Obamacare Subsidies Affordable Care Act

Indiana and Oklahoma Are Suing To Make It Harder For Their Residents To Get Health Insurance — Here's Why

By: Danny Vinik - December 16, 2013

The Obamacare challenges never stop.

Two states have brought cases against the federal government that are intended to undermine President Obama's greatest legislative achievement by denying subsidies to their residents.

You read that correctly. These states want to stop the federal government from giving money to their residents to purchase health insurance.

Here's what you need to know:

What are the two cases?

One case was filed by Oklahoma Attorney General Scott Pruitt against the Obama Administration earlier this year. Indiana Attorney General Greg Zoeller filed the other in early October. In August, U.S. District Court Judge Ronald A. White allowed Pruitt's case to proceed, rejecting the government's motion to dismiss.

Businesses and individuals in Virginia and D.C. have filed cases as well. U.S. District Judge Paul Friedman also shot down the Justice Department's attempt to have the D.C. case dismissed in October.

So there are a bunch of cases. What is Oklahoma and Indiana's argument?

Everyone involved in these lawsuits is making the same case: that the federal government cannot give subsidies to individuals enrolling in Obamacare through the federal exchange. The idea comes from Case Western University law professor Jonathan Adler and the Cato Institute's Michael Cannon. They scoured the law's text and discovered that the the federal government must offer subsidies to qualifying Americans who purchase insurance "through an Exchange established by the State." Adler and Cannon argue that that means the government cannot give subsidies to residents of any state that has not set up its own exchange.

The Obama administration expected most states to set up their own exchanges, but they were wrong. Thirty six states, including Oklahoma and Indiana, chose not to do so. Only 14 states and the District of Columbia set up their own exchanges. Adler and Cannon argue that the law clearly states that the government can give subsidies to residents using a state exchange, not the federal one. They say that Congress wrote the law so that the subsidies were an incentive for states to build their own exchanges.

Obamacare also contains individual and employer health insurance mandates that are tied to the exchange subsidies. The individual mandate penalty only applies to people who decline to buy insurance that is affordable; removing the subsidies will make insurance unaffordable for many people, as defined by the law, thus exempting them from the penalty if they don't buy insurance.

Some employer penalties for failing to cover full-time workers are linked to those workers' use of exchange subsidies; eliminating the subsidies in states using federal exchanges will save some employers from penalties. Adler and Cannon argue that this gives employers standing to sue to prevent provision of subsidies in federal-exchange states. Of course, these financial savings to individuals and businesses are dwarfed by the loss of the subsidies themselves.

That seems pretty straightforward - it says it directly in the law's text after all. So what's the federal government's rebuttal?

The Obama Administration says that the intent of the law was clearly to allow the government to give subsidies to all states, not just those that set up their own exchange. They say it was an oversight in the legislation and that there is no evidence that Congress intended to use the subsidies as an incentive to persuade states to set up their own exchanges. Government lawyers also point to a couple of different areas in the law that would prove unnecessary if Adler and Cannon's argument were correct.

Okay that's not so clear-cut. What would happen if Oklahoma and Indiana win their cases?

It would be a deadly blow to Obamacare. Without the subsidies, millions of Americans would be unable to afford coverage. States who set up their own exchanges would be unaffected but the 36 states that are using the federal exchange would have trouble signing up many of their uninsured.

Who is likely to win?

It's unclear. No judge has ruled on the merits on the case yet, but it's likely that the lawsuits will head to an appeals court after that happens. In D.C., that would mean the D.C. Circuit Court which Democrats are in the process of filling with like-minded judges. That could give the administration an advantage there. It could potentially head to the Supreme Court after that.