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Court: No Obamacare subsidies in fed exchanges

Appeals judges find law excludes assistance for non-state marketplaces

By [Russ Britt](#), MarketWatch

LOS ANGELES (MarketWatch) — A U.S. appeals court ruled Tuesday that those who use federal exchanges are prohibited from receiving subsidies under the Affordable Care Act, a ruling that has the potential to unravel much of the landmark legislation designed to get health coverage to all.



U.S. Court of Appeals in the District of Columbia

But that ruling may be undermined by an appeal by the Obama administration for a full judicial review as well as a second finding from another appeals court, which subsequently ruled in favor of Obamacare subsidies.

A three-judge panel in the U.S. Court of Appeals in the District of Columbia said the ACA as written limits subsidies only to policies purchased on exchanges that were “established by the State.” Their 2-1 ruling sides with that of appellant Jacqueline Halbig against U.S. Health and Human Services Secretary Sylvia Mathews Burwell.

The D.C. court’s ruling, now expected to go to the U.S. Supreme Court, could undermine Obamacare enrollment, as the bulk of the 8 million who signed up for coverage under the ACA, or 5.4 million, did so through the federal exchange. And the 86% of those signups, roughly 4.7 million people, were eligible for subsidies.

Various news organizations, however, reported that an appeals court in nearby Virginia unanimously ruled that the ACA allows the federal government to provide subsidies via its HealthCare.gov exchange.

Sixteen states and the District of Columbia thus far have established their own exchanges, while 34 states rely on the federal government’s HealthCare.gov marketplace. Some of the state exchanges, however, have yet to be established such as that of New Mexico.

The D.C. court found that Halbig and other appellants had the more compelling argument when they said a section of the law, known as 36B, allows only “the state” to offer subsidies, though it acknowledged the federal government’s notion that is a “blinkered view” of Obamacare.

“We conclude that appellants have the better of the argument: a federal Exchange is not an ‘Exchange established by the State,’” the ruling read. Circuit judges Thomas B. Griffith and A. Raymond Randolph ruled that the government “comes up short in its efforts to overcome the statutory text.”

Their ruling went on to say, however: “We reach this conclusion, frankly, with reluctance. At least until states that wish to can set up Exchanges, 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. But, high as those stakes are, the principle of legislative supremacy that guides us is higher still.”

The lone dissenter, Judge Harry T. Edwards, said: “This case is about appellants not-so-veiled attempt to gut [the ACA.]” He went on to say that the appellants “rely on a specious argument that there is no ‘Exchange established by the State’ in States with HHS-created Exchanges and, therefore, that taxpayers who purchase insurance in these States cannot receive subsidies.”

Financial analysts and the market quickly determined that the D.C. ruling should have little effect on the market, or the law for that matter. All the major health insurers joined much of the rest of the market in positive ground on Wall Street, with most up 2% or more.

Clay Brockman, analyst for Height Securities, said in a note to clients that while the ruling serves as major setback to the Obama administration, the government is likely to vigorously appeal it. He noted the government plans to make a rapid “en banc” appeal that keeps the tax credits in place.

That appeal to the D.C. court puts the matter in the hands of a panel of seven Democrat appointees and four Republican appointees. While that appeal is being heard, the subsidies remain in place for Obamacare recipients in federal marketplaces.

Ana Gupte of Leerink Research said in her note to clients that it’s likely the administration will find a way around it even if it ultimately loses this case in the U.S. Supreme Court.

“In our view, even in the worst case scenario whereby the Supreme Court rules against the IRS, we ultimately expect the Obama administration to find a work-around solution to the objection, perhaps by driving a more state-run structure using Medicaid dollar financing as seen in several Medicaid expansion states,” she said.

The Virginia court ruling, which came down just a couple hours after the D.C. court’s, was unanimous in favor of the administration -- though the three-judge panel there said it was a narrow victory.

They noted that “the court cannot ignore the common-sense appeal of the [Obamacare opponents’] argument; a literal reading of the statute undoubtedly accords more closely with their position.”

That court pointed out there are several provisions of the act that make it clear both state and federal marketplaces were designed to receive subsidies, but went on to say that “while we think the defendants make the better of the two cases, we are not convinced that either of the purported statutory conflicts render Congress’s intent clear.”

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