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Ex-Obama Aide's Statements in 2012 Clash With Health Act Stance

By: Robert Pear and Peter Baker
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A former adviser to the Obama administration on health policy made public statements in 2012 that undercut arguments it is now making in court about the government's authority to subsidize insurance premiums.

The adviser, Jonathan Gruber, a professor of economics at the Massachusetts Institute of Technology, said at a conference in 2012 that consumers could not obtain insurance subsidies under the health care law if they lived in states that refused to establish their own insurance exchanges.

His comments, captured on videotape, contradict the argument now made in court by the administration, which says that Congress always intended for the subsidies to be available nationwide, in all states, regardless of whether they had a federal or state-run exchange.

The subsidies are widely seen as essential to the survival and success of the health care law, President Obama's most significant legislative achievement, adopted in March 2010 without any Republican votes. More than six million people who bought insurance on the federal and state exchanges have qualified for subsidies, in the form of tax credits.

Mr. Gruber backed away from his comments on Friday. But the remarks embarrassed the White House and could help plaintiffs in court cases challenging the payment of subsidies in 36 states that rely on the federal exchange.

"I made a mistake in some 2012 speeches in describing the tax credits," Mr. Gruber said in an email on Friday. "It is clear from all my writings and modeling that I did over this same time period that tax credits are assumed to be available in all states. This is the only sensible reading of the Affordable Care Act and is corroborated by every single person who helped craft the law."

The video surfaced Thursday in a comment posted at the Volokh Conspiracy, a blog on legal and political issues.

In lawsuits challenging the health care law, plaintiffs contend that Congress confined the subsidies to state exchanges for a reason: It wanted to provide an incentive for states to establish and operate exchanges, rather than leaving the task to the federal government.

At the conference in 2012, Mr. Gruber said the federal government would provide a backstop if states failed to establish insurance exchanges.

“What’s important to remember politically about this,” Mr. Gruber said, “is if you’re a state and you don’t set up an exchange, that means your citizens don’t get their tax credits.”

Conservative and libertarian critics of the health law seized on the video as evidence to support their case.

Michael F. Cannon, director of health policy studies at the Cato Institute, said, “Professor Gruber’s comments totally disrupt the narrative that Congress could not have intended to do this.”

A panel of the United States Court of Appeals for the District of Columbia Circuit ruled Tuesday in favor of plaintiffs in a case here, while a panel of the federal appeals court in Richmond, Va., sided with the Obama administration in a similar case.

In 2009 and 2010, Mr. Gruber was a paid adviser to the administration. The Department of Health and Human Services said in June 2009 that it had awarded a $297,000 contract to him “for technical assistance in evaluating options for national health care reform.” He also provided advice to Democrats in Congress and was an architect of the Massachusetts health care program, a precursor of the federal plan.

The White House played down the video on Friday, saying that Mr. Gruber had made clear in friend-of-the-court briefs that he supports the administration’s interpretation.

“His views on this are pretty clear,” said Josh Earnest, the White House press secretary. “I think that he described those remarks as a mistake. But I’d refer you to his explanation for why he said them. I think what is clear is that he, like Congress, intended for every eligible American to have access to tax credits that lower their health care costs, regardless of who is operating their marketplace.”

On Thursday, the administration issued new tax forms to enforce provisions of the health care law that require most Americans to have insurance and to repay subsidies if necessary.

The forms require taxpayers to report — for each member of a household and each month of the year — whether the person had coverage. If they were uninsured for part of the year, they are supposed to compute and pay penalties, which for some taxpayers could be nearly 1 percent of their adjusted gross income.