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Q&A: How will health care rulings affect those using Kentucky's insurance program?

By Tony Pugh
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WASHINGTON — Contrary rulings Tuesday on a key element of the Affordable Care Act by two separate federal appeals courts raise a variety of questions.

Q: What happened?

A: The U.S. Court of Appeals for the District of Columbia Circuit decided 2-1 that tax subsidies available to help people pay for health coverage through the Affordable Care Act can only be used in the 14 states (like Kentucky) and in D.C., which run their own insurance exchanges without any help from the federal government. But in a unanimous decision on a similar case a short time later, the 4th U.S. Circuit Court of Appeals in Richmond, Va., ruled just the opposite.

Q: Who's eligible for the tax subsidies?

A: Individuals and families who earn between 100 percent and 400 percent of the federal poverty level. For those who enrolled this year, it includes individuals earning \$11,490 to \$45,960, and a family of four earning from \$23,550 to \$94,200.

Q: Does the D.C. court's decision mean that consumers in the 36 states that use the federal marketplace will lose their tax credits going forward?

A: No. The tax credits remain available. The federal government is appealing the decision to the full 11-member U.S. Court of Appeals for the D.C. Circuit. That ruling will supersede Tuesday's decision.

Q: Are there other similar court cases out there?

A: Yes. A U.S. District Court in Oklahoma is hearing the case of Pruitt v. Burwell, in which Oklahoma Attorney General Scott Pruitt argues that providing tax credits to state residents is illegal. Another, Indiana v. IRS, will be heard in a federal court in Indianapolis, Ind.

Q: Will this case end up before the Supreme Court?

A: Unclear, but many experts believe it will. The high court usually takes a case after two circuit courts issue split rulings on the same matter. But the court can also accept cases dealing with urgent national questions if it desires. Ross C. D'Emanuele, a Minneapolis-based health care attorney, said that the courts weren't "entirely comfortable' with either of the two decisions on tax credits and it was "highly likely that the Supreme Court will take up the issue."

Q: What happens if the courts ultimately find that premium tax credits can only be provided to people in states that run their own insurance marketplaces?

A: Many people who enrolled would not be able to afford insurance. That could mean higher premiums for those who remain covered. These people are more likely to have a pre-existing health condition that can no longer be used to deny their coverage. This turn of events, would force more people to drop coverage, leading to a so-called "death spiral," in which the the federal marketplace would become unsustainable.

Q: How many people receive tax credits to buy marketplace health coverage?

A: Across the country, 6.7 million people enrolled receive advance premium tax credits for marketplace coverage. That's 85 percent of all people who signed up. Seventy percent of them _ 4.7 million people _ get tax credits through the federal marketplace.

Q: Who are the people bringing these lawsuits against the Affordable Care Act?

A: Conservative scholars Jonathan Adler and Michael Cannon, who first touted the tax credit loophole in the law, are behind the lawsuits. The lead plaintiff in Halbig v. Burwell is Jacqueline Halbig, a former policy adviser to the U.S. Department of Health and Human Services under President George W. Bush. Burwell is Sylvia Mathews Burwell, the secretary of Health and Human Services. The lead attorney is Michael Carvin, who argued the National Federation of Independent Business case against the Affordable Care Act before the Supreme Court in 2012.