



## Exchange subsidies draw conflicting federal court rulings

**If the D.C. federal court is ultimately upheld, 95 percent of the Georgians enrolled in ACA would lose subsidies**

By Andy Miller  
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ATLANTA — More than 190,000 Georgians are enrolled in the health insurance exchange created by the Affordable Care Act.

But if a D.C. federal court ruling announced Tuesday on exchange subsidies is ultimately upheld, that Georgia number could shrink precipitously.

The U.S. Court of Appeals for the District of Columbia ruled Tuesday that the language of the ACA allows subsidies, or discounts, only for people who obtain coverage through exchanges run by the states, and not by the federal government.

Georgia is among 36 states whose insurance exchanges are federally run.

About 95 percent of Georgians enrolled in health plans in the exchange have received subsidies to help them afford their premiums, according to the state insurance department.

The 2-to-1 ruling by a three-judge panel of the court — if not overturned on appeal — would be a tremendous setback for President Obama's health care law.

Without subsidies, the price of health insurance for millions of people in Georgia and the 35 other states with federally run exchanges would rise sharply, making it generally unaffordable.

The judges suspended their ruling pending an appeal by the administration. The Obama administration said it would appeal to the full circuit court, a process that could take up to six months, and stressed the ruling would have no impact on consumers receiving monthly subsidies now, Reuters reported.

Also Tuesday, a three-judge panel of the 4th U.S. Circuit Court of Appeals in Virginia ruled unanimously to uphold the subsidies provision, saying the wording of the law was too ambiguous to restrict the availability of the funds. The ruling was announced shortly after the D.C. decision.

Still, if the D.C. court ruling ultimately prevails, there are no easy options for saving the current subsidies.

Rewriting the ACA to extend the subsidies would appear to be politically impossible at this time. And if dozens of states should choose to take over the running of their exchanges, that could create issues of its own.

In Georgia, for instance, the General Assembly passed a law this year prohibiting the state from running its own exchange.

“Clearly if this (D.C. ruling) were the final say, it would be devastating,” said Cindy Zeldin of Georgians for a Healthy Future, a group that supports the ACA. The subsidies, she added, helped people “who couldn’t buy coverage in the past to purchase it.”

She cautioned that Tuesday’s decision by the D.C. court “is still just one step in the process.”

The D.C. judges’ ruling Tuesday said the ACA “does not authorize the Internal Revenue Service to provide tax credits for insurance purchased on federal exchanges.” The health law, the judges said, “plainly makes subsidies available only on exchanges established by states.”

The lawsuit was filed by several people, supported by conservative and libertarian organizations, in some states that use the federal exchange: Tennessee, Texas, Virginia and West Virginia. They objected to being required to buy insurance, even with subsidies to help defray the cost, the New York Times reported.

Josh Earnest, the White House press secretary, said after the D.C. court ruling, “You don’t need a fancy legal degree to understand that Congress intended for every eligible American to have access to tax credits that would lower their health care costs, regardless of whether it was state officials or federal officials who were running the marketplace. I think that is a pretty clear intent of the congressional law.”

A Justice Department spokeswoman, Emily Pierce, said, “In the meantime, to be clear, people getting premium tax credits should know that nothing has changed. Tax credits remain available.”

Consumers qualify for subsidies if they have incomes of up to \$45,960 for individuals and up to \$94,200 for a family of four.

The designers of the 2010 law assumed that states would want to create their own insurance exchanges. But many Republican governors and state legislatures — including

in Georgia — decided to let the feds run it, basically out of general opposition to the ACA.

The D.C. judges deciding the case were Thomas Griffith, an appointee of President George W. Bush; A. Raymond Randolph, an appointee of George H.W. Bush; and Harry Edwards, an appointee of President Jimmy Carter. Edwards was the dissenter in the 2-1 ruling. All three judges in the Virginia case were appointed by Democrats.

Michael Cannon, a Cato Institute health economist who helped devise the legal challenge in the D.C. case, said the refusal by so many states to create health exchanges led to the court ruling, USA Today reported. “This is popular resistance to the law,” he said.

“This illegal rule would have cost employers crippling fines, destroyed jobs, and forced Americans to pay for insurance that they didn’t want or need,” said Sam Kazman, general counsel of the Competitive Enterprise Institute, which coordinated the lawsuit. “The court’s decision put an end to the administration’s power grab that the IRS rule represented.”

ACA supporters, meanwhile, said they expect the D.C. ruling to be reversed by the full appeals court. The decision “represents the high-water mark for Affordable Care Act opponents, but the water will recede very quickly,” said Ron Pollack of consumer group Families USA, who applauded the Virginia court ruling.

The D.C. decision is the second in less than a month to go against the Obama administration’s implementation of the ACA.

Last month, the U.S. Supreme Court ruled that closely held corporations that object on religious grounds to offering insurance coverage for contraceptives have the right to sidestep that requirement. The high court based its decision on a federal religious liberty law enacted in the 1990s.

Zeldin of Georgians for a Healthy Future said Tuesday’s ruling in federal court in D.C., if upheld, would lead to great inequities between states who run their own exchanges and those whose exchanges are operated by the federal government.

Without subsidies, she said, “most people would not be able to renew their (exchange) coverage.”

If the decision eventually stands, it could mean at least 5 million Americans would face an average premium increase of 76 percent, according to a projection by the consulting firm Avalere Health, Kaiser Health News reported.

The Georgia Association of Health Plans, though, noted Tuesday that there are conflicting rulings on the subsidies from different courts.

“There’s no immediate impact on subsidized premiums,” said Graham Thompson, the organization’s executive director.

“It’s way too early to tell” the ultimate resolution, he said. “We’ll wait and see.”