



Federal court ruling threatens Obamacare in Indiana

By Richard Wolf and Maureen Groppe
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WASHINGTON – A federal appeals court dealt a potentially major blow to President Obama's health care law Tuesday, ruling that participants in health exchanges run by the federal government in 34 states — including Indiana — are not eligible for tax subsidies.

The 2-1 ruling by a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit, which is sure to be appealed by the government, threatens the framework of the health care system for about 5 million Americans without employer-provided health plans.

About nine in 10 of the Hoosiers who have used Indiana's exchange to purchase insurance have received a subsidy. That has reduced their premium to an average \$88 a month, according to the U.S. Department of Health and Human Services.

But Indiana Attorney General Greg Zoeller and more than three dozen Indiana school districts have challenged the subsidies in a suit similar to the one the federal appeals court panel ruled on.

That case, filed by a coalition of states, employers and individuals, had been considered a long shot effort to derail the Affordable Care Act, also known as Obamacare. Federal district judges in the District of Columbia and Virginia previously had ruled for the government.

Indiana's case is one of three similar cases that are pending.

Indiana's challenge aims to protect large employers in the state from facing penalties if they don't offer health insurance to their workers. That's because fines for businesses with at least 50 full-time employees are triggered if a worker, lacking insurance, uses a subsidy to buy individual insurance through the exchange.

The appeals panel ruled that as written, the health care law allows tax credits to be offered to qualified participants only in state-run exchanges. The administration had expected most if not all states to create their own, but only 16 states did so.

The court said the Internal Revenue Service went too far in allowing participants in other states served by the federal exchange to qualify for billions of dollars in government assistance. The aid has helped boost enrollment figures to more than 8 million.

"We reach this conclusion, frankly, with reluctance," Judge Thomas Griffith said. "At least until states that wish to can set up exchanges, our ruling will likely have significant consequences both for the millions of individuals receiving tax credits through federal exchanges and for health insurance markets more broadly."

Judge Harry Edwards dissented, calling the challenge "a not-so-veiled attempt to gut the Patient Protection and Affordable Care Act" and warning that the panel's ruling "portends disastrous consequences."

If allowed to stand, the ruling would blow a major hole in the law, since tax credits or subsidies are what make the private health insurance policies offered on the exchanges affordable to most Americans without employer-sponsored insurance plans.

If the subsidies are invalidated in 34 states, then many of the tax penalties imposed on employers and individuals for non-compliance with the law also would be eliminated. Employers pay a penalty when their workers get subsidized on the exchange. Individuals get penalized if they don't buy affordable insurance, but the subsidies often are what make it affordable.

Michael Cannon, a Cato Institute health economist who helped devise the legal challenge, said the refusal by so many states to create health exchanges led to the court ruling. "This is popular resistance to the law," he said.

Although the ruling will have no impact while it is appealed -- either to the full appeals court, which includes four Obama appointees, or to the Supreme Court -- the result could be chaotic if ultimately allowed to apply nationwide.

Ron Pollack, executive director of the advocacy group Families USA which supports the law, predicted that Monday's ruling will be a high-water mark for Affordable Care Act opponents.

"The likelihood that today's decision will not be implemented does not obscure the harm it could cause," Pollack added. "It would eliminate help for almost five million low- and moderate-income people who currently receive subsidies so they can afford health insurance. Millions of other low-income families, who are also entitled to such assistance but have not yet received it, would also be denied help."