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Ballard Pritchett, vice president of strategic communications at Colorado Access, says the nonprofit plans to expand its coverage into the private individual market through exchanges that reduce the cost of insurance combining buying power.

Supreme Court holds fate

■ If the court tosses individual mandate, that could roil the health care insurance market.

BY ED SEALOVER
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If the U.S. Supreme Court throws out the individual mandate of the Patient Protection and Affordable Care Act (PPACA) without nixing other provisions of the federal health care reform law, it could have major effects on insurance availability and pricing, several Colorado experts say.

The court is expected to rule this month on the constitutionality of President Barack Obama's signature legislation, which requires every American to purchase health insurance by 2014 — the so-called individual mandate. Opponents say his use of the Constitution's Commerce Clause to require purchase of a commercial product is illegal, while backers say it's needed because uninsured Americans drive up the cost of health care for everyone else.

Observers forecast three likely outcomes from the court:

- The law is upheld.
- The law is overturned.
- The individual mandate is overturned, but other provisions — such as bans on insurers imposing lifetime coverage limitations or denying coverage because of pre-existing conditions — are upheld. This option could prove so troublesome that Obama administration officials have asked the court to throw out the entire law if the individual mandate is overturned.

“If only the individual mandate [is] struck down, it would be anomalous,” said Bruce Brown, an Atlanta-based attorney specializing in complex commercial and constitutional cases for McKenna Long and Aldridge LLP, which has a Denver office. “What you're trying to decide [as the court] is: Would Congress have wanted the entire law and no individual mandate or no law at all?”

Without every customer being required to buy insurance from some source, requirements that insurers end pre-existing condition denials and lifetime limitations would make rates difficult to calculate, said Steve Purkapile, vice president of

Van Gilder Insurance Corp. of Denver. That's because the healthiest potential customers could remain out of the market, and sicker customers or people who have just suffered serious medical conditions would dominate the individual market, making it an unappealing risk pool for insurers.

If that were to happen, many insurance companies would pull out of the individual market, seeing it as unprofitable, Purkapile predicted. That would make it harder and more expensive for anyone, sick or healthy, to buy individual insurance — counteracting the purpose of federal health care reform, he said.

May send unhealthy people back to work

If employers become about the only insurance providers in the country other than the federal and state governments, it also might prompt some chronically ill individuals who don't work now to re-enter the workforce just to get coverage, he predicted. If workforces become less healthy, that would drive up the cost of small-group policies purchased by employers of 50 or less, he said.

This is a dicey situation because a number of the small companies Van Gilder insures already are looking at dropping insurance plans, and instead giving a set amount to employees to find individual policies through health benefit exchanges once those marketplaces open in 2014, Purkapile said.

If there are few or no insurers offering individual policies, that could force companies to continue to offer insurance or have a largely uninsured workforce, he said.

"Not changing the bill at all probably has a better impact in the big picture than basically turning down just one piece of it," Purkapile said. "But the problem is, I don't think the Supreme Court is in [a] position to strike down the entire bill ... That just creates a huge dilemma."



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Ballard Pritchett, vice president of strategic communications at Colorado Access, says the nonprofit will enter the private individual market by using the Colorado Health Benefits Exchange, an Internet marketplace where combined buying power results in lower health insurance rates.

Brown said there's considerable legal debate over whether the court could throw out other parts of the law, such as the ban on lifetime limitations, if such provisions aren't found unconstitutional.

But if the court invalidates the entire law, it also could order the federal government to refund any taxes or fees paid under the law since it took effect in March 2010, Brown noted. Though legal observers think this is unlikely, one potential beneficiary of such a ruling could be indoor tanning salons, which have been assessed a special tax since July 2010 to help pay for the law. The 10 percent tanning-salon tax was inserted into the reform law in place of an earlier proposal to tax cosmetic surgery which met with lobbyist opposition.

State health exchange would lose funds

A 2011 state law creating the Colorado Health Benefits Exchange — a business-backed Internet marketplace where small companies can combine buying power and get lower health insurance rates — ensured the exchange, mandated by PPACA, could continue independently of the federal law's fate. But it would face several obstacles to its planned 2014 start date without PPACA.

First, the federal government is funding the full cost of the technology infrastructure needed to make the exchange work. Patty Fontneau, the exchange's executive director, estimates that cost in the tens of millions of dollars. If the court throws out the full law, any future federal funding goes away.

Also, exchange leaders are relying on the individual mandate to push some 300,000 uninsured Coloradans to the new marketplace. If the mandate is struck down, that number could drop significantly, leaving exchange officials teaching people who might not otherwise buy insurance about its benefits in order to generate enough users to leverage significant buying power.

"When that [court decision] happens, we have to have conversations with the board, with our legislative review committee and with our key stakeholders to see if there is still an appetite and funding for it," Fontneau said, should the individual mandate or full law be ruled unconstitutional.

At least one business also is hinging significant

expansion plans on the court affirming, rather than tearing down, the law.

Colorado Access, a Denver nonprofit that specializes in being a third-party insurance administrator health maintenance organization for public insurance programs, plans to expand its coverage into the private individual market through the exchange, said Ballard Pritchett, vice president of strategic communications. Officials already have reallocated some internal resources and assigned new responsibilities related to the new product line to a high-level employee.

But how that plan is executed will be affected by the court's opinion and how the Colorado exchange is implemented.

"We've been growing at a pretty hefty rate, and we expect that to continue on the public side and accelerate rapidly on the commercial side," Pritchett said. "That's a decision that will hinge on certain fine points in the ruling that we don't know yet."

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