

House Scrutiny of Obamacare Suit Lags Behind Health Legislation

By Shira Stein

Posted March 14, 2019, 5:36 AM

- Democrats want more information about Trump decision not to defend Obamacare
- Only one hearing has been held on issue

Scrutiny of the Trump administration's decision not to defend Obamacare in a lawsuit has gotten little public attention from House Democrats even as key lawmakers say it is still a top priority.

House Energy and Commerce Chairman Frank Pallone Jr. (D-N.J.) said at a March 12 hearing that the inquiry into the administration's decision is the "No. 1 investigative priority" for his panel.

The Energy and Commerce and House Judiciary committees have sought, but not received, documents from the the Department of Health and Human Services on the lawsuit, according to aides on both committees.

The committees requested information about the department's involvement in the lawsuit, any analysis it has done on the effects of removing protections for pre-existing conditions, and any plans the department has put together on the outcome if the law ultimately is held unconstitutional.

But House Democrats' scrutiny of the Justice Department's refusal to defend the law appear to be taking a back seat for now to efforts to shore up the Affordable Care Act and to stop the administration's other changes to it.

If the law ultimately is held unconstitutional, more than 10 million people would lose health coverage they obtained through the Obamacare exchanges. There also would no longer be protections for pre-existing conditions, offices that test new ways of paying for Medicare and Medicaid would be shuttered, and about 13 million people who have been added to Medicaid would be dropped from the program.

The Trump administration decided not to defend the ACA in a lawsuit, *Texas v. United States*, brought by a slate of Republican attorneys general. The lawsuit contends the ACA is unconstitutional because Congress dropped the penalty for failing to have health insurance to zero. A federal judge in Texas ruled the entire law was null as a result, but that ruling is being appealed.

Democrats are trying to prove the Trump administration effectively tried to repeal the ACA by not using the Justice Department to defend the health law.

Legislation First

"We're working on these legislative initiatives now with the Affordable Care Act," Pallone said in an interview when asked about oversight of the Obamacare constitutionality case.

His committee has held two hearings to consider seven pieces of legislation that are aimed at shoring up the ACA and the individual insurance markets.

The Energy and Commerce Committee had one hearing on the Texas case Feb. 6, with witnesses and lawmakers agreeing Obamacare would survive the legal battle.

The House also voted to give itself the authority to intervene in the Texas lawsuit Jan. 3 and passed a largely symbolic resolution Jan. 9 to allow the House to intervene in Obamacare-related cases.

Since then, little has happened in public in overseeing the lawsuit, and Democrats have turned their attention to other legislation.

"Now, the focus is more on what we can do legislatively to stabilize the Affordable Care Act," Pallone said. "We wanted to make the point that the Republicans are still trying to repeal the Affordable Care Act and the damage that does."

Among the bills under consideration, which aren't likely to be approved by the Senate, is a proposal to disallow extended use of short-term health plans that don't meet ACA standards. Democrats say making it easier to obtain those plans weakens Obamacare markets and hurts patients by not giving them appropriate protections like covering pre-existing conditions.

Daniel Schwarz, director of strategic communications for the House Judiciary Committee, confirmed his panel would review the administration's involvement in the Texas case. But another committee aide said leaders of the Judiciary Committee don't see the panel as taking the lead on this issue. The committee has yet to hold a hearing on the matter.

Rep. David Cicilline (D-R.I.), a key member of the Judiciary panel, said his committee will address it, but gave no specifics on when that would be.

This issue is seen as one for the full Energy and Commerce committee, not its oversight subcommittee, Chairwoman Diana DeGette (D-Colo.) said in an interview.

"I don't think we're planning on doing an oversight hearing on that case at this point," DeGette said. "It's a big issue, but I'm not sure it is in the oversight subcommittee," she said.

House Speaker Nancy Pelosi (D-Calif.) hasn't forgotten about the case. "The Trump administration's participation in the Texas lawsuit to strike down protections for people with pre-existing conditions is very much a focus of House Democrats," said her spokesman Henry Connelly in a statement for Bloomberg Law.

—With assistance from Alex Ruoff

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(Feb. 6, 2019, 2:57 PM)

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