

# The Detroit News

## Yet another Obamacare bungle

By Ingrid Jacques  
August 10, 2014

President Barack Obama and ardent defenders of his Affordable Care Act believe so firmly in the health care overhaul that they are blinded to its shortcomings.

Plenty of Americans, however, see Obamacare clearly, and they aren't happy.

Its opponents are determined to keep fighting, even though the president treats these naysayers — whether individuals or members of Congress — as annoying distractions to the foregone conclusion of Obamacare. But they are drawing attention to true flaws in the Obama administration's application of the law.

The president is determined that Obamacare succeed at all costs, even if it means ignoring what the law actually says. Yet not everyone is comfortable with trampling the separation of powers.

An appeals court decision late last month called out this overreach. Plaintiffs in *Halbig v. Burwell* sued because they opposed regulations issued by the Internal Revenue Service related to the health care law. The IRS, under the administration's direction, didn't just clarify the law. The agency rewrote it.

A panel of the U.S. Court of Appeals for the D.C. Circuit sided with the challengers.

Under Obamacare, states were required to establish health insurance exchanges. If states didn't, the law allowed the federal government to step in and operate the exchange. Thirty-six states, including Michigan, let the federal government run the show.

Here's the problem. The law states that individuals qualify for insurance subsidies if they enroll in an exchange "established by the state." It doesn't say anything about federal-run exchanges. Yet the IRS chose to apply subsidies to both state and federal exchanges.

"The law is actually pretty clear," says Michael Cannon, director of health policy studies at the Cato Institute. He's made this argument the past few years and is pleased with the *Halbig* decision.

Without these generous subsidies, which benefit about half of individuals qualified to purchase coverage on the exchanges, the plans go from being a good deal to a raw deal as the true costs are revealed. In Michigan, 237,337 residents receive federal subsidies.

Since the whole point of Obamacare was to insure everyone, especially those who couldn't afford it, this development has the potential to undercut the very heart of the law.

As inconvenient as it may be for Obama, it's Congress' job to pen laws. The administration says it wasn't Congress' intention to limit subsidies to state exchanges. But the language is not ambiguous.

This discussion is far from over. The same day the Halbig decision came down, the U.S. 4th Circuit Court of Appeals upheld the tax subsidies on all exchanges in *King v. Burwell*. Not surprisingly, the Obama administration last week asked the full D.C. appeals court to rehear the Halbig case. And the challengers in the King case have asked the Supreme Court to weigh in soon.

If it wanted to, Congress could easily clarify the law. But that would take cooperation between the GOP-controlled House, which would rather repeal the law, and the Democratic-controlled Senate, which won't admit there's a problem.

That's frustrating for Obama. But it doesn't give him a free pass around Congress.