



Supreme Scenarios: Potential Outcomes of the Legal Challenge to Federal Health Reform (ACA) for Utah

Utah Health Policy Project Report

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INTRODUCTION

On three separate days last month (March 26-28) the Supreme Court of the United States (SCOTUS) heard the oral arguments for and against the constitutional challenges to the Affordable Care Act (ACA). SCOTUS considered:

1. the constitutionality of the “mandate” or individual requirement to purchase insurance
2. the severability of the mandate from other provisions of the law
3. the constitutionality of the Medicaid expansion.

Around the end of June SCOTUS will issue its final decision on these challenges. Each of the justices had to indicate a preliminary position by Friday March 30, 2012 in order to formulate the majority and minority opinions.

For states like Utah with disappointing results from reforms that do not include such provisions, the stakes of the SCOTUS decision could not be higher. But is it “game over” if SCOTUS breaks with legal precedents and overturns these critical provisions? Not necessarily—there may be other pathways to covering the uninsured, though the jury is out on their cost effectiveness in comparison to the ACA pathways. This report reflects on the various scenarios for the SCOTUS decisions and their implications for Utah’s efforts to fix our broken health care system.

SCENARIO 1: ENTIRE LAW IS UPHELD

Implications for Insurance Market Reforms

It will be good news for Utah if the ACA is upheld. Intact, the nation’s health reform law sets in place the foundation for a private health insurance industry that will compete for business based on the quality of their products. They will no longer be able to base their financial success on avoiding risk, that is, by rejecting or dropping people who are sick. In fact, if the law is upheld the discriminatory pricing of premiums based on health risk will go away in 2014. No one will ever be “uninsurable” again!

The ACA will also put in place guidelines that limit how much people pay out-of-pocket (the cost of premiums, co-pays, and deductibles) and offer a sliding scale tax credit for people with incomes below 400% of the federal poverty line who buy insurance in the individual market (that’s about \$92,000/year for a family of 4).

The centerpiece of private market reform is the health insurance exchange. There are 2 of these: one for people who buy individual policies, where they can buy insurance with pre-tax dollars and another for small businesses:

1. The **American Health Benefits Exchange** will be a web-based portal where people who buy individual health insurance policies can shop for insurance based on comparable quality and costs and apply for premium tax credits to help pay the cost of the premium. People will also be able to find out if they are eligible for any public insurance (like Medicaid).
2. The **Small Business Health Option Program** (SHOP) will be a web-based portal where small businesses can buy insurance for their employees while pooling risk with other small businesses for the sake of lower costs (Utah has a small business exchange but it’s not set up to do this... yet) and their employees will be able to shop for insurance based on comparable quality and cost measures.

This is a robust reform of the private insurance industry based on getting everyone covered, helping people pay for it, and eliminating harmful industry practices like turning sick people away or canceling policies when people get sick. And, federal health reform is helping states pay for the design and implementation of health insurance exchanges. Utah received a \$1million planning grant for the Utah Health Exchange, and they could apply for more exchange money, but they haven't.ⁱ

ACA based private health insurance reform is very good news for Utahns who are struggling to find and pay for affordable health insurance, especially Utah's small business owners and their employees, the self-employed, people who buy insurance in the individual market, and Utah's estimated 400,000 uninsured.

In addition, the ACA is already benefitting many people in Utah:

- Utah's children (under age 19) cannot be denied health insurance because of pre-existing conditions.
- Insurance companies are no longer allowed to impose lifetime dollar limits on essential coverage.
- Utah's children can stay on their parents' health insurance until age 26.
- Small businesses can apply for tax credits for what they spend on insurance for their employees.
- Seniors get a 50% discount on name-brand drugs in the Medicare "donut hole."
- All new plans must cover preventive services without charging a deductible or co-pay.
- Insurers can no longer cancel a plan when someone gets sick (for plans beginning March 23, 2010).
- Insurers must spend 80-85% of each premium dollar on medical care, not administrative costs.
- Insurance companies have to submit their rate increases to the Department of Insurance and the Department has to review anything over 10%. Utah has received \$4.3million under the ACA to do this.
- ...and the list goes on! Visit www.healthcare.gov, a great resource to learn more.

Since passage of the Affordable Care Act in March 2010...

- ✓ 21,016 Utah Medicare recipients saved over \$12 million dollars on their medicines.
- ✓ 790,608 Utahns now receive coverage of preventative services like cancer screenings without co-payments or deductibles.
- ✓ 1,183,000 Utahns no longer face a lifetime cap on their insurance benefits.
- ✓ 21,247 more young adults up to age 26 in Utah are covered under their parents' insurance.
- ✓ 696 Utahns are now covered through the pre-existing condition insurance plan.

Implications for Medicaid

It will be great news for Utahns with incomes below 133% of the federal poverty level if the ACA is upheld (that's about \$30,000/year for a family of 4). Intact, the nation's health reform law makes sure that Utahns who currently have no options at all for health insurance because their incomes are low and they simply can't afford it will no longer go without. An estimated 138,918 Utahns will find coverage through Medicaid beginning in 2014.ⁱⁱ This is good news for the State's budget, too, because the federal government will pay 100% of the cost of the newly eligible Utahns for the first 3 years, and then gradually ask the State to pay a portion, but never more than 10%! The Congressional Budget Office did the math, and this is the most cost-effective way to get this population covered.ⁱⁱⁱ

The ACA also supports changing Medicaid to what is called "accountable care." This means teams of healthcare providers will work together to help their patients get and stay healthy—saving everyone money. Utah's already working on this change in the way Medicaid is delivered and paid for. An intact ACA means this process has a better chance of succeeding because it includes financial and technical support.^{iv}

The ACA will also make it easier for Utahns to apply for and enroll in health insurance (public or private) through the American Health Benefits Exchange (discussed above). One simple application will screen people and let them know what their options are. And for those Utahns whose income changes over the year, the ACA will ensure that when they have to change their insurance (like moving from Medicaid into private coverage) their medical care will not be interrupted. Federal health reform is all about getting and keeping people covered, regardless of their income, so that they can have access to medical care on a regular basis. This means everyone will be able to get preventive care and screenings for diseases (at no cost!) and won't suffer interruptions in their care when their coverage changes.

In addition, the ACA requires that States have "navigators." Navigators are consumer assistance teams who will help individuals find the right coverage for themselves and their families and, once enrolled, use their coverage and their medical care wisely. UHPP and United Way have already started a consumer assistance program called [Take Care Utah](#).

Really important for Utah is that the ACA also has many opportunities for states to get funding to start programs, improve health care, crack down on fraud, and help people get covered. Utah's leaders have missed out on too many of the funding opportunities offered through the federal health law. So far, Utah has received more than \$34.1 million from the Affordable Care Act. Examples of Affordable Care Act grants to Utah include:

- \$700,000 for the expansion of the [Physician Assistant Training Program](#), a five-year initiative to increase the number of physician assistants in the primary care workforce.
- \$3 million to help Utah reduce [health care fraud](#) by identifying efficient and effective procedures for long-term care facilities to conduct background checks on prospective employees, thereby protecting its residents.
- \$60,000 to [support outreach to eligible Medicare beneficiaries](#) about their benefits.
- \$191,000 for [Family-to-Family Health Information Centers](#), organizations run by and for families with children with special health care needs.
- \$3.3 million for [Maternal, Infant, and Early Childhood Home Visiting Programs](#). These programs bring health professionals to meet with at-risk families in their homes and connect families to the kinds of help that can make a real difference in a child's health, development, and ability to learn - such as health care, early education, parenting skills, child abuse prevention, and nutrition.

In addition, the federal health law offers many other opportunities for improving Utah Medicaid:

- [Health home option \(90% match\)](#): The ACA created a new Medicaid state plan option to permit Medicaid enrollees with at least two chronic conditions, one condition and risk of developing another, or at least one serious and persistent mental health condition to designate a provider as a health home. States taking up the option will receive 90% federal financial participation (FFP) for two years for home health-related services, including care management, care coordination, and health promotion (effective January 1, 2011).
- [Enhanced primary care reimbursement \(100% match\)](#): The ACA increases Medicaid payments in fee-for-service and managed care for primary care services provided by primary care doctors (family medicine, general internal medicine or pediatric medicine) to 100% of the Medicare payment rates for 2013 and 2014. States will receive 100% federal financing for the increased payment rates (effective January 1, 2014).
- [Increased Medicaid prescription drug rebates](#): The ACA increased the Medicaid drug rebate percentage for brand name drugs to 23.1 (except the rebate for clotting factors and drugs approved exclusively for pediatric use increases to 17.1%) and increased the Medicaid rebate for non-innovator, multiple source drugs to 13% of average manufacturer price (effective January 1, 2010). The Act also extended the drug rebate to Medicaid managed care plans (effective upon enactment).

- Extension of “Money Follows the Person” long term services and supports rebalancing demonstrations: The ACA extended the Medicaid Money Follows the Person Rebalancing Demonstration program through September 2016 (effective 30 days following enactment) and allocated \$10 million per year for five years to continue the Aging and Disability Resource Center initiatives (funds appropriated for fiscal years 2010 through 2014).
- Reduction in Medicare Part D cost-sharing for dual eligibles: The ACA provides for phasing down gradually the beneficiary coinsurance rate in the Medicare Part D coverage gap from 100% to 25% by 2020:
 - For brand-name drugs, the Act requires pharmaceutical manufacturers to provide a 50% discount on prescriptions filled in the Medicare Part D coverage gap beginning in 2011, in addition to federal subsidies of 25% of the brand-name drug cost by 2020 (phased in beginning in 2013); and
 - For generic drugs, the ACA provides federal subsidies of 75% of the generic drug cost by 2020 for prescriptions filled in the Medicare Part D coverage gap (phased in beginning in 2011).Between 2014 and 2019, the statute reduces the out-of-pocket amount that qualifies an enrollee for catastrophic coverage;
The ACA also makes Part D cost-sharing for full-benefit dual eligible beneficiaries receiving home and community based care services equal to the cost-sharing for those who receive institutional care (effective no earlier than January 1, 2012).

Click here to learn more about the Supreme Court’s decision on the Medicaid expansions:
<http://www.kff.org/healthreform/upload/8288.pdf>.

SCENARIO 2: MANDATE STRUCK DOWN, CONSIDERED SEVERABLE FROM REST OF THE LAW (EVERYTHING ELSE STAYS)

Implications for Insurance Market Reforms

This is a tricky scenario for the private health insurance market. One of the ways that ACA reforms the private health insurance industry is by making sure everyone is covered (the mandate and affordability measures) and no one can be turned away (guaranteed issue). This brings the cost of premiums down because the insurance company will have plenty of premium dollars coming in from healthy people to cover the cost of the medical claims they have to pay out when people get sick. If the mandate is taken away but guaranteed issue remains, it’s possible that some people will wait until they are sick to buy insurance. The insurance companies will not be allowed to turn them down and may end up having to pay out more in medical claims than they bring in from premium payments. The solvency of private health insurance companies could be at risk, and some companies could go bankrupt. That could be game-over for the new insurance marketplaces.

A redeeming factor will be that the cost-sharing reductions and premium tax credits available in the American Health Benefit Exchange will stay, making insurance affordable for many Utahns that can’t afford it. This should help bring more people into the market, mitigating the disruption that could happen if too many people wait until they are sick to buy a policy. But it might not be enough. Most likely, insurance premiums would go up.^{vi} New Jersey tried this... and failed. The good news for Utahns is that the reforms already in place (see scenario 1) will stay. Most likely, guaranteed issue will be considered not severable from the individual mandate. In other words, if the mandate is struck down, guaranteed issue will go down with it (see scenario 3).

Implications for Medicaid

If the mandate is struck down but the rest of the law stays, people with incomes up to 133% of the federal poverty level will still be able to get coverage through Medicaid, and all the things discussed above in the Medicaid section for scenario #1 will stick.

SCENARIO 3: INDIVIDUAL MANDATE STRUCK DOWN BUT CONSIDERED NOT-SEVERABLE FROM SOME OF THE LAW'S PROVISIONS (MEANING SOME PARTS OF THE LAW WILL GO DOWN WITH THE MANDATE)

Implications for Insurance Market Reforms

If the mandate is struck and the Court finds some provisions of the law to be so closely linked to it that they must go too, we will be left with weak private market reform based on enticing people to buy health insurance with a few safeguards in place. Without a mandate, health insurance has to be affordable or people won't be able to buy it. Without guaranteed issue, sick people who want to buy insurance may find themselves denied coverage, which is how the market operates today. If those provisions already in place are struck down we could find ourselves moving back in time to an industry that can deny policies to children with preexisting conditions, where young adults fall off their parents' insurance during or right out of college, where insurance companies can use as much of a premium dollar as they want to pay CEO salaries, and our seniors find themselves unable to afford medications they need because the "donut hole" reopens.

The implications for the American Health Benefits Exchange (where people in the individual market will be able buy subsidized insurance) are grim if the cost sharing reductions and premium tax credits are struck, because the affordability incentive will be lost.

Implications for Medicaid

If the mandate and some provisions considered unseverable are struck down and some of the law stays, as long as the Medicaid Expansion remains (see scenario #4 below) people with incomes up to 133% of the federal poverty level will still be able to get coverage through Medicaid, and all the things discussed above in the Medicaid section for scenario #1 will stick.

SCENARIO 4: MEDICAID EXPANSION DEEMED COERCIVE, STRUCK DOWN

Implications for Insurance Market Reforms

If the part of federal health reform law that increases eligibility for Medicaid to 133% of the federal poverty level) is struck down, people in this income bracket would be able to enroll in private health insurance through the American Health Benefits Exchange and apply for premium tax credits (a premium subsidy). Depending on the ultimate cost of the private health insurance plan, Utahns with incomes below 133% of the federal poverty level may be hard pressed to buy insurance. If there is no mandate, then this population will likely find themselves stuck with no affordable options for coverage, forgoing medical care and going to the emergency department for delayed and costly care. Often this care goes unpaid for and the cost is shifted into health insurance premiums. This is the status quo and it is unacceptable.

Implications for Medicaid

As discussed above, if the part of the federal health reform law that increases eligibility for Medicaid to 133% of the federal poverty level is struck down, people in this income bracket could try to buy subsidized private health insurance through the American Health Benefits Exchange. The other parts of the Affordable Care Act that allow for reforming and improving Medicaid will stand (see scenario #1).

SCENARIO 5: ENTIRE STATUTE STRUCK DOWN

Implications for Insurance Market Reforms

If the entire statute is struck down we are back where we started. The reality is that the status quo has resulted in a decade or more of rising insurance premiums with diminishing benefits while industry profits are on the rise. The *status quo* is not a solution to the serious health care problem our nation—and Utah— faces.

Implications for Medicaid

If the entire statute is struck down, then over 300,000 Utahns that would have been eligible for Medicaid will find themselves right where they are today—without health insurance and with no affordable options to get health insurance. The *status quo* is not a solution!!

The State of Utah can move forward in their efforts to reform the delivery and payment of Medicaid, working towards a healthier population, increased efficiency, and financial savings.

ⁱ <http://www.healthcare.gov/law/resources/ut.html>

ⁱⁱ <http://www.kff.org/healthreform/8076.cfm>

ⁱⁱⁱ CBO, *The Budget and Economic Outlook: Fiscal Years 2012 to 2022*; January 2012, p.57,
http://www.cbo.gov/sites/default/files/cbofiles/attachments/01-31-2012_Outlook.pdf.

^{iv} <http://www.healthcare.gov/news/factsheets/2011/03/accountablecare03312011a.html>

^v <http://www.healthcare.gov/law/resources/ut.html>

^{vi} <http://www.urban.org/url.cfm?ID=412480>