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## Courts issue conflicting rulings on health care tax subsidies

By Michael Doyle and Tony Pugh  
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- **What about Idaho?**

Idaho has its own state-run health insurance exchange, Your Health Idaho. But the exchange relies for now on the federal system, HealthCare.gov, for enrollment while Idaho develops its own technology. The U.S. Department of Health and Human Services in April characterized the exchange as "a federally supported [state-based marketplace]." As a result, it's not immediately clear where Idaho would fall if the D.C. ruling stands.

"As a state-based marketplace, Your Health Idaho has requested official guidance to confirm that this ruling does not impact Idahoans," Amy Dowd, the exchange's executive director, said in an emailed statement Tuesday afternoon.

Several Your Health Idaho board members told the Statesman that they believe they fall in the state-based category. And Gov. Butch Otter appeared to conclude Idaho is firmly in the camp of state-based exchanges in his own statement Tuesday:

"While it has no immediate impact on Idaho, I hope the decision in the D.C. case eventually carries the day before the U.S. Supreme Court and leads to the end of Obamacare. But for now, it doesn't reduce or eliminate federal control over healthcare matters in states with federal exchanges. If anything, the uncertainty from today's conflicting decisions could make things worse for them.

"As we have known for some time, the benefits of being a state-based health insurance exchange far outweigh Idaho being on the federal exchange. As Idaho transitions to our own technology, we are even more confident in Idaho's decision to maintain control of the exchange in Idaho."

Almost 70,000 of the 76,000 people in Idaho who bought health insurance through the exchange during its debut enrollment period received federal assistance, according to the U.S. Department of Health and Human Services.

The fiscally conservative Idaho Freedom Foundation and Cato Institute previously urged Idaho lawmakers and Gov. Butch Otter not to form a state-run exchange, citing the language in the Affordable Care Act that was at issue in Tuesday's appellate court rulings.

"This ruling validates our position that the state not only didn't need to establish an insurance exchange but that also that Idaho's exchange has become the vehicle for enforcing Obamacare's penalty provisions," said Idaho Freedom Foundation President Wayne Hoffman in a press release Tuesday.

*-Audrey Dutton*

WASHINGTON — Two appeals courts on Tuesday reached radically different conclusions about whether millions of consumers in 36 states can use tax credits to help buy health coverage on the federal health insurance marketplace.

The conflicting rulings, combined with two other pending challenges still awaiting decisions, potentially tee up for the Supreme Court its next landmark health care case and leave one of the Affordable Care Act's signature provisions in a state of legal limbo.

"The important thing for consumers to know is that they will keep their tax credits and coverage as this judicial process continues," said Anne Filipic, president of Enroll America, a national health care law support group.

In the first ruling to become public, a divided panel of the U.S. Court of Appeals for the District of Columbia Circuit concluded that the Obama administration stretched the 2010 health care law too far in extending the subsidies through the federal HealthCare.gov website.

"We reach this conclusion, frankly, with reluctance," Judge Thomas Griffith wrote in the 2-1 decision. "Our ruling will likely have significant consequences both for the millions of individuals receiving tax credits through federal exchanges and for health insurance markets more broadly."

More bluntly, Senior Judge Harry Edwards in his dissent called the challenge a "not-so-veiled attempt to gut" the health care law.

The judicial decision quickly revived the familiar political debate that has raged since Congress approved the health care law on party-line votes.

From the right, Texas Republican Sen. Ted Cruz cheered the D.C. ruling as "a repudiation of Obamacare and all the lawlessness that has come with it." From the left,

Ron Pollack, executive director of Families USA, a health care advocacy group, called the decision “the high-water mark for Affordable Care Act opponents.”

The Justice Department said it would ask for the full D.C. court to review the decision, calling it “incorrect, inconsistent with congressional intent, different from previous rulings, and at odds with the goal of the law.”

But just as advocates from both sides were starting to make sense of the D.C.-based court’s 42-page majority decision, the Richmond, Va.-based 4th U.S. Circuit Court of Appeals reached the opposite conclusion about the same set of facts.

In a unanimous decision, the three-judge panel called extension of the health insurance tax credits a “permissible exercise” of a federal agency’s discretion in interpreting ambiguous legislative language.

“It is . . . clear that widely available tax credits are essential to fulfilling the Act’s primary goals and that Congress was aware of their importance when drafting the bill,” Judge Roger Gregory wrote. “The economic framework supporting the Act would crumble if the credits were unavailable on federal exchanges.”

All agree the legal, political and household consequences would be huge if the tax credits are voided.

The D.C. court decision could cause nearly 5 million low- and moderate-income people to lose their tax credits, which have helped make health insurance affordable, according to a Families USA estimate.

On average, monthly premiums fell by 76 percent for people who received the tax credits, according to the Department of Health and Human Services. This dropped monthly premiums from \$346 to \$82 on average across all plan types. Sixty-nine percent of Americans who received the tax credits had monthly premiums of \$100 or less, while 46 percent paid less than \$50 per month, HHS data shows.

But no action is yet final, and intense legal maneuvering will now follow.

Both three-judge panel decisions can be presented for a so-called en banc review by all of the judges on the respective circuit courts. The D.C.-based court has 11 active judges, seven of whom were appointed by Democrats. Four of these are Obama appointees, and Pollack of Families USA declared the full court “predictably will reverse” the smaller panel.

The 4th Circuit has 14 active judges, nine of whom are Democratic appointees.

Two other federal courts are still considering similar challenges. Disagreements among circuit courts are a recipe for Supreme Court action. Few doubt one challenge or another will eventually reach the high court.

“I trust that the full D.C. Circuit and eventually the Supreme Court will likewise uphold the legitimate lawmaking authority of Congress,” declared Sen. Orrin Hatch of Utah, the senior Republican on the Senate Finance Committee.

The various challenges contend the complicated health care law doesn’t allow the federal government to provide subsidies — which help people purchase health coverage — in states that use the federal marketplace.

A section of the health care law says the tax credits can only be applied to coverage purchased “through an exchange established by the state.”

Only 14 states and the District of Columbia have established their own exchanges. The federal government has established exchanges in the remaining 36 states, in most cases without state assistance.

The Obama administration argued the language concerning state exchanges was merely a drafting error, which could easily be fixed if not for the polarized state of Congress. The administration further maintained that other aspects of the law make clear Congress intended to provide the tax credits in all states.

Accordingly, the Internal Revenue Service interpreted the section of the law broadly to authorize the subsidy also for insurance purchased on the federal health exchange.

“We feel very strongly about the sound legal reasoning of the argument that the administration is making,” White House spokesman Josh Earnest said.

This broad interpretation, though, imposes costs as well as benefits.

“By making tax credits available in the 36 states with federal exchanges, the IRS rule significantly increases the number of people who must purchase health insurance or face a penalty,” Griffith wrote for the D.C. court.

Both appellate courts faced two fundamental challenges. The judges had to figure out what Congress meant, using both the plain language of the law as well as the surrounding legislative history and context, and they had to resolve how much leeway to give the administration.

The D.C. panel went one way.

“The fact is that the legislative record provides little indication one way or the other of congressional intent, but the statutory text does,” Griffith wrote, adding the law’s language “plainly makes subsidies available only on exchanges established by states.”

The 4th Circuit went another.

“Confronted with the Act’s ambiguity, the IRS crafted a rule ensuring the credits’ broad availability and furthering the goals of the law,” Gregory wrote. “In the face of this permissible construction, we must defer to the IRS rule.”