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Health care law faces another crucial ruling

By: David G. Savage

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President Barack Obama's health care law could be dealt a severe blow this week if a U.S. appeals court rules that some low- and middle-income residents no longer qualify to receive government subsidies to pay for their insurance.

The case revolves around the wording of the Affordable Care Act, which, as written, says that such subsidies may be paid only if the insurance is purchased through an "exchange established by the state."

That would seem to leave out the 36 states in which the exchanges are operated by the federal government.

The 2010 health law has survived other court challenges; a ruling on this one could come Tuesday.

The administration has argued that Congress intended to offer the subsidies nationwide to low- and middle-income people who bought insurance through an exchange, without making a distinction. Lawyers and congressional staffers who worked on the law have described the problem as a classic wording glitch in a long and complicated piece of legislation.

George Washington University's Sara Rosenbaum was quoted by Newsweek as saying the law was being misinterpreted. "The plaintiffs have seized on a few words in a statute, they've taken the words completely out of context, and they have ignored numerous other parts of the statute that make their interpretation of the law basically senseless," she said.

In one part of the law, it says states, which typically regulate insurance, could create exchanges that would help consumers and small businesses shop for coverage. It also said that if a state failed to establish an exchange, the federal government could step in and run one in its place.

A second part of the law described the subsidies that could be offered to low- and middle-income people to cover the cost of the insurance. This part said these subsidies, or tax credits, would be offered for insurance bought on an exchange "established by the state."

Apparently, no one noticed the problem until the law was passed. Then, because of fierce political opposition and the 2010 Republican takeover of the House, supporters of the law could not fix the wording through an amendment.

The Competitive Enterprise Institute has filed a suit, *Halbig v. Burwell*, on behalf of several plaintiffs.

Michael Cannon of the Cato Institute and law professor Jonathan Adler, writing in a Health Affairs blog post, argued that it was clear the subsidies are supposed to only apply to state exchanges. "The rules employ that restrictive phrase nine times, without deviation," they wrote, going on to say it was "not a fluke or a drafting error."

If a panel of the U.S. Circuit Court of Appeals for the District of Columbia rules against Obama, the administration could ask the full 11-member appeals court to weigh the issue.