

Modern Healthcare

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4 ways 340B discounts would change if the ACA is struck down

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If the Supreme Court struck down the Affordable Care Act, that could decimate some providers' savings from the 340B drug discount program.

The fate of the Affordable Care Act in court could have big implications for the 340B drug discount program, experts said.

The Supreme Court is set to hear a [case regarding the Affordable Care Act's constitutionality](#) on Nov. 10, and the Justice Department and Republican attorneys general are arguing that the law should be struck down in its entirety.

Striking down the ACA altogether could have significant implications for the healthcare industry at large. In one example, it could decimate some providers' savings from the 340B drug discount program, which was expanded under the Obama-era law.

Amid heated [controversy over manufacturers' policy changes](#) to restrict 340B discounts on drugs delivered through contract pharmacies, the potential ACA repeal's impact on 340B has largely stayed under the radar, Hall Render attorney Todd Nova said.

"Covered entities only have so much bandwidth," Nova said. "They have a bit of ACA litigation fatigue. The debate has been going on for years, and it becomes background noise."

Many legal analysts [do not think the Supreme Court will strike down the law in its entirety](#), but much uncertainty surrounds the case as the Senate fights over the confirmation of President Donald Trump's nominee for the open seat, Judge Amy Coney Barrett.

1. Some providers could lose discounts

The ACA made critical-access hospitals, standalone cancer hospitals, sole community hospitals and rural referral centers newly eligible for 340B discounts. If the ACA is struck down those entities would lose the statutory underpinning for their discounts.

The loss of 340B discounts could be especially challenging for vulnerable rural hospitals. Tommy Barnhart, a technical assistance specialist with the National Rural Health Association, said that he's anecdotally heard from some small rural hospitals that losing 340B discounts could mean they lose "their entire bottom lines."

However, there's limited lobbying that can be done on the issue, as the case is in the justices' hands.

"It's a really big deal, but there's not a lot covered entities can do about that," 340B Health President and CEO Maureen Testoni said.

2. Drug discounts would be smaller

The ACA also increased mandatory Medicaid Drug Rebate Program discounts from 15.1% to 23.1% of average manufacturer price. The 340B ceiling prices are directly related to Medicaid discounted prices, so that change would cut 340B prices across the board for all covered entities.

3. Medicaid changes could threaten 340B eligibility

Covered entities qualify for 340B discounts in part based on the percentage of their inpatient days are Medicaid patients. If Medicaid expansions are eliminated across the country, that could decrease covered entities' share of Medicaid patients. If the change is drastic enough, it could hurt covered entities' eligibility for the 340B program, said K&L Gates partner Richard Church.

"If covered entities are in a state that has Medicaid expansion and they are teetering on the edge over time, or they are close today, they could begin to fall out of program with the decrease of Medicaid-eligible people in the state," Church said.

4. Enforcement mechanisms would be diminished

The ACA laid out several measures to introduce more accountability into the 340B drug discount program including requiring manufacturers to publish ceiling prices and creating civil monetary penalties for drugmakers that overcharge providers.

The law also gave the Health Resources and Services Administration authority to create an administrative dispute resolution process, though the agency has not yet done so.

Community health centers have criticized HRSA's delay in setting up the process and [threatened to sue](#) HHS if the agency does not take punitive actions against drugmakers over their contract pharmacy policies.

Congress could act to reinstate provisions of the ACA if it is struck down, though it's unclear how fast lawmakers could come to an agreement, Church said.

"There probably would be an appetite within Congress to fix many of these in short order. However, so many things would be broken at same time, it would be a question of in what order they would put pieces back together," Church said.

Inline Play

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