



Enter Symbols

GO

Enter Keywords

GO

HOME U.S. ▾

NEWS

MARKETS

INVESTING

TECH

SMALL BUSINESS

VIDEO

SHOWS

WATCH LIVE

PRO

REGISTER | SIGN IN

HEALTH CARE

Split decision! Fed appeals courts disagree on Obamacare subsidies

Dan Mangan | @DanMangan

21 Hours Ago

4.9K
SHARES

4K COMMENTS Join the Discussion

In a dramatic split decision, two federal appeals panels disagreed Tuesday on the legality of Obamacare subsidies that gave billions of dollars to help 4.7 million people buy insurance on HealthCare.gov.

A panel of the appeals court that covers Washington, D.C., **ruled 2-1 that the subsidies were and are illegal** if issued through that federal exchange, as opposed to one set up by a state.

But about two hours later, a Fourth U.S. Circuit Court of Appeals panel **ruled 3-0 in another case that the subsidies are legal** for people who buy plans on HealthCare.gov, which the federal government operates in 36 states.

The two decisions can be read [here](#).

The circuit split could mean the cases will soon land before the U.S. Supreme Court. For now, the subsidies remain in effect.

The stakes are immense, not least because of the value of the taxpayer-funded subsidies to Obamacare enrollees in two-thirds of the US.

The subsidies are also the linchpin to Obamacare's two mandates.

MORE FROM CNBC

Recommended by

Subprime woes are back: This time in used cars
UPDATE 2-China food scandal spreads, drags in Starbucks, Burger King and McNuggets in Japan
Cafe in Irish tourist town bans 'loud' Americans

One mandate now requires people obtain affordable health insurance or pay a fine. The other, beginning in 2015, will require mid- to large-sized employers to offer such insurance to workers or pay a tax penalty.

If the subsidies aren't legal in HealthCare.gov-served states, the employer mandate would be eliminated in those states and the individual mandate would be effectively crippled.

The subsidies to HealthCare.gov enrollees were authorized by an IRS rule that was issued after the Affordable Care Act was passed.

But plaintiffs in several federal lawsuits claim that rule is not legal because the ACA only explicitly authorizes subsidies to enrollees on state-run exchanges. The ACA does not explicitly authorize subsidies being issued to enrollees on a federal exchange, although it does discuss the creation of such an exchange as HealthCare.gov if a state doesn't set up its own marketplace.

In the D.C. circuit case, the panel agreed with the plaintiff's controversial claim that only state-exchange enrollees can legally be granted such subsidies.

[Read More > The BIG threat to Obamacare you've never heard of](#)

"Section 36B plainly makes subsidies available in the Exchanges established by states," wrote Judge Thomas Griffith, who was joined in the majority decision by Senior Circuit Judge Raymond Randolph 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, called the case a "not-so-veiled attempt to gut" Obamacare, and said the ruling "portends disastrous consequences."

Indeed, the 72-page decision threatens to unleash a cascade of effects that could seriously compromise Obamacare's goals of compelling people to get health insurance, and helping them afford it.

"Obviously, were the DC ruling ultimately to stand, it would be a serious blow

[Court denies payout to Ponzi scheme victims](#)

[Microsoft's mangled layoff memo: What NOT to do](#)

[Court ruling may 'free' millions from Obamacare](#)

[Herbalife: Ackman is 'Worst of Wall Street'](#)

[Workers fired amid family grocery store feud](#)

[MH17 photo shows signs of missile strike](#)

[Work, work, work. Millionaires never retire](#)

SPONSORED

Recommended by



Science Delivers a Big Blow to Bigfoot
(Re/Code)



Tornado Facts That Will Blow You Away
(Eaton)



How to Pick the Brightest, Most Efficient Light Bulb
(Allstate Blog)



Maglev train project clears environmental assessment
(Nikkei Asian Review)

FEATURED



[Obamacare subsidizes fictitious persons](#)

The GAO said that 11 out of 12 fictitious applicants secured government subsidized healthcare. NBC News reports.



[Puma shares nearly triple on drug news](#)

Puma Biotechnology shares jumped after the company said its experimental breast cancer drug met its main goal.



[Who gets the last word on Obamacare?](#)

After a split ruling on Obamacare from the courts, who gets the last word? Law professor Dan Eaton weighs in.



[Appeals court split on Obamacare subsidies](#)

In a dramatic split decision, two appellate panels disagreed on the legality of government subsidies for Obamacare.

MORE FROM HEALTH CARE

[GSK CEO: 'Very committed' to China despite probe](#)

[Texts of US appeals court decisions on Obamacare subsidies](#)

[Teary Ackman on HLF: Time to shut the company down](#)

to trying to extend insurance to all Americans," said Timothy Jost, a Washington and Lee University School of Law professor who has been influential in the debate over Obamacare and the subsidies.

However, the ruling does not and will not ultimately affect the same kinds of taxpayer-funded subsidies the federal government issued to about 2 million people who bought health plans on the 15 exchanges run by individual states and the District of Columbia.

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.

In its own ruling upholding the legality of the subsidies, a three-judge panel in the Fourth Circuit said that the language detailing how those tax credits are awarded is "ambiguous and subject to multiple interpretations."

But the panel found that 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."

"The IRS Rule advances this understanding by ensuring that this essential component exists on a sufficiently large scale," the Fourth Circuit panel wrote.

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 DC panel's 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.

[Read More](#) > [Courts could cause big Obamacare \\$\\$\\$ hike](#)

The DC panel's ruling also threatens, in the 36 states, to destroy the Obamacare rule starting next year that all employers with 50 or more full-time workers offer affordable insurance or face fines. That's because the rule kicks in if one of their workers buy subsidized coverage on HealthCare.gov.

The DC panel's decision 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.

[Court ruling may 'free' millions from Obamacare](#)

[Separate appeals court upholds Obamacare subsidies](#)

[Allergan posts profit, plans to cut 13% of workforce](#)

[Valeant complains to regulators about Allergan](#)

[Big tobacco's \\$23B award unlikely to stand: Experts](#)

[FedEx indictment shouldn't hurt shares, pro says](#)

[Courts could cause big Obamacare \\$\\$\\$ hike](#)

CNBC NEWSLETTERS

Get the best of CNBC in your inbox

[> Learn More](#)

SLIDESHOWS >



[Food fads that faded before Crumbs](#)

Crumbs' failure should not surprise anyone. Many chains have risen and fallen with flash-in-pan fads.



[10 folks who became rich on YouTube](#)

From girls who play with food, to video gamers and toy collectors, you'd never guess who's getting rich on YouTube



[America's 10 worst states to live in](#)

If you call one of these 10 states home, your home has plenty of room for improvement.

TOP NEWS & ANALYSIS >

[Amid global turmoil, the best ways to invest in gold](#)

[As S&P nears 2,000, traders say keep an eye on this](#)

[2 Ukrainian military fighter jets shot down](#)

[Delta waits on return to Israel; Lufthansa extends ban](#)

[Retail trade group lowers 2014 industry forecast](#)

Got a Pelvic Mesh Injury?

pelvicmeshhelp.com/

Learn About Your Legal Rights Today Akin Mears.
Free Consultation Now!

If the Obama administration fails to prevail in its planned challenge to Tuesday's bombshell ruling by asking the full DC circuit to reverse the decision, it can ask the Supreme Court to reverse it. Likewise, the plaintiffs who were challenging the subsidies in the Fourth Circuit appeals court could ask that full court to reverse the decision that upheld the legality of the subsidies.

If, after a review by each of the entire circuits' judicial lineup, there is still a split in their decisions, a Supreme Court review is effectively guaranteed. It is not clear that the high court would consider an appeal if there ends up being no split between the circuits.

Two other federal district courts are dealing with similar challenges to the subsidies, but those cases have not reached the appellate level.

"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 a primary architect of the challenges to the subsidies.**



Getty Images

The White House, already badly stung by the recent Supreme Court's "Hobby Lobby" 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."

House Speaker John Boehner praised the DC ruling, saying it's "further proof that President Obama's health care law is completely unworkable. It cannot be fixed."

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.

Read More › What's really surprising about Hobby Lobby ruling

Cannon's claim has been met with derision by Obamacare supporters, who argue that it relies on a narrow reading, or even misreading of the law.

"The clear intent of the Affordable Care Act was to give American families access to affordable coverage no matter where they live," said Anne Filipic, president of the Obamacare advocacy group Enroll America President.

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.

Jost, the law professor, said of Tuesday's decision by the DC panel, "I think this is a speed bump in the way to getting uninsured Americans coverage."

"It's unfortunate that it happened, but it's not going to ultimately undermine or destroy the Affordable Care Act," Jost said.

When the ACA was passed, most supporters believed that the vast majority of states would create their own exchange. But the opposition to Obamacare of many Republican governors and state legislators lead to most states refusing to build their own marketplaces, setting the stage for the challenges to the subsidies issued for HealthCare.gov plans.

Two separate federal district court judges—in D.C. and Virginia—had rejected plaintiffs' challenge to the subsidies. Those denials lead to the appeals in the D.C. federal circuit and in the Fourth Circuit.

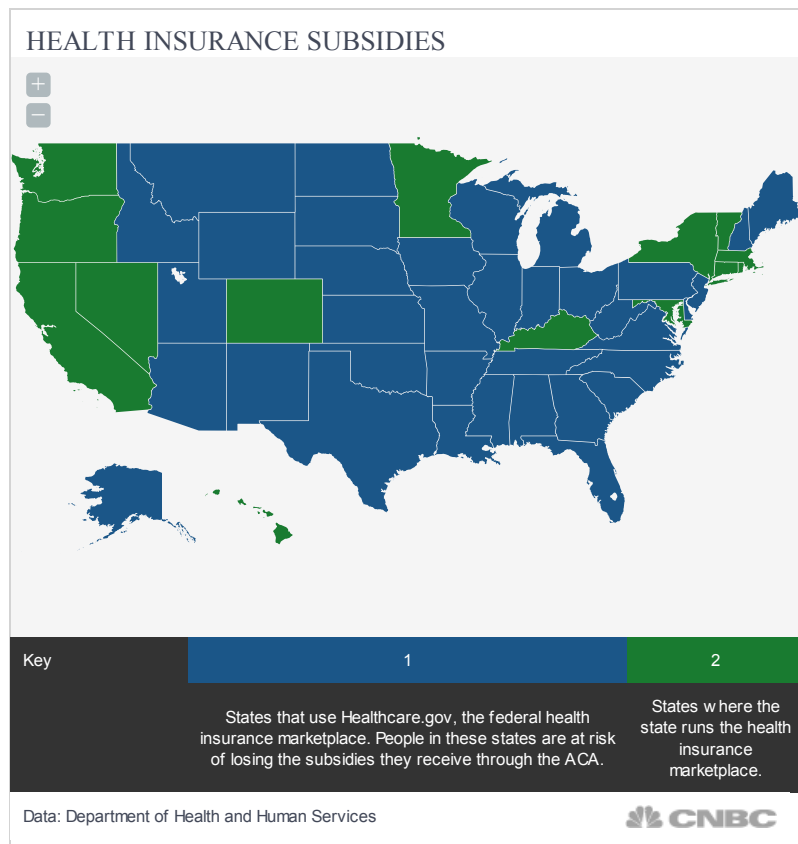
Out of the more than 8 million Obamacare enrollees this year, fewer than 2.6 million people signed up in plans sold via an exchange run by a state or the District of Columbia. Of those people, 82 percent, or about 2.1 million, qualified for subsidies.

The subsidies are available to people whose incomes are between 100 percent and 400 percent of the federal poverty level. For a family of four,

that's between about \$24,000 and \$95,400 annually.

In a report issued Thursday, the consultancy Avalere Health said that if those subsidies were removed this year from the 4.7 million people who received them in HealthCare.gov states, their premiums would have been an average of 76 percent higher in price than what they are paying now.

Another report by the Robert Wood Johnson Foundation and the Urban Institute estimated that by 2016, about 7.3 million enrollees who would have qualified for financial assistance will be lose access to about \$36.1 billion in subsidies if those court challenges succeed.



On Monday, the Cato Institute's Cannon **said that tens of millions of people would be eliminated from Obamacare mandates** in the affected states if the challenges prevailed.

Cannon said more than 250,000 firms in those states—which have about 57 million workers—would not be subject to the employer mandate being phased in starting next year. That rule, which hinges on the availability of subsidies on Obamacare exchanges, will compel employers with 50 or more full-time workers to offer affordable health insurance or pay a fine.

Read More > Courts could cause big Obamacare \$\$\$ hike

And if the challenge prevailed, a total of about 8.3 million individuals will be removed from Obamacare's rule that they have health insurance or pay a fine equal to as much as 1 percent of their taxable income, said Cannon.

--By CNBC's Dan Mangan



Dan Mangan

Health Care Reporter



RELATED TOPICS

[Health Care](#) [US: News](#) [Politics](#) [Obamacare](#)

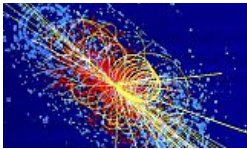
MORE FROM CNBC

Recommended by

[Lady Gaga 'Water Boards' California](#)
[Cramer: Post earnings, 3 stocks with more upside](#)
[Airbnb nightmare: Squatters take over host's condo](#)
[Obama is crushing the Reagan link—Putin knows it](#)
[Plane crash victims put in refrigerated wagons](#)
[The safest used cars for teen drivers](#)

SPONSORED

Recommended by



The Higgs Paradox: A Phenomenal Finding Leads To Many More Questions

(Tchnologist)



The Truth About GMOS May Shock You
(UCR Magazine)



Bras in Space: The Incredible True Story Behind Upcoming Film Spacesuit

(The Credits)

Sponsored

- ▶ [Best Dental Plans](#)
- ▶ [Individual Health Insurance](#)
- ▶ [Medicare Premiums For 2014](#)
- ▶ [Benefits of Obamacare](#)
- ▶ [Obamacare T-Shirts](#)
- ▶ [Employee Health Insurance](#)
- ▶ [Obamacare Health Plans](#)
- ▶ [Affordable Care Act](#)
- ▶ [Obamas Grant Giveaways](#)
- ▶ [Obamacare Applications](#)



4965 Comments

CNBC

Login ▾

Sort by Best ▾

Share Favorite ★



Join the discussion...



Sapir-Whorf · a day ago

"We have to pass the bill to see what is in it." Nancy Pelosi Maybe you should have read it first and possibly not crafted a 1700 page miniacal