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Judge strikes down Obama health law insurance subsidy in victory for House GOP

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A federal judge struck down a portion of President Obama's signature Affordable Care Act health law Thursday, ruling that Obama exceeded his authority in unilaterally funding a provision that sent billions of dollars in subsidies to health insurers.

In a 38-page decision, U.S. District Judge Rosemary Collyer of the District put her ruling on hold pending the administration's certain appeal. Her decision sided with the U.S. House of Representatives, which brought the lawsuit challenging more than \$175 billion of spending after a party-line vote by House Republicans in July 2014.

The House GOP argued that the administration's decision to subsidize deductibles, co-pays and other "cost-sharing" measures was unconstitutional because Congress rejected an administration request for funding in 2014. Obama officials said they withdrew the request and spent the money, arguing that the subsidies were covered by an earlier, permanent appropriation.

House Republicans have tried repeatedly, without much success, to repeal parts or all of the health-care law, holding dozens of votes on the matter over the past five years. Thursday's ruling may represent their most significant victory in trying to dismantle the ACA. The ruling, if upheld, could undermine the stability of the program because of the added financial burden it would place on insurers, health policy experts said.

Under the ruling, in order for the subsidy payments to be constitutional, Congress would be required to pass annual appropriations to cover the subsidies' cost.

At stake is whether the subsidy "can nonetheless be funded through the same, permanent appropriation. It cannot," Collyer wrote, referring to the provision in question.

"None of [the administration's] extra-textual arguments — whether based on economics, 'unintended' results, or legislative history — is persuasive," added Collyer, who was appointed to the bench in 2003 by President George W. Bush.

The judge's logic drew a quick rebuke from White House press secretary Josh Earnest, who called the lawsuit a new low in the battle over the controversial health-care law and predicted that the ruling would be overturned by the courts because it charted new ground in the separation of powers between presidents and Congress.

“This suit represents the first time in our nation’s history that Congress has been permitted to sue the executive branch over a disagreement about how to interpret a statute,” Earnest said.

He criticized Republicans for using taxpayer money to “re-fight a political fight that they keep losing.”

“They’ve been losing the fight for six years, and they’ll lose it again,” Earnest said.

Republicans, including House Speaker Paul D. Ryan, were quick to praise the court’s decision. Ryan (R-Wis.) called the ruling a “historic win for the Constitution and the American people,” saying that the judge concluded that the White House had “overreached by spending taxpayer money without approval from the people’s representatives.”

At issue is the provision in the law, also known as Obamacare, that requires insurers to soften the impact of out-of-pocket costs for people who earn between 100 and 250 percent of the federal poverty line (\$29,425 for an individual; \$60,625 for a family of four).

Those subsidies, which are paid directly to insurance companies, mean that low-income Americans have coverage plans with lower limits on their out-of-pocket maximum payments and lower deductibles. The law requires insurers to offset the cost reductions whether or not the federal government pays them.

“If the decision ultimately sticks, which I think is unlikely, it will be a pretty big deal,” said Timothy Jost, an expert on the ACA and professor emeritus at Washington and Lee University law school.

Insurers will still be legally required to provide those discounts to low-income individuals, “but insurers won’t be able to get reimbursed for that expense unless Congress appropriates the money,” he said.

Many insurance companies would probably stop participating in the insurance exchanges, some experts say, because of the uncertainty and the fear of having to absorb those expenses. This, in turn, would reduce the competitiveness of insurance marketplaces and result in higher premiums.

“There is a long judicial process ahead before a final decision is made,” said Marilyn Tavenner, president and chief executive of America’s Health Insurance Plans, an industry trade group, in a statement. The judge’s ruling will not affect coverage for now, she said.

But even before the ruling, there were signs that insurers were uneasy with aspects of the exchanges set up under the law. Last month, UnitedHealth Group, the nation’s largest health insurer, said that in 2017 it will pull out of most of the 34 states where it offers plans on the Affordable Care Act insurance exchanges. Its chief executive blamed the small market size and greater expenses of patients insured through the marketplaces.

UnitedHealth covers 795,000 people through the exchanges, and executives said they expect that number to drop to 650,000 by December. There are 12.7 million people insured through the state and federal marketplaces, according to the latest data.

In arguments before Collyer last May, Justice Department attorney Joel S. McElvain called Congress's complaint unprecedented and said lawmakers were improperly asking the courts to referee a political dispute that Congress could resolve by revoking or changing the law.

"There are any number of other tools the legislature can use to influence the executive branch . . . which is why we have not seen a lawsuit like this in over 230 years," McElvain said.

George Washington University law professor Jonathan Turley, arguing for the House, said the administration's argument would mean that Congress's "power of the purse is effectively decorative."

In a statement released Thursday, Turley said: "The historic ruling reaffirms the foundational power of the purse that was given to the legislative branch by the Framers."

Four previous challenges to the president's signature health-care law have reached the Supreme Court, including one that is currently being considered involving the law's mandate that employers provide contraceptive coverage to employees.

The latest politically sensitive case involving subsidies revives a battle over the law that the Supreme Court had settled last June, in a 6-to-3 decision that prompted Obama to declare from the White House Rose Garden, "The Affordable Care Act is here to stay."

In that decision, Chief Justice John G. Roberts Jr. seemed guided by what Congress intended in passing the law. "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible we must interpret the Act in a way that is consistent with the former, and avoids the latter," Roberts wrote.

Michael Cannon, director of health policy at the Cato Institute and one of the architects of last year's unsuccessful Supreme Court challenge, predicted that the impact on insurers would be swift.

"You may have insurers decide to increase their premiums in order to hedge against the possibility that they may no longer receive these subsidies," he said.

In addition, the administration may be under pressure to approve higher rate increases to prevent insurance companies from pulling out of the exchanges, he said.

While the ruling may be a near-term win for Obamacare opponents, other analysts said it puts Republican members of Congress in a tough position if they fail to appropriate the funds.

"If you're a senator and up for reelection in a district that may not be solidly Republican, you're faced with a real problem," said Joseph Antos, a health policy analyst at the American Enterprise Institute. "You're hurting low-income people who presumably need that help."

Those politicians will face pressure not only from insurers, he said, but other health-care industries that will want to "keep the money flowing," he said.