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Judge dismisses lawsuit challenging Virginia health insurance subsidies

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A lawsuit challenging the way Virginians can buy subsidized health insurance — part of a broader legal attack on the Affordable Care Act — has been dismissed by a federal judge in Richmond.

Filed by four state residents who object to the law's requirement that they purchase insurance or pay a tax penalty, the lawsuit questioned the legality of an online marketplace that offers financial assistance to those with low to moderate incomes.

When Congress passed the Affordable Care Act in 2010, the plan was for each state to run its own marketplace. Virginia and other states balked at the idea, leaving the federal government to operate marketplaces for the residents of 36 states.

But the law was worded in such a way, the lawsuit asserted, that government subsidies were available only through state-run marketplaces — a theory that would invalidate the plans sold in Virginia and 35 other states.

“At first blush ... it seems comprehensible” that Congress intended the subsidies to be available only through state marketplaces because there is no mention in the law of the federal system, U.S. District Judge James Spencer wrote in a decision Tuesday.

But on closer examination, there was no supporting evidence of such a legislative intent, Spencer found in dismissing the lawsuit.

To the contrary, the judge wrote, “the text of the ACA and its legislative history evidence congressional intent to ensure broad access to affordable health coverage for all.”

When the lawsuit and others like it were filed, legal analysts said they had the potential to unravel a key part of the health care law.

“This litigation poses a very serious challenge to the ACA,” Timothy Jost, a Washington and Lee University law professor and an expert on the health care law, wrote on his Health Affairs Blog last month. Jost was out of the country this week and unavailable for comment.

So far, judges have rejected the arguments. Last month, a federal judge in Washington, D.C., sided with the government in an opinion similar to Spencer’s.

Both decisions will be appealed, said Sam Kazman, general counsel for the Competitive Enterprise Institute, which is supporting the litigation.

“It’s very possible this will end up before the U.S. Supreme Court,” Kazman said.

Lawsuits in Oklahoma and Indiana are still pending.

The crux of the legal challenge deals with a regulation issued by the Internal Revenue Service after confusion first arose about whether subsidies are available through both the federal and state exchanges.

Although the IRS determined they were, critics adopt a more strict reading of the law, which says in part that subsidies should be allowed for those enrolled “through an exchange established by the State.”

Critics argue that having the IRS clean up confusion in a poorly worded law goes beyond the intent of Congress.

“The Obama administration is rewriting the law by itself, and has done so repeatedly,” said Michael Cannon, a health policy expert at the Cato Institute who has filed legal briefs in support of the lawsuits.

If the challenges were to ultimately succeed, people who purchased insurance in the 36 states that use the federal marketplace would be barred from receiving financial assistance.

In Virginia, nearly 75,000 people had purchased plans through the marketplace by Feb. 1, the government announced last week. Most have received subsidies, which are available to people with incomes at the federal poverty guideline or up to four times that level.

Without the subsidies, critics say, the government cannot enforce a part of the law that requires everyone to have insurance or pay a tax penalty.

Also conceivably in peril is the so-called employer mandate, another provision of the Affordable Care Act that will require large employers to provide insurance to their workers or pay a penalty, starting in 2015.

The penalty only applies to employers with inadequate coverage that have at least one employee who is receiving a subsidy through the marketplace.

So if the subsidies were found to be invalid in Virginia and 35 other states, “it would also have rendered the employer mandate unenforceable in those states,” Jost wrote in his blog post.

In the lawsuit that was dismissed this week, David King of Fredericksburg was the lead plaintiff. With an annual income of \$39,000, King qualifies for a subsidy to help with the cost of his health insurance.

But he doesn’t want it.

Without the subsidy, King would be exempt from the individual mandate requiring him to have insurance, because the mandate does not apply to those who would have to pay more than 8 percent of their household income.

Under the law as it is currently written, “King will be forced to either pay a penalty or purchase more insurance than he wants,” the lawsuit stated.

Even though the Affordable Care Act has been upheld by the U.S. Supreme Court, opponents have continued to bring legal challenges.

Cannon, of the Cato Institute, said the Supreme Court ruling applied to the law on its face, while lawsuits such as King’s have questioned the way the law has been administered and changes that have been made since it was first passed.

“The legal challenges are far from over,” Cannon said, “because this is a 2,000-page bill with many, many provisions.”