

ALERTS

U.S. Supreme Court Holds Premium Tax Credits Available on All Exchanges — Key Group Health Plan Action Items

July 2, 2015

On June 25, 2015, Chief Justice John Roberts announced the U.S. Supreme Court's second decision to uphold the Patient Protection and Affordable Care Act ("ACA"). In *King v. Burwell*, a 6-3 decision, the Court ruled that the premium tax credits created by the ACA are available to all qualifying individuals who purchase coverage on an Exchange, regardless of whether the Exchange was created by a state or the federal government. At issue in the case was language in the ACA that, on its face, could be read to provide that these premium tax credits would be available only to qualifying individuals who purchase coverage on an Exchange "established by the State" — thereby foreclosing such credits to individuals who reside in states that chose not to establish their own Exchanges and instead relied on the federal government to establish Exchanges within their borders. This *Alert* reviews the decision and offers action items that group health plans need to consider.

The Supreme Court's Opinions

The majority opinion rejects the petitioners' claim that tax subsidies are not available on Federal Exchanges based on both the language of the statute and the implications of agreeing with their argument. After parsing each relevant section of the ACA, a majority of the Court determined that on its face the ACA is at worst ambiguous as to whether premium tax credits are available to qualifying individuals who purchase coverage on a Federal Exchange. Chief Justice Roberts concluded that many other

sections of the ACA would be nonsensical if premium tax credits were not available to all qualifying individuals.

Noting that the issue presented in *King v. Burwell* was not the only instance of “inartful drafting” in the ACA (citing, as one example, the presence of three Sections 1563 throughout the statute), the Court said that the presence of such ambiguity requires it to look at context and intent to guide its interpretation of the ACA. To that end, the Court determined that without making premium tax credits available on both State and Federal Exchanges, the very structure of the ACA would fall apart. The opinion recognizes that many of the ACA’s cornerstone provisions — guaranteed issue (the elimination of preexisting condition exclusions), community rating, the individual mandate (which was upheld as constitutional during the Court’s 2011-2012 term)[1] and the premium tax credits — work together to make affordable health insurance available to everyone. The opinion emphasizes that denying premium tax credits to individuals who reside in states with Federal Exchanges would destabilize the individual insurance market and likely create “death spirals” by permitting individuals to purchase insurance only when they are sick: Allowing a delayed purchase of insurance would cause insurance premiums to increase dramatically, which could ultimately lead to insurance itself being too expensive for many people to afford.

Separate and apart from the impact on the entire individual insurance market, the Court also described the effect that denying premium tax credits would have on those individuals who already relied on their assistance. According to the majority opinion, roughly 87 percent of individuals who purchased coverage on a Federal Exchange in 2014 did so with premium tax credits. Without the tax credits, health insurance would have been unaffordable to these individuals, and the cost would have exempted them from exposure to the ACA’s individual mandate.

Justice Antonin Scalia wrote the strongly worded dissenting opinion, focusing primarily on the plain language of the statute. He wrote that interpreting the ACA’s language to provide that premium tax credits are available on both State and Federal Exchanges, when “the Congress that wrote the Affordable Care Act knew how to equate two different types of Exchanges when it wanted to do so,” effectually rewrites the statute. According to the dissenting opinion, the ACA is clear on its face that premium tax credits should be available only to those qualifying individuals who purchase coverage on a State Exchange.

Action Items

The Court's decision to uphold premium tax credits for all qualifying individuals, regardless of whether they purchase coverage on a State Exchange or Federal Exchange, means that group health plans can now focus exclusively on preparing for the future implementation of some of the ACA's provisions, including the following:

- *Review and update, as necessary, the Summary of Benefits and Coverage.* The "SBC" is a brief summary of the plan's benefits and payment obligations. On June 16, the Departments of Labor, Health and Human Services, and the Treasury published final regulations on the SBC that make some minor clarifications to the currently effective SBC rules, including rules that reduce the chance that duplicative SBCs will be provided to participants. These new regulations apply to coverage that begins on or after Sept. 1, 2015. In a set of FAQs issued prior to the final regulations, the DOL said it anticipated that a streamlined template will be finalized by January 2016.
- *Continue to collect information to comply with employer reporting obligations.* In January 2016, plans and employers will need to submit certain forms to the Internal Revenue Service regarding the eligibility and enrollment of employees in health plans in order to help the IRS determine whether such individuals are complying with the individual mandate and, if not, whether they are liable for an individual shared responsibility payment.
- *Prepare for the "Cadillac Tax."* Effective Jan. 1, 2018, high-cost, or "Cadillac," health plans will be assessed a 40-percent non-deductible excise tax on the value of health coverage that exceeds \$10,200 for an individual and \$27,500 for a family, indexed for inflation. Insurers of fully-insured plans will be responsible for the payment of the tax. The purpose of the tax is to bring down the cost of health care by ensuring that individuals consume only the minimum amount of health care necessary. To date, only one set of information guidance has been issued regarding the Cadillac Tax.
- *Monitor additional legal challenges to the ACA.* For example, Speaker John A. Boehner and other House Republicans filed a lawsuit challenging the ACA's provision that requires insurance companies to reduce cost-sharing, including copayments and deductibles, for certain qualifying low-income individuals. The lawsuit contends that the Obama

administration is granting billions of dollars in these cost-sharing reductions without the necessary congressional appropriations. In addition, numerous other plaintiffs have filed lawsuits challenging the ACA's rule that requires health plans to offer contraceptives without cost-sharing (subject to certain limited exceptions).

Authored by Mark E. Brossman and Melissa J. Sandak.

If you have any questions about the Court's ruling, any of the Action Items or any of the ACA's other provisions, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] For a summary of this opinion, see our July 10, 2012 *Alert*, "Supreme Court Upholds Landmark Health Care Reform as a Tax."

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**Mark
Brossman**

Partner
New York

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