absence of federal funding for development of the exchanges and for the subsidies could make large-scale transformation unlikely. In addition, exchanges without financial assistance are unlikely to attract sufficient enrollment to remain viable or to significantly affect insurance markets.

ONLY THE MANDATE IS OVERTURNED: The total number of uninsured will be higher than with a mandate, but coverage will still increase significantly as a result of the Medicaid expansion and exchange subsidies. The law would still make Medicaid eligibility uniform across states, and its insurance reforms, many new-cost containment ideas, service delivery reforms, and Medicare savings would be implemented. But, without the mandate, insurers could face adverse selection. [*Subsidized voluntary enrollment that limits individuals' premium contributions would mitigate these selection effects, but the costs per insured person would increase for the federal government.*](#) Pressures may be on for a fix, but could Congress act?

Also, insurers will likely be up in arms, not wanting reforms—such as guaranteed issue and modified community rating—without a mandate for people to buy coverage. Insurers would end up with a smaller, sicker pool of enrollees than would have occurred with the mandate.

THE MANDATE AND INSURANCE REFORMS ARE OVERTURNED: Similar to when only the mandate is overturned, coverage would still increase substantially as a result of the Medicaid expansion that makes eligibility rules uniform across states. Also, all the cost-containment provisions as well as service delivery reform and Medicare savings would continue.

If some key insurance reforms (like guaranteed issue and modified community rating) are also overturned, the problems of getting coverage for high-risk populations would remain. Insurers could deny them coverage or charge them very high premiums. States and the federal government would still need to create state-based exchanges, and states could act on their own to maintain the key insurance reforms. Federal subsidies would remain and would help some people afford coverage, if it is offered to them. If states and Congress do not reinstate the insurance reforms, the public reaction to continuing insurance barriers for people with preexisting conditions may be surprising. People may see what they have lost by eliminating health insurance reforms and may realize that these policy changes were linked to the mandate. There may even be political pressure for congressional or state action.

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