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Customized Briefing for Kimberly Barry-Curley

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Leading the News



Federal Appeal Courts Issue Conflicting Rulings On Legality Of ACA Subsidies.

The court rulings on the legality of key ACA subsidies are featured on the front pages of major US newspapers this morning, including the [New York Times](#) [f](#)[t](#), the [Washington Post](#) [f](#)[t](#), [USA Today](#) [f](#)[t](#), and the [Wall Street Journal](#) [f](#)[t](#) – all of which also run editorials on the issue. However, the story generated only a 30-second blurb on the network newscasts, where the crises in Ukraine and Gaza continued to receive the brunt of the coverage. On cable, Fox News commentators used the rulings to train their fire on the ACA and on the President himself, while MSNBC and CNN had little to say about the controversy and largely focused their news and commentary shows on foreign policy. Overall, coverage of the rulings highlights the ongoing partisan split over the President's healthcare reform law, and predicts the issue will be settled – as it was in 2012 – by the Supreme Court.







As the only network news broadcast reporting the news, [ABC World News](#)

(7/22, story 6, 0:30, Sawyer) referred to “a trampoline of a day for Obamacare in court,” as the US Court of Appeals for the District of Columbia “ruled that only Americans in states with their own exchanges for insurance can get financial subsidies,” while “hours later,” the Richmond-based 4th Circuit Court of Appeals “issued the opposite ruling, saying Obamacare can proceed as planned.” Ultimately, notes [Bloomberg News](#) [f](#)[t](#) (7/22, Zajac, Dorning, Allen), “if the first decision stands, it could damage Obama’s legacy as a policy maker and render his party’s candidates more vulnerable to Republican attacks in November’s midterm election.” Moreover, “the ruling also threatens to gut the law’s basic premise – to provide affordable insurance for Americans who don’t have it.” [The Hill](#) [f](#)[t](#) (7/23, Viebeck) similarly reports that “a ruling against the administration would demolish ObamaCare’s structure.”



The [AP](#) [f](#)[t](#) (7/23), however, cautions that may not necessarily be the case: The DC case “was decided by a three-judge panel,” and the Administration “will ask the full 11-member appeals court to hear the case.” Of the 11 judges in the full court, seven were appointed by Democratic presidents, and if they come out “in favor of the administration, the prospect of Supreme Court involvement would be greatly diminished.” And on its front page, [USA Today](#) [f](#)[t](#) (7/23, A1, Wolf) adds, “even if the full court rules against the law, a likely split among appeals courts could force the Supreme Court to take up the case. Two years ago, the justices upheld the Affordable Care Act by a 5-4 margin.”





Providing background, the [Christian Science Monitor](#) [f](#)[t](#) (7/23, Kiefer) explains the issue in contention is that the ACA, as drafted, “specifically covers subsidies for the state exchanges, but not a word is said about subsidies for the federal exchange.” Upon “realizing this oversight,” the IRS “issued a rule allowing subsidies for everyone covered by the act, regardless of whether they are in state exchanges or the federal exchange.” The [Washington Times](#) [f](#)[t](#) (7/23, Howell) explains that the DC court “ruled the administration used” the IRS rule “to stretch the meaning of the” law, “which said financial aid to low- and middle-income people should only flow to exchanges ‘established by the State.’” The Times adds that “if that means only state-run exchanges, it would cut off subsidies to two-

thirds of the nation” by invalidating “the IRS rule that ensured subsidies flowed to every state.” The US Court of Appeals for the Fourth Circuit “upheld the administration’s interpretation of where subsidies may flow,” reasoning that “Obamacare’s language was ambiguous and that the IRS rule was ‘a permissible exercise of the agency’s discretion.’”









The [Daily Caller](#)   (7/22, Hurtubise) says that “a whopping 36 states decided building an exchange wasn’t worth it,” and that would have made “their customers...ineligible for premium subsidies.” It was then, according to the Caller, that the IRS “issued its own belated rule that subsidies would also apply to exchanges set up by the federal government.” According to the account on the front page of the [New York Times](#)   (7/22, A1, Pear, Subscription Publication), Administration officials say that argument is “absurd,” and that “the overriding purpose of the Affordable Care Act, they said, was to ensure access to health care for nearly all Americans, wherever they live.” [Bloomberg News](#)   (7/22, Harris, Zajac) quotes Walter Dellinger, former solicitor general during the Clinton Administration, as saying, “The Congress that passed the Affordable Care Act could not have intended [an] utterly absurd result, much less unambiguously required it.”





On its front page, the [Washington Post](#)   (7/22, A1, Somashekhar, Goldstein) reports “conservatives have spent years laying the groundwork for the challenge, which they viewed as their last, best chance at hollowing out the federal program.” The Post notes that the DC Circuit panel “was made up of two Republican and one Democratic appointee,” while the Fourth Circuit panel “was comprised of two Democratic appointees and one judge...who was nominated by a Bill Clinton and then renominated by George W. Bush.”

Under the headline “Democrats Still Haven’t Learned Obamacare Lesson,” [Politico](#)   (7/23, Nather, Haberkorn) reports, “Memo to Democrats: This is what happens when you pass a law where you can’t fix simple drafting errors.” Yesterday’s “conflicting rulings were another wake-up call for Democrats about the fragility of the health care law – and a reminder that whenever they think a lawsuit is no threat to the law, it’s probably a threat to the law.” Adds Politico, “It’s all because of what most Democrats insist is a drafting error in the law, but it’s kind of a big one.”

On its front page, the [Los Angeles Times](#)   (7/23, A1, Savage) also notes “conservative legal groups have argued ever since that ‘exchange established by the state’ does not include the federal exchange,” and “that reading of the law would block insurance subsidies in two-thirds of the nation.” The [Huffington Post](#)   (7/22, Grim) puts it differently, reporting that “two Republican judges on the DC Circuit Court have ruled that the equivalent of a typo is enough to strip health care subsidies from up to 5 million people.”

Effect Of Rulings Vary By State. In addition to national print and web outlets, dozens of regional sources covered Tuesday’s dueling court rulings, many of them offering a local-spin on the news.

For example, several Oregon papers offer conflicting reports as to what the case means for subsidies offered by its exchange, Cover Oregon. The [Bend \(OR\) Bulletin](#)   (7/23, Bannow) and the [AP](#)   (7/23) say subsidies won’t be affected, while [The Oregonian](#)   (7/23, Budnick) says the first ruling puts the subsidies in a “legal gray area,” and a later article from [The Oregonian](#)   (7/23, Budnick) says the cases “leave experts split” on the implications.

The [Boston Globe](#)   (7/23, Freyer) reports that ACA customers in Massachusetts are “unlikely to be affected,” while the [Charleston \(WV\) Gazette](#)   (7/23, Nuzum) says West Virginia consumers’ subsidies are now “in peril.”

From NAHU

NEW Membership Campaign!

NAHU is excited to announce our new [membership campaign!](#) The campaign will run from June 1 – December 31, 2014. For EVERY four members you recruit you will receive a \$250 American Express Gift Card. There is no limit to the number of times you can win!



Make sure your new recruits list you as the sponsor on their membership application and we will take care of the rest.







For recruitment tips and a listing of our members who have recruited four new members, visit our [membership campaign](#) webpage.



Good luck to everyone!



Minnesota Governor To Release State Health Exchange Rates Ahead Of Gubernatorial Elections.



The [AP](#)   (7/23, Potter) reports that Minnesota Governor Mark Dayton (D) is “pushing to release prices for the state’s health insurance exchange on Oct. 1...a month before [constituents] head to the polls” amid accusations from the Republicans that his Administration is “hiding potential rate increases until after the gubernatorial race.”





The [Minneapolis Star Tribune](#)   (7/23, Crosby) reports that the largest health insurance providers in Minnesota have agreed to release the rates early so long as they are “guaranteed a level playing field.” Scott Keefer, a top official at Blue Cross Blue Shield of Minnesota, said “moving up the release date would benefit Minnesotans but only if done in a way that ‘makes the data understandable and meaningful for shoppers.’” The [St. Paul \(MN\) Pioneer Press](#)   (7/23, Snowbeck) reports that, according to the Alycia Reidl, immediate past president of Minnesota Association of Health Underwriters, “Insurers filing 2015 rates are doing so based on the experience from the first few months of this year” because “there’s evidence to suggest that insurers saw a lot of claims during those months...and the experience would likely prompt carriers to increase premiums.” The [MinnPost](#)   (7/23) also covers this story.




Editorial: Governor’s “Move Toward Transparency” A “Welcome Turnabout.” The [St. Paul \(MN\) Pioneer Press](#)   (7/23) praises the Governor’s “move toward transparency” as a “welcome turnabout,” nothing he has decided to release rate increases earlier than he had previously pledged to do. The paper applauds the Governor and says the earlier rate announcements “will give Minnesotans information they need as they make their health care decisions.” The paper also notes that “if they come to bear in their decisions on their election ballots as well, that’s good, too.”

Legislation and Policy



GAO Investigation Reveals “Holes” In ACA Subsidy Verification System.

The [AP](#)   (7/22) reports that GAO investigators “using fake identities were able to obtain taxpayer-subsidized health insurance under” the Affordable Care Act “in 11 out of 18 attempts.” According to the AP, at a Wednesday hearing of the House Ways and Means Committee, Seto Bagdoyan, “head of GAO audits and investigations, will also testify that there’s still a huge backlog of applications with data discrepancies, even though the administration has resolved some 600,000 cases.”



The [New York Times](#)   (7/23, Times, Subscription Publication) reports that the GAO concluded from its tests that “the Obama administration was not adequately verifying information submitted by applicants.” [The Hill](#)   (7/23, Al-Faruque) refers to the vulnerabilities revealed by GAO investigation as “holes in the ObamaCare sign up system.”

Also reporting on the story are the [Wall Street Journal](#)   (7/23, Armour, Subscription Publication) and [NBC News](#)   (7/23, Fox).



Maryland Transgender State Employees Granted Access To Gender Reassignment Treatments Under State Insurance.

The [Baltimore Sun](#)   (7/23, Rector) reports that transgender state employees in Maryland “can now access gender reassignment surgery, hormone therapy and other transition-related care under their state-provided health insurance plans.” This may prompt changes in private insurance plans. The paper further reports that the Maryland Insurance Administration issued a bulletin “informing insurance carriers in the state that they can’t discriminate against transgender patients in January, but stopped short of requiring carriers to cover reassignment surgery or other transition care.”



Federal Judge Dismisses Johnson’s Lawsuit Against Congressional ACA Subsidies.



In continuing coverage, the [Washington Post](#)   (7/22, Harrison) “On Small Business” column reports that a Federal court ruling will allow members of Congress to “continue buying health insurance through the new marketplaces intended for small businesses.” US Senator Ron Johnson (R-WI), who instigated the suit, claimed that “The Obama administration violated its own signature health care law by giving special treatment to members of Congress and their staffs.”

Administration Developing Work-Around For Nonprofits To Ensure Contraception Coverage.

The [Washington Post](#)   (7/22, Somashekhar, Barnes) reports that in a legal brief filed with the US Court of Appeals for the 10th Circuit in Denver, the Obama Administration said it is developing “a work-around to ensure that employees of certain charities, hospitals

and colleges whose leaders have religious objections to contraceptives can still get birth control through their employee health insurance plans.” The move comes “in response to a recent Supreme Court order questioning the government’s current process for allowing nonprofit organizations to opt out of a requirement that their health plans cover all contraceptives that have been approved by the Food and Drug Administration.”



The [AP](#)   (7/23) reports that Wheaton College, the Christian institution at the center of the Supreme Court decision in question, claims even filling out the Form 700, which “lets faith-affiliated groups transfer responsibility for paying for birth control to insurers or third-party administrators” makes the group “complicit by forcing it to participate in a system that subsidizes coverage they oppose.” It is unclear what form the opt-out will take so it remains to be seen if the alternative will be “any less objectionable.”



The Administration’s willingness to take up this issue is a departure from the opinion of the Justice Department, which according to [The Hill](#)   (7/23, Al-faruque) had argued that “the college falls under the ‘accommodation’ category cited in the recent Hobby Lobby case which exempts it from directly paying for worker’s contraception.” As part of the accommodation, The Justice Department felt that the college “should be required to fill out the form so third-party insurers can use it to get tax credits.”



Also reporting on this “work-around” are the [Wall Street Journal](#)   (7/23, Radnofsky, Subscription Publication), the [Los Angeles Times](#)   (7/23, Hennessey), [Politico](#)   (7/23, Kenen), the [Huffington Post](#)   (7/23, Bassett), and [Reuters](#)   (7/23).

Public Health and Private Healthcare Systems



Cover Oregon Health Exchange Looks To Solve Technical Problems And Plan For The Future.

The [Portland \(OR\) Business Journal](#)   (7/23, Hayes, Subscription Publication) reports that Oregon Governor John Kitzhaber (D) has told the board of his state’s health exchange, Cover Oregon to “stay focused” on enrolling Oregonians in health insurance and that “form should follow function.” Cover Oregon will defer to the Federal exchange for the upcoming enrollment period amid insurmountable technical issues, a situation the Federal government refers to as “transitional, not permanent.”



The [Portland \(OR\) Business Journal](#)   (7/23, Subscription Publication) reports that Cover Oregon has a new director, Aaron Patnode, who will be leading the exchange and “mapping out the future of the exchange.”

Connecticut State Senator Calls For Meeting With Access CT Board About “Problems.” The [Hartford \(CT\) Courant](#)   (7/22, Sturdevant) reports that Connecticut State Senator Leonard Fasano (R) has requested to have a meeting with the board of Connecticut’s Health Exchange to discuss “problems that have come to light in recent weeks.”



New York Insurer Fails To Submit 2015 Rate Proposal, Withdraws From Exchange.

[Capital New York](#)   (7/23, Prakash) reports that American Progressive Life & Health Insurance Company of New York “failed to file a 2015 rate proposal, which would make the company the first to withdraw from the state’s exchange.” The insurance company only managed to secure “roughly one-tenth of one percent of the individual exchange market” during the first open enrollment period.

Insurer Prices For All Hospital Services Increased 0.2% Last Month.



[Modern Healthcare](#)   (7/23, Herman, Subscription Publication) reports that according to figures from the US Bureau of Labor Statistics, “prices that private health insurers paid for all hospital services increased 0.2% in June, mostly spurred by the outpatient side.” As indicated by the Consumer Price Index, “prices for inpatient hospital services last month grew 0.1%, while prices for outpatient hospital services rose 0.5%.”

Some Health Insurers Refusing To Pay For Sofosbuvir For Hep C.



[Bloomberg News](#)   (7/23, Bennett, Langreth) reports that a new medicine called Sovaldi (sofosbuvir), made by Gilead Sciences Inc. represents a cure for hepatitis C. The medicine is extremely expensive, costing \$84,000, and health insurers are “refusing to pay” for it. While “it makes sense to treat as many people as possible for the virus, before severe damage has a chance to occur,” treating “every US patient with Sovaldi and companion drugs could cost \$400 billion, assuming some people need to be retreated, according to estimates from hepatitis C researcher Andrea Branch at the Icahn School of Medicine at Mount Sinai in New York.” Government figures indicate that amount dwarfs the \$263 billion spent by the US on all prescription medications two years ago.

Also in the News



Certain Major Businesses Object To ACA Auto-Enrollment.

[The Hill](#)   (7/23, Al-Faruque) reports on a letter sent to Senator Johnny Isakson (R-GA) from major businesses who “want to overturn an ObamaCare provision that requires large employers to enroll workers automatically into a health insurance program.” In the letter the businesses, which included 7-Eleven, Lowe’s, Petco Animal Supplies, and White Castle, lamented that the auto-enrollment process “is redundant, expensive and unnecessarily burdensome for employers without increasing employees’ access to coverage.” Senator Isakson has drafted a bill to overturn the mandate.

UNC Hospitals To Face Medicare Cuts Under ACA Provision.

The [Chapel Hill \(NC\) Chapelboro](#)   (7/23, Streeter) reports that UNC hospital are facing the prospect of having to “pay millions in Medicare penalties for a high number of patient infections and complications.” Executive Vice President and CEO of the hospital system laments that “Medicare is comparing all hospitals across the country, but it isn’t making any adjustments or consideration for how sick the patients are to begin with. So if one hospital takes more sicker patients than another, it’s reasonable to think that there may be, in the aggregate, more infections.”

Many Dual-Eligibles Opting Out Of Voluntary Coordinated Care Initiatives.

[Modern Healthcare](#)   (7/22, Subscription Publication) reports that many dual-eligibles “are opting out at high rates from voluntary state initiatives aimed at better coordinating their care.” Under an Affordable Care Act provision, “the CMS Innovation Center invited states to launch three-year demonstration projects that would align care for dual-eligibles.” So far, 11 states are participating. Massachusetts is the only state that has “studied why so many beneficiaries are declining to participate.” A focus group held in February revealed that patients are afraid of possible service restrictions and of losing trusted physicians and other healthcare professionals.

Tuesday's Lead Stories

- [Judge Dismisses Johnson’s Challenge To Congressional ACA Subsidies.](#)
- [ACA Includes \\$11 Billion To Expand Primary Care Treatment System Across US.](#)
- [Providers, Payers Face “Backlash” Over Narrow Networks Offered Under ACA.](#)
- [Hawaii’s Uninsured Rate Dropped Below Six Percent Due To ACA.](#)
- [Home Testing For Sleep Apnea Becoming More Popular.](#)

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