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## Will the Affordable Care Act Survive?

7.22.2014

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.

Two Federal appeals courts split on the legality of subsidies provided under the Affordable Care Act. The subsidies were intended to help bring down the cost of coverage for millions of consumers. The decision deals with 36 states—Michigan among them—that did not set up a separate health insurance exchange marketplace, but instead allowed the Federal government to run the exchange for them.

The D.C. circuit court struck down the IRS regulations that provided subsidies, in the form of tax credits, to lower-income consumers buying coverage on the federal insurance marketplace. But the 4th circuit court in Richmond, VA ruled just the opposite, holding that the subsidies were valid. The rulings will be further appealed, and because of this split, and because at least two other similar cases are pending in other circuits, the matter will most likely be ultimately decided by the U.S. Supreme Court. If the regulations are stuck down, this would eliminate a key part of the ACA designed to help individuals purchase affordable health insurance policies. Several million consumers would be affected, and an important element in the ACA would

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go away, potentially jeopardizing the overall ACA insurance scheme.

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