

US courts deliver conflicting rulings on Obamacare subsidies

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Two federal judicial panels on Tuesday delivered conflicting rulings on the provision of government subsidies for premiums purchased on the exchanges set up under the Affordable Care Act (ACA). The rulings mark the latest stage in the skirmish between the White House and supporters of what is commonly known as Obamacare and Republican and conservative opponents of the legislation.

The two cases concern the federal government's ability to offer tax credits to people who purchase insurance through HealthCare.gov, the federally run insurance marketplace that serves the majority of the 8 million consumers who have signed up for coverage through private insurers for 2014.

Residents of 36 US states are served by the federal marketplace, while those in the remaining 14 individual states and the District of Columbia are served by state exchanges. State governments in a majority of states, many run by Republican governors opposed to Obamacare, opted not to set up their own exchanges.

In the first ruling Tuesday, a three-judge panel of the US Court of Appeals for the District of Columbia Circuit ruled 2-1 that the ACA can only allow subsidies to help pay for insurance premiums for those customers who purchase coverage through exchanges run by states. The panel suspended its ruling pending an appeal by the Obama administration.

Only hours later, a three-judge panel of the 4th US Circuit Court of Appeals in Richmond, Virginia ruled unanimously to uphold the provision, contending the wording of the ACA is too ambiguous to restrict the provision of subsidies.

Plaintiffs in the cases centered their arguments around a literal interpretation of the ACA legislation, in which it is written that tax credits are available to people who enroll through an exchange "established by the state,"

and that premium subsidies should therefore not be allowable for those purchasing coverage on the federal exchange.

The two rulings fell along partisan lines, with two Republican-appointed judges ruling against the administration in the District of Columbia court and three Democratic appointed judges ruling in its favor in Virginia. In his dissent in the DC court, Judge Harry Edwards described the plaintiffs' case as a "not-so-veiled attempt to gut" the Affordable Care Act, and that the panel's majority opinion "portends disastrous consequences."

Striking down subsidies in the federal exchange would do away with one of the few remaining nominally progressive features of Obamacare, which through its "individual mandate" requires individuals and families not insured through a government program such as Medicare or Medicaid to obtain insurance or pay a tax penalty. Modest government subsidies are available to those with incomes between 100 percent and 400 percent of the federal poverty level, or between about \$24,000 and \$95,400 for a family of four.

Of the more than 8 million people who have enrolled through Obamacare so far, fewer than 2.6 million signed up through an exchange run by a state or the District of Columbia. Of these 2.6 million, 82 percent, or about 2.1 million, qualified for subsidies. If the subsidies are struck down for the federal exchange, the estimated 4.7 million people who enrolled and qualified for subsidies through HealthCare.gov will not have access to them.

A report by consultancy firm Avalere Health estimates that if the subsidies in the federal exchange were removed premiums would be an average of 76 percent higher in price. In another report, the Robert Wood Johnson Foundation and the Urban Institute

estimate that by 2016 about 7.3 million ACA enrollees who would have qualified for financial assistance would lose about \$36.1 billion in subsidies if the court challenges to the subsidies succeed.

People visiting both the federal and states health care exchanges to shop for coverage have already discovered that the more inexpensive coverage offered by the private insurance companies come with high premiums and deductibles in excess of \$5,000 for an individual.

Removing the subsidies would cause Obamacare insurance premiums to skyrocket and would undoubtedly result in millions choosing to go uninsured. As the ACA is based on forcing the uninsured to purchase coverage—guaranteeing a new crop of cash-paying customers for the private insurance companies—eliminating the subsidies could place a question mark over the entire legislation.

The striking down of subsidies in the federal exchanges would also impact the ACA employer mandate being phased in beginning next year. Under this rule, employers with 50 or more full-time workers will be required to offer “affordable” health insurance to their employees or pay a tax penalty. Imposition of this rule, however, hinges on the availability of subsidies on the Obamacare exchanges.

The Obama administration says it will appeal the District of Columbia court’s ruling to the full circuit court, a process that could take up to six months. In the meantime, the subsidies will remain in place. The challenge to the subsidies will likely make its way eventually to the US Supreme Court.

In 2012, the Supreme Court upheld the constitutionality of the Affordable Care Act, but left the decision whether or not to expand Medicaid up to the states. Nineteen states, generally located in the Deep South and Midwest, have opted out of the expansion of Medicaid, the health program administered by the federal government and the states. The failure to expand Medicaid has forced an estimated 5 million of the nation’s poorest adults into the “Medicaid gap”—with no health care coverage whatsoever.

Earlier this month, the US high court handed down two Obamacare-related decisions, upholding the “religious liberty” of corporations and other institutions to deny their female employees insurance coverage for birth control, coverage mandated by the ACA.

The legal wrangling over the provision of government subsidies under the Affordable Care Act is part of a process that has seen the legislation divested of any features that even cosmetically improved the image of Obamacare as a health care “reform.” This began with the removal of a token government-run “public option” on the health care exchanges

While five years ago the Obama administration claimed that the bill would provide “near universal,” affordable health care, in reality the ACA is designed to cut costs for the government and big business while rationing health care for the vast majority of the population. As the population becomes increasingly aware of this reality, the pro-corporate character of the legislation is being further exposed and honed as it makes its way through the courts.



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