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Federal Appeals Court Ruling on Exchange Subsidies

In a [ruling](#) that represents a potential setback to the healthcare reform law, a federal D.C. appeals court has ruled that the government can not subsidize premiums for people in states that use the federally facilitated exchange. Under the Affordable Care Act (ACA), the court said insurance subsidies (also known as premium tax credits) are available only to people who obtained insurance through state-run exchanges. The ruling will likely be appealed by the Obama administration, and even if they prevail, the case appears destined for the U.S. Supreme Court as a Fourth circuit appeals court in Virginia ruled in a similar challenge that the government *can* subsidize premiums for people in states that use the federal exchange.

The Dispute. The D.C. dispute relates to the grant of premium tax credits to low- and moderate-income individuals who qualify for and purchase qualified plan coverage under an exchange (the Marketplace). Public exchanges are either state-run or “federally-facilitated.” Most states have opted against running their own exchanges, leaving it to the federal government. To date, the following operate state-run exchanges: CA, CO, CT, DC, HI, ID, KY, MD, MA, MN, NV, NM, NY, OR, RI, VT, WA. A group of small business owners argued that the law authorizes subsidies only for people who buy insurance through state-run exchanges, and that no subsidies are authorized for people in federally facilitated exchanges.

The D.C. Ruling. The D.C. appeals court ruled that the statutory language of the ACA law does not explicitly allow the government to subsidize premiums for people in the federally facilitated exchange. The law does explicitly allow the government to subsidize premiums for enrollees on the state run exchanges. Therefore, the court found that the IRS is exceeding its authority by allowing the premium tax credit (subsidies) to be issued in all 50 states.

The Virginia Ruling. While the Fourth circuit appeals court in Virginia recognized that the language of the law is not clear regarding the issuance of premium subsidies in states with the federally facilitated exchange, the court concluded that the IRS has the authority to write rules under healthcare reform and is operating within its rights when permitting subsidies under both the state-run and federally facilitated exchanges.

The Administration Response. The Obama administration has said that the D.C. ruling does not affect existing premiums and therefore, during the appeals process, the agencies are expected to continue to administer premium tax credits for *all* public exchanges. Thus, any employees or retirees who currently have subsidized exchange coverage should continue to have subsidized

coverage.

The Consequences to Employers. The D.C. ruling is of concern for employees (and their employers) relying on premium tax credits in states with federally-facilitated exchanges. Plan sponsors should keep in mind that the ruling does not affect any of the other ACA provisions affecting employer-sponsored health plans. Therefore, plan sponsors should continue with implementation of the ACA's employer reporting requirements, fee payments, and other group health plan requirements. If the ruling is ultimately confirmed on appeal, premium tax credits will be available only for coverage purchased on state-run exchanges, which would have consequences for large employers that are subject to the ACA's employer shared responsibility or "pay-or-play" rules. For employers, confirmation on appeal would be positive since penalty payments under the pay or play rules are triggered only where one or more employees qualify for a premium tax credit. If no employee is eligible, then there can be no liability for any penalty payments.

This legal battle may not be resolved for months and confusion over the legality of the subsidies may have consequences for the second exchange enrollment period set to begin in November. Conner Strong & Buckelew will provide alerts and updates as new information is issued on this important topic. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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