

### The Affordable Care Act and the Supreme Court: What Might the Decision Mean for Connecticut?

Connecticut and national stakeholders have been eagerly awaiting the upcoming Supreme Court decision on the Affordable Care Act (ACA). Their decision, expected this week, will have a substantial impact on plans for health reform, regardless of the outcome. Any decision places a great deal of responsibility on states. Below are five overlapping possible scenarios and potential consequences for Connecticut.

**One: The law is upheld entirely.**

**Impact: Great. Let's get to work.**

- 170,000 to 200,000 more state residents are expected to gain coverage beginning in 2014<sup>i</sup>
  - 190,000 to 197,000 will remain uninsured
- Health insurance consumer protections become effective<sup>ii</sup>
- Residents are required to secure health care coverage, large employers must offer decent coverage
- Cost control and quality improvement innovation supports continue
- Medicare donut hole closes by 2020
- In each month's survey, Connecticut Health Thought Leaders have consistently called on state policymakers to push forward on reform with urgency; Connecticut is only 13.2% of the way to implementing reform.<sup>iii</sup>

**Two: Only the individual mandate is overturned. The rest of the Affordable Care Act is left intact.**

**Impact: OK, this is not bad and could actually be good news.**

- A law mandating coverage alone was never going to be enough to get everyone covered.<sup>iv</sup> Ten percent of Connecticut drivers are uninsured<sup>v</sup> (illegal), while 10% of state residents are uninsured for their health (legal).<sup>vi</sup>
- There are exceptional ways to get people enrolled without a mandate including<sup>vii</sup>
  - auto-enrollment at important life-stage events such as getting a new job, registering for school, filing taxes, applying for a driver's license, etc. with an opt-out informed consent process
  - incentives for early enrollment (such as for Medicare Part D coverage)
  - open enrollment timeframes (keeps people from buying coverage right when they become ill)
  - limiting the ability to upgrade to more comprehensive coverage (again, just when people need it)
  - condition certain government services on proof of health coverage

- encourage or require credit bureaus to include health insurance status in determining credit ratings
- While not strictly comparable, SustiNet economic researchers predicted only 2% of Connecticut residents would remain uninsured without an individual mandate but with the SustiNet public option and auto enrollment.<sup>viii</sup> This is compared to estimates from the same researchers of 6% remaining uninsured under the ACA alone.<sup>ix</sup>
- Over 95% of eligible seniors are covered by voluntary Medicare Part B by automatically enrolling them and deducting premiums from their benefit when they sign up for Social Security. Seniors have a defined length of time to opt-out of the program.<sup>x</sup>
- A law mandating coverage could backfire in securing compliance with young, healthy males – the same population most likely to be uninsured.
- Public education and outreach are key. Most stakeholders credit the strong, positive-message, public education campaign (e.g. Red Sox Nation) rather than penalties (negative message) for Massachusetts’ success in reducing uninsurance in their reforms.
- Insurers will argue that guaranteed issue without a mandate will start a “death spiral” of skyrocketing premiums as people with high health costs are will be more likely to buy coverage than healthier people. This did happen in a few states. However that is less likely in this case.
  - ACA premium subsidies will still be in place to make coverage more affordable. The vast majority of uninsured don’t have coverage because they can’t afford it, not because they don’t believe they need it.<sup>xi</sup>
  - While rates cannot vary based on health status or gender under the ACA, they can vary over a three-fold range by age. This helps keep premiums affordable for healthier, young people encouraging them to purchase coverage.
  - ACA risk adjustments between plans should remove any incentives for insurers to avoid costly members.
- With a strong public education campaign, auto enrollment, premium subsidies, and improved insurance products that are worth buying, we can achieve the same, or better, enrollment levels without an individual mandate.

**Three: The individual mandate and related insurance provisions are overturned.**

**Impact: Not great, but there are still a lot of good provisions in the rest of the law.**

- Associated provisions that could be struck down include guaranteed issue – prohibiting insurers from denying coverage to people with high medical needs – and modified community rating – rates cannot be based on health status. Both provisions have been the law for years in many states for small group coverage, including Connecticut.
- Low income Americans and small businesses will still have subsidies to purchase coverage.
- Large employers will still be required to offer coverage to workers.
- If the Medicaid expansion is upheld, up to 155,000 more Connecticut residents will have coverage.
- Children up to age 26 can still stay on their parents’ policies. However, parents will likely have to pay federal taxes on the value of that coverage for non-dependent children.
- The Medicare donut hole will still close by 2020.
- Insurers will have to comply with reasonable consumer-friendly rules including comprehensiveness of coverage, no cost sharing on preventive care, and prohibiting annual or lifetime limits on coverage.

- The insurance exchange could serve as a user-friendly marketplace to help consumers purchase meaningful coverage that is worth what it costs. Through competitive bidding, the exchange can serve to improve affordability and value across all insurance options. Independent navigators can be employed to help consumers understand why coverage is important, consider their options, and help them purchase coverage that fits their needs.
- Connecticut will still have funding for a new non-profit CO-OP insurer, HealthyCT.<sup>xii</sup>
- Other reforms in the ACA will keep administrative costs down, ensure decent benefit packages, expand the health care workforce, and continue over one hundred innovative programs to reduce costs, improve the quality of care, and encourage wellness and prevention.

**Four: The entire ACA is overturned.**

**Impact: Not good, but public pressure will again mount to fix our broken health system.**

- 77 % of Americans want policymakers to start on a new bill if the Supreme Court overturns the ACA.<sup>xiii</sup>
- Large health insurers have agreed to continue some of the ACA’s most popular provisions that are already in effect including allowing children to remain on their parents’ policies to age 26.
- Preventive care may again have copayments and deductibles.
- Medicare recipients will no longer receive drug subsidies or preventive care without copayments.
- States like Connecticut that have begun development of insurance exchanges will have to find an alternate funding source.
- Because of the debate, there is a common understanding among most Americans about the harmful impact of uninsurance and skyrocketing health costs that did not exist before the ACA.
- Without the ACA, the number of uninsured will continue to rise, and costs for the rest of us will continue to skyrocket. It will become increasingly more difficult for small employers to offer health benefits to workers. States and providers will not be able to shift the costs of caring for a growing uninsured population onto the federal budget.
- We’ve tried cost-shifting onto consumers, HMOs/managed care, and other “easy” fixes; they haven’t worked.
- The status quo is no longer sustainable; change is inevitable.

**Five: The ACA’s Medicaid expansion is overturned.**

(This scenario could be combined with some of the above scenarios.)

**Impact: Up to 155,000 Connecticut residents would be without a comprehensive, affordable coverage option.**

- All states now participate in Medicaid and every state covers many optional services such as prescription drugs.
- Medicaid is a great deal for states, covering at least half the costs of covering fragile state residents, but providing substantial flexibility to craft a Connecticut-specific solution and foster innovation.
- Connecticut has been relatively generous in covering low income state residents as a state Medicaid option. Policymakers in our state understand that uninsured state residents don’t stop getting ill. We all pay those bills indirectly.

- Connecticut policymakers also understand that rising uninsurance is an immense financial burden on individuals and families, and a drag on our collective economy.
- Connecticut's state government has always been a strong and active partner with the federal government in implementing our Medicaid program.
- Hopefully, that generosity and enlightened self-interest will continue and Connecticut will find ways, through waivers and other innovations, to expand Medicaid coverage to more state residents.

**In any scenario, a great deal of responsibility rests with states to reform health care. Congress needs to step up and provide resources to make those efforts successful.**

**No matter what the Supreme Court decides, we are much farther along than before the ACA.**

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<sup>i</sup> The Impact of the Coverage-Related Provisions of the Patient Protection and Affordable Care Act on Insurance Coverage and State Health Care Expenditures in Connecticut, RAND Compare, April 2011, <http://www.rand.org/news/press/2011/04/05/index2.htm>; M Buettgens, et.al., Health Reform Across the States: Increased Insurance Coverage and Federal Spending on the Exchanges and Medicaid, Urban Institute, March 2011, <http://www.urban.org/uploadedpdf/412310-Health-Reform-Across-the-States.pdf>.

<sup>ii</sup> Summary of New Health Reform Law, Kaiser Family Foundation, April 2011, <http://www.kff.org/healthreform/upload/8061.pdf>

<sup>iii</sup> May 2012 CT Thought Leaders Survey and July 2012 Health Reform Dashboard, CT Health Policy Project, [www.cthealthreform.org](http://www.cthealthreform.org)

<sup>iv</sup> An Individual Health Insurance Mandate: Could it Work for Connecticut?, CT Health Policy Project, December 2008, [http://www.cthealthpolicy.org/pdfs/200812\\_issue\\_paper.pdf](http://www.cthealthpolicy.org/pdfs/200812_issue_paper.pdf)

<sup>v</sup> Recession Marked by Bump in Uninsured Motorists, Insurance Research Council, April 21, 2011, <http://www.prweb.com/releases/uninsured/motorists/prweb8330897.htm>

<sup>vi</sup> One in Ten CT Residents Still Uninsured Last Year, CT Health Policy Project, September 2011, [http://www.cthealthpolicy.org/briefs/issue\\_brief\\_58.pdf](http://www.cthealthpolicy.org/briefs/issue_brief_58.pdf)

<sup>vii</sup> Private Health Insurance Coverage: Expert Views on Approaches to Encourage Voluntary Enrollment, GAO, Feb. 25, 2011, <http://www.gao.gov/products/GAO-11-392R>

<sup>viii</sup> SustiNet: the Original Proposal, S Dorn SustiNet Board Presentation, Sept. 9, 2009, <http://www.ct.gov/sustinet/cwp/view.asp?a=3825&q=451762>

<sup>ix</sup> PPACA in Connecticut: Initial Cost and Coverage Estimates, S Dorn Report to SustiNet Board, July 14, 2010, [http://www.ct.gov/sustinet/lib/sustinet/board\\_of\\_directors\\_files/resources/urbaninstitutesustinet\\_nationalreform\\_071310.pdf](http://www.ct.gov/sustinet/lib/sustinet/board_of_directors_files/resources/urbaninstitutesustinet_nationalreform_071310.pdf)

<sup>x</sup> Automatic Enrollment Strategies: Helping State Coverage Expansions Achieve Their Goals, S Dorn, State Coverage Initiatives, Urban Institute, August 2007, <http://www.statecoverage.org/files/Automatic%20Enrollment%20Strategies%20Helping%20State%20Coverage%20Expansions%20Achieve%20Their%20Goals.pdf>

<sup>xi</sup> Inside the Uninsured, Oliver Wyman Consulting, 2011, [http://www.cthealthpolicy.org/briefs/issue\\_brief\\_58.pdf](http://www.cthealthpolicy.org/briefs/issue_brief_58.pdf), Uninsured Workers in America, Kaiser Family Foundation, 2004, <http://www.kff.org/uninsured/upload/Uninsured-Workers-in-America.pdf>

<sup>xii</sup> <http://www.healthycct.org/>

<sup>xiii</sup> Polling report.com, accessed 6/25/12, <http://pollingreport.com/health.htm>