
U.S. Supreme Court Upholds Premium Subsidies on Federally Run Health Insurance Exchanges

By Mark C. Jones, Marta K. Porwit and Kevin Lin¹

On June 25, 2015, in a 6-3 majority opinion, the U.S. Supreme Court confirmed the availability of premium subsidies for health coverage purchased on Affordable Care Act (ACA) health insurance exchanges, regardless of whether those are state or federally operated. Noting the importance of premium subsidies to the ACA's policy goals, the majority rejected the most natural meaning of the provision at issue, which appears to limit premium subsidies to state-run exchanges. The decision maintains the status quo, allowing employers to continue their current strategies for ACA compliance.

Background

Section 36B of the Internal Revenue Code (Code), added by the ACA, provides that an individual who buys health insurance “through an Exchange *established by the State*” (emphasis added) is generally entitled to subsidies (in the form of tax credits) if such individual's household income is between 100 and 400 percent of the federal poverty level. However, only 16 states and the District of Columbia maintain their own health insurance exchanges. The exchanges in the remaining 34 states are wholly or partially operated by the federal government.

Final regulations issued by the Internal Revenue Service (IRS) in May of 2012, interpreted Code Section 36B to allow premium subsidies on both state-run and federally operated exchanges, finding this interpretation to be consistent with the ACA's language, purpose, and structure. Four federal lawsuits challenged this IRS rule, resulting in conflicting circuit court decisions. The plaintiffs in one those lawsuits, a Fourth Circuit decision upholding the IRS rule, petitioned for Supreme Court review, which was granted in November of 2014. (For more information on the Fourth Circuit decision, *King v. Burwell*, see our [client alert](#) dated August 4, 2014.)

¹ We would like to thank our Summer Associate Kevin Lin for his contribution to this alert.

The Majority Decision

The key question before the Supreme Court was whether participants in federally run exchanges are also eligible for premium subsidies. The petitioners argued that the ACA's plain language limits subsidies to state-run exchanges. Although the Supreme Court majority rejected the Fourth Circuit's deference to the IRS, it agreed that Code Section 36B was ambiguous in the context of other related provisions in the ACA, describing it as an example of "inartful drafting." Earning the ire of the dissent, the majority described as implausible that Congress would intend to eliminate one of the key elements needed to achieve the ACA's goal of expanded coverage. According to the majority opinion, the elimination of premium subsidies for insurance purchased in the federally operated exchanges would cause insurance to become unaffordable for "virtually all" of the 87 percent of individuals currently purchasing subsidized coverage on those exchanges. As a result, enrollment would decrease, and premiums would increase, a so-called "death spiral" that Congress had meant to avoid.

Impact to Employers

Employers that have structured their health benefits around the assumption that alternative, affordable coverage would be offered on the exchanges can breathe easier now that premium subsidies will continue to be available across the nation, regardless of the employees' state of residence.

And, with the status quo maintained, employers can refocus their efforts on continued compliance with remaining ACA employer mandate obligations, including the following, beginning in 2016:

- Employers with 50 to 99 full-time and full-time equivalent employees must begin complying with the employer coverage requirements when their transitional relief period expires.
- Employers with 50 or more full-time and full-time equivalent employees (applicable large employers) will need to offer 95 percent (for large employers, up from 70 percent) of their full-time employees and dependent children ACA-compliant coverage.
- Employers sponsoring self-funded group health plans and applicable large employers will need to ensure they are tracking hours of service and are otherwise prepared to meet reporting requirements of Code Sections 6055 and 6056, respectively.

Possible ACA Legislative Changes

It is possible that Congress could make changes to the ACA this year. Reforms with bipartisan support, such as repealing or revising the 40 percent excise tax on "Cadillac" plans and easing shared-responsibility reporting, may have a chance at becoming law. Pillsbury is monitoring these efforts and will continue to keep you informed of any significant developments.

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