



July 22, 2014

Will the Affordable Care Act Survive?

Two different federal appeals courts handed down conflicting rulings Tuesday, July 22, 2014, regarding federal subsidies of health insurance premiums for people using the insurance exchanges. The cases address those states that elect not to create a state exchange, but use the federal insurance exchange (Michigan is one of them). The Fourth Circuit Court in Richmond VA upheld the legality of the subsidies for those individuals using the federal exchange, while the DC Circuit Court ruled that the federal government could not subsidize individuals purchasing insurance through a federal insurance exchange. The government is expected to ask for an en banc hearing before the DC Circuit Court of Appeals which will be an eleven (11) judge panel versus the three (3) judge panel that heard the case originally.

The Issue

This issue is part of the Affordable Care Act ("ACA") designed to subsidize consumers who bought policies on the insurance exchanges, by providing tax credits for part of the cost of coverage. Internal Revenue Service regulations implementing this provision made these subsidies available to all qualifying middle and low income consumers, regardless of whether their state had a state-run exchange or an exchange run by the federal government. The lawsuits challenging the IRS regulation argued that the language of the ACA only applied to exchanges operated directly by a state, not to an exchange that the federal authorities operate. Many states chose not to create and run their own insurance exchanges; the IRS interpreted the statute to mean that those participating in federal exchanges were allowed the same subsidies as those participating in state run exchanges.

Michigan

Michigan's health exchange marketplace is run by the federal government. Gov. Snyder had proposed last year that Michigan run its own exchange, but the legislature did not agree.

Other Cases

At least two other similar cases are pending in other circuits of the country. Because of that, and because of the split in the two Circuits in today's rulings, it is likely that the issue will have to be finally determined by the U.S. Supreme Court. As a result, a ruling is unlikely for many months. Theoretically, Congress could act to clarify the language in question, or in Michigan, the legislature could elect to take over the exchange and obtain the subsidies. As elections approach legislative days in Lansing and Washington are few, and continued controversy over the ACA makes a quick legislative fix unlikely.

Final Ruling

If the final ruling is that the subsidies are not available to individuals in the states using a federal exchange (about three dozen), the effect will be that lower and middle income consumers in Michigan and those other states would lose subsidies designed to help them purchase insurance on the exchanges. This could have a major impact on the overall

scheme of the ACA, which was designed to bring more people into the insurance system, while providing assistance to make health insurance more affordable. Individuals with incomes of up to \$45,960 for individuals and up to \$94,200 for a family of four may qualify for the subsidies, estimated by the Congressional Budget Office this year at an average subsidy of \$4,400 per person. In all, over 5.4 million people nationwide obtained coverage through the federal exchange, and most of them—perhaps as many as 4.5 million—qualified for the federal subsidies.

Conclusion

The resolution of this issue, ultimately by the Supreme Court, will have a major impact on the viability of the ACA. We will alert you as further developments arise.

If you have questions regarding the ACA, or other health care law matters generally, please contact the authors of this client alert, your regular Butzel Long attorney or any member of Butzel Long's Health Care Industry Group

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