



Federal appeals court deals death blow to integral part of Obamacare

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In a potentially crippling blow to Obamacare, a federal appeals court panel declared Tuesday that government subsidies worth billions of dollars that helped 4.7 million people buy insurance on **HealthCare.gov** are illegal, reports CNBC.

The 2-1 ruling said such subsidies can be granted only to people who bought insurance in an Obamacare exchange run by an individual state or the District of Columbia — not on the federally run exchange **HealthCare.gov**.

The ruling relied on a close reading of language in the Affordable Care Act.

"Section 36B plainly makes subsidies available in the Exchanges established by states," wrote Senior Circuit Judge Raymond Randolph, who was joined by Judge Thomas Griffith in the majority decision on the case known as *Halbig v. Burwell*.

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

In his dissent, Judge Harry Edwards, calling the case a "not-so-veiled attempt to gut" Obamacare, wrote that the ruling "portends disastrous consequences."

The 72-page decision could seriously compromise Obamacare's goals of compelling people to get health insurance, and helping them afford it, stated the MSNBC article.

However, "the ruling does not and will not ultimately affect the same kinds of taxpayer-fund subsidies the federal government issued to 2 million or so people through the 15 exchanges run by individual states and the District of Columbia," the story noted.

The Obama administration said it will ask the full U.S. Court of Appeals for the District of Columbia Circuit to reverse the panel's decision, which for now does not have the rule of law.

Tuesday's ruling endorsed a controversial interpretation of the Affordable Care Act, which argues that the **HealthCare.gov** subsidies are illegal because ACA does not

explicitly empower a federal exchange to offer subsidized coverage, as it explicitly does in the case of state-created exchanges.

HealthCare.gov serves residents of the 36 states that did not create their own health insurance marketplace. By the close of open enrollment in mid-April, the federal exchange had enrolled 5.4 million of the 8 million people who signed up for Obamacare plans.

About 4.7 million people, or 86 percent of all **HealthCare.gov** enrollees, qualified for a subsidy to offset the cost of their coverage this year because they had low or moderate incomes. Many of those people pay less than \$100 per month in premiums after their subsidies are factored in.

If upheld, the ruling could lead many, if not most of those subsidized customers to abandon their health plans sold on HealthCare.gov because they no longer would find them affordable without the often-lucrative tax credits.

And if that coverage then is not affordable for them as defined by the Obamacare law, those people will no longer be bound by the law's mandate to have health insurance by this year or pay a fine next year.

If there were to be a large exodus of subsidized customers from the HealthCare.gov plans, it would in turn likely lead to much higher premium rates for non-subsidized people who would remain in those plans.

The ruling also threatens, in the same 36 states, to gut the Obamacare rule starting next year that all employers with 50 or more full-time workers offer affordable insurance to them or face fines. That's because the rule only kicks in if one of such an employers' workers buy subsidized covered on **HealthCare.gov**.

The decision by the panel is the most serious threat to the underpinnings of the Affordable Care Act since a challenge to that law's constitutionality was heard by the Supreme Court. The high court in 2012 upheld most of the ACA, including the mandate that most people must get insurance or pay a fine.

If the Obama administration fails to prevail in its planned challenge to Tuesday's ruling by asking the full DC circuit to reverse the decision, it can ask the Supreme Court to reverse it.

A Supreme Court review is guaranteed if another federal appeals court circuit rules against plaintiffs in a similar case challenging the subsidies. And the only other circuit currently considering such a case, the Fourth Circuit, is expected by both sides to rule against plaintiffs there in a decision that is believed to be imminent. Two other federal district courts are dealing with similar challenges to the subsidies, but those cases have not reached the appellate level yet.

"It's in everyone's interest for this issue to be resolved sooner than later," said Jonathan Adler, a Case Western Reserve University law professor who has been the leading theorist for the challenge.

The White House, already badly stung by a recent Supreme Court ruling that allows some businesses to avoid an Obamacare contraception-related rule for religious reasons, quickly responded to the latest blow to the Affordable Care Act.

White House spokesman Josh Earnest said the ruling "does not have any practical impact" on premium subsidies issued to HealthCare.gov enrollees now.

"We are confident" that the ruling will be overturned, Earnest said. "We are confident in the legal position we have . . . the Department of Justice will litigate these claims through the federal court system."

Earnest said "it was obvious" that Congress intended subsidies, or tax credits, to be issued to Obamacare enrollees regardless of what kind of exchange they used to buy insurance.

Justice Department spokeswoman Emily Pierce said, "We believe that this decision is incorrect, inconsistent with Congressional intent, different from previous rulings, and at odds with the goal of the law: to make health care affordable no matter where people live."

"The government will therefore immediately seek further review of the court's decision," Pierce said. "In the meantime, to be clear, people getting premium tax credits should know that nothing has changed, tax credits remain available."

Michael Cannon, one of the intellectual godfathers of the court challenge and a director at the libertarian Cato Institute, said the ruling "was validating" to him.

"This is the first opinion that looked at all of the evidence," said Cannon, noting that the decision found the Obama administration does not have and never had the power to issue subsidies to enrollees on a federal exchange.

"The Obama administration has been violating its own health care law," Cannon said.

The plaintiffs' claim has been met with derision by Obamacare supporters, who argue that it relies on a narrow reading, or even misreading of the law. Those supporters said the claim ignores its overarching intent: to provide affordable insurance to millions of people who were previously uninsured.

Supporters argue that the legality of the subsidies to HealthCare.gov enrollee derives from the fact that the law explicitly anticipated the potential need to create such a federal exchange in the event that a state chose not to.