

Appeals Court Ruling on ACA Subsidies Case Imminent

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The U.S. Court of Appeals for the D.C. Circuit is expected to rule as early as Friday in a case that challenges the Affordable Care Act's subsidies to help consumers purchase health plans through the federal insurance exchange, *Newsweek* reports (Westcott, *Newsweek*, 7/7).

Background on the Case

The lawsuit -- *Halbig v. Burwell*-- targets a May 2012 Internal Revenue Service rule that allows subsidies to be offered through the federal exchange.

The suit's 12 plaintiffs -- including a hospital chain and a restaurant franchise -- argue that the IRS rule should be invalidated because it contradicts what Congress originally intended in the ACA. Numerous ACA opponents also have argued that IRS exceeded its legal authority by issuing the rule.

However, U.S. District Court Judge Paul Friedman in January ruled against the plaintiffs, stating that both the text of the ACA and the law's structure "make clear that Congress intended to make premium tax credits available on both state-run and federally facilitated exchanges." The plaintiffs filed an appeal following the ruling (*California Healthline*, 2/19).

Initial arguments were heard in the appeal at the U.S. Court of Appeals of the D.C. Circuit in March (Baker, *National Journal*, 7/7).

Potential Outcomes, Effect

Legal experts on both sides of the case have said that the upcoming ruling could be the first in a series of challenges to the subsidies to go against the federal government.

However, it is unlikely a ruling in favor of the plaintiffs would have an immediate effect on the law, according to *National Journal* (*National Journal*, 7/7). The Obama administration would likely petition the court for a full "en banc" review of the ruling by an 11-judge panel, according to Ron Pollack, executive director of Families USA (Reichard, *CQ HealthBeat*, 7/7).

However, if the plaintiffs eventually prevail, nearly five million U.S. residents who purchased health plans through the federal insurance exchange could lose the subsidies they used to

purchase that coverage. That number represents nearly 90% of all those who enrolled in coverage through the federal exchange, according to *Newsweek*. Losing the subsidies would mean that millions of U.S. residents could become uninsured, since health plans sold through the exchange might be unaffordable without the assistance.

In addition, the loss of subsidies could spur a so-called "death spiral," in which insurance premiums would rise because not enough young, healthy enrollees purchase plans to offset the higher costs of elderly, sicker individuals.

Simon Lazarus, senior counsel at the Constitutional Accountability Center, noted that such a loss would have a "vast" effect on not only the five million people who already have purchased coverage and received the subsidies, but also on the 10 million additional individuals who are eligible for them. He added, "It doesn't really stop there. Taking those people out of the health insurance market would ... radically increase the cost of all people who don't have group insurance." In effect, an ultimate win for the plaintiffs "would literally blow [the insurance] markets up," he said.

Lazarus also said a win for the plaintiffs could ultimately disrupt the ACA's individual mandate, because most people who would lose the subsidies would then qualify for a hardship exemption under the law because their premiums likely would be higher than 8% of their annual incomes (*Newsweek*, 7/7).

State-Run Exchanges Might Be at Risk

In addition, a ruling in favor of the plaintiffs ultimately could shrink the number of state-run exchanges, according to Cato Institute analyst Michael Cannon. Cannon said employers in states that run their own exchanges could petition the states to give up the exchanges, because the ACA's employer mandate could not be enforced in states without an exchange. In addition, penalties assessed under the individual mandate could no longer be allowed, because they are only permitted if individuals refuse to buy affordable coverage that is available to them through the exchanges.

However, insurance industry consultant Robert Laszewski said he expects states would "expeditious[ly]" work to establish exchanges if plaintiffs eventually were victorious. He noted that state legislatures and governors could enact laws that allow the states to contract with the federal government to run the exchanges. He added, "I can't see any state denying benefits people already had."

Possible Immediate Effect

Meanwhile, one immediate effect of a ruling in favor of the plaintiffs might be confusion surrounding the upcoming open enrollment period, Pollack said. He said U.S. residents could be unsure whether the subsidies would be available to them while the lawsuit continues, depending on media reports of the ruling (*CQ HealthBeat*, 7/7).