NELSON HARDIMAN
HEALTHCARE LAWYERS

20 GOP Attorneys General Challenge ACA in Court

A year ago, the GOP appeared confident that a repeal of the Affordable Care Act (ACA) would be forthcoming. Yet despite br Republican support for the dismantling of President Obama's signature legislation, it is still the healthcare law of the land. Hov attorneys general in 20 red states are not treating it like an unmovable mountain; they've taken their displeasure with the ACA court, asserting that a decision made by the Trump administration has made Obamacare ripe for repeal.

TX Atty. Gen. leads 19 other red-state leaders in anti-ACA litigatio

Led by Texas Attorney General Ken Paxton, the group of state attorneys general filed a complaint in a north Texas federal co last month, a complaint that challenges the ACA. When Trump announced he was repealing the individual mandate that requi everyone to carry healthcare coverage or incur a tax penalty, many experts in the field warned that this would prove disastrou markets. Because insurers rely on the reassurance that enough healthy individuals will pay into the system to offset the financ burden of covering the chronically ill, with that reassurance removed, insurance companies will likely hike their rates, perhaps steeply.

And the GOP's Tax Cuts and Jobs Act, enacted this past winter, officially zeroed out the individual healthcare mandate penalt The plaintiffs say that the mandate is no longer a tax, and therefore they believe that the ACA is open to be challenged.

Would repeal of ACA "destabilize the markets"?

George Horvath, health law scholar at the University of California at Berkeley law school, had this to say to *Modern Healthcar* would be a decision to destabilize the markets. It is not just the individual market, it is Medicaid expansion and insurance regulations."

Timothy Jost, health law scholar, is an expert on the ACA. He says that the attorneys general are not envisioning what a repe the law would do to the millions of individuals who count on it. "Does that mean the donut hole comes back for Medicare?" he *Modern Healthcare*. "Do 12 million to 14 million people lose Medicaid coverage? Do 10 million people lose exchange coverag

And Wendy Netter Epstein, professor of law and director of the Jaharis Health Law Institute at the DePaul University College Law, warns that the part of the plaintiffs' case that ostensibly conflates the individual mandate with the ACA as a whole might hold up to judicial scrutiny.

Hospital assn. joins plaintiffs: "Our concern is more practical"

It's likely that many people who currently don't qualify for Medicare or Medicaid won't be able to afford individual coverage wh insurers raise rates to account for the loss of large numbers of healthy enrollees. Healthcare providers realize that will translat uncompensated care costs for them.

The Missouri Hospital Association joined the attorneys general as a plaintiff in the case; Dave Dillon, spokesperson for the association, said, "Our concern is more practical—what happens when hundreds of thousands of marketplace enrollees woul coverage?" He noted that his state's hospitals have reported an uptick in uncompensated care costs, even with the ACA in ful force.

Ultimately, though, there may be an irreconcilable issue at the heart of the case made by the attorneys general, at least regar what they also seek in the long run. These red state legislators are asking a court to put an end to the ACA. But they also clai want their states' residents to have healthcare coverage.

Does the lawsuit contradict what state legislators want for their

residents?

For instance, when *Modern Healthcare* asked Florida's Republican governor Rick Scott if he might consider revisions to some of the ACA's provisions, rather than yanking the law altogether, his spokesperson affirmed that the governor supports an immediate "repeal and replace." (Florida is one of the 20 plaintiff states.)

And yet, Scott's deputy communications director McKinley Lewis said that the governor's "primary focus remains replacing Obamacare with a new healthcare policy that allows Florida families to have access to quality healthcare at an affordable price," which means Scott expects his residents to have access to coverage in the absence of the ACA's offerings, although the lawsuit is only addressing repealing the law.

The case will be heard by George W. Bush appointee U.S. District Judge Reed O'Connor.

This article is provided for educational purposes only and is not offered as, and should not be relied on as, legal advice. Any individual or entity reading this information should consult an attorney for their particular situation. For more information/questions regarding any legal matters, please email info@nelsonhardiman.com or call 310.203.2800.