



Federal Judge Rules Against IRS ObamaCare Subsidy Rule

ObamaCare has been struck yet another blow in court, with a federal judge in Oklahoma ruling that its subsidies cannot go to residents of states that are not running their own insurance exchanges. If the ruling stands, the impact on the president's healthcare legislation is potentially crippling, as the federal exchanges serve residents in 36 states that elected not to build their own exchanges.



When the U.S. Supreme Court held in 2012 that the Patient Protection and Affordable Care Act was a valid exercise of the tax powers of Congress, it didn't address the question of subsidies.

The language in the text of the Affordable Care Act indicates that advanced premium tax credits are to go only to customers of exchanges "established by the state."

Talking Points Memo writes, "The Obamacare statute is less than iron-clad on the question of whether premium tax credits are allowed through the federal exchange, but the Democratic authors roundly insist that was always their intention and say the law as a whole makes that clear."

At issue is whether the IRS had the authority to enact a regulation that permits the federal government to provide tax credits to policyholders through healthcare exchanges.

Pointing to the text of the law, Oklahoma Attorney General Scott Pruitt argued that customers in his state — which does not run its own exchange — are not eligible for the subsidies. He has sued to overturn the IRS provisions regarding subsidies, asserting that the regulations will cost local governments and large employers millions in penalties for noncompliance.

The subsidy issue would not exist if all the states had set up their own exchanges, as Congress expected. The Obama administration could have gone back to Congress and asked lawmakers to clarify the statute on subsidies through an amendment, though such an amendment likely would not have passed in the Republican-controlled House.

Therefore, circumventing Congress as usual, the administration directed the IRS to enact a rule that requires the U.S. Treasury to provide subsidies for health plan coverage that is purchased on any exchange — not just state exchanges.

U.S. District Judge Ronald White ultimately concluded that the IRS overstepped its authority in writing that regulation. On September 30, the judge determined that the administration's decision to permit either a state-run health exchange or the federal exchange is an incorrect reading of the Affordable Care Act, and therefore invalid. He wrote,

The court holds that the IRS rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law ... in excess of statutory jurisdiction, authority, or limitations, or short of statutory right ... or otherwise is an invalid implementation of the ACA, and is hereby vacated.

On this particular precise question, case law does not provide wiggle room for finding ambiguity. This is because tax credits must be expressed in clear and unambiguous language.



Written by [Raven Clabough](#) on October 1, 2014

The ruling in *Pruitt v. Burwell* is the first victory for the challengers in a district court after two other federal judges sided with the government. The Obama administration won the case at the 4th Circuit Court of Appeals, while the D.C. Court of Appeals ruled against the regulation. But it recently has vacated that decision, deciding instead to have the full court, not just a three-judge panel, hear the case. It will hear a new round of arguments on December 17.

The law's opponents have asked the Supreme Court to review the case, which requires agreement from four of the justices. It would be more likely for the Supreme Court to hear the case if the 10th Circuit Court of Appeals also rules against the subsidies.

Meanwhile, White has put his ruling on hold pending an appeal.

The decision improves the "odds for [the Supreme Court] taking appeal this fall despite [the] D.C. Circuit's pending en banc hearing in December," observed Tom Miller, a healthcare policy expert at the American Enterprise Institute.

Another challenge to the IRS regulations is pending in an Indianapolis federal court, where in August a judge denied a federal request to dismiss a suit filed by the state of [Indiana](#).

In his ruling, White indicated that he was aware that the case would be carefully scrutinized, but dismissed any notions that the rulings are politically motivated:

Such a case (even if affirmed on the inevitable appeal), does not "gut" or "destroy" anything. On the contrary, the court is upholding the act as written. Congress is free to amend the ACA to provide for tax credits in both state and federal exchanges, if that is the legislative will.

The ramifications of the ruling are enormous, as it will have an impact on residents in 36 states. If subsidies were to disappear, many Healthcare.gov customers most likely would not be able to afford the cost of the exchange insurance.

But some assert that White's ruling is not cause for fear just yet. "This is only a district court decision and the court stayed its effect until the government has a chance to appeal to the 10th Circuit," said Timothy Jost, a Washington and Lee law professor. "I would expect the Supreme Court to await a circuit split, and currently there is none with the Halbig judgment vacated" pending the en banc hearing.

An Obama administration official criticized the ruling and vowed to appeal it:

The district judge in the Oklahoma case made a decision that is inconsistent with the text of the statute, the clear intent of Congress, common sense, and the Fourth Circuit panel's unanimous contrary ruling on the same issue. [The Justice Department] has indicated that it will be appealing the decision. For people getting premium tax credits today, nothing has changed: tax credits remain available.

But Oklahoma Attorney General Scott Pruitt welcomed White's decision. "Today's ruling is a consequential victory for the rule of law," he declared in a statement. "The administration and its bureaucrats in the IRS handed out billions in illegal tax credits and subsidies and vastly expanded the reach of the health care law because they didn't like the way Congress wrote the Affordable Care Act. That's not how our system of government works."



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