

The Affordable Care Act: Exchanges & Tax Credits In The Supreme Court's *King V. Burwell* Decision

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Though five years have passed since the Affordable Care Act ("ACA") went into effect, the ACA continues to be challenged, interpreted, and clarified through every level of the judiciary. On June 25, 2015, the Supreme Court issued its most recent opinion in another noteworthy ACA case, *King v. Burwell*, which examined the applicability of the ACA's tax credit incentive to health insurance exchanges established by the federal government.

Despite concerns of increased premiums, a rise in the number of uninsured health care patients, and a substantial drop in the number of individuals mandated to purchase health insurance, the Court found the tax credit incentive applies equally to federal and state exchanges—closing a potential "loophole" to the ACA's insurance mandate.

The ACA: Mandatory Health Insurance, Exchanges, and Tax Credits

One of the most well-known and controversial elements of the ACA is its requirement that all individuals maintain health insurance. Failure to comply with this insurance mandate subjects an individual to a penalty payment to the Internal Revenue Service ("IRS"). Notably, however, there is one specific exemption to the coverage requirement: if the cost of buying health insurance exceeds eight percent (8%) of an individual's income, that individual is not required to purchase health insurance.

In addition to the insurance mandate, the ACA also requires the creation of an "exchange" in each state. An exchange is intended to function as a marketplace where individuals can compare and purchase health insurance plans. Each state is given the opportunity to establish its own exchange; however, it is not mandatory. Should the state elect not to establish its own exchange, the federal government will establish and facilitate an exchange for the state, through its website healthcare.gov. To date, more than thirty states, including Ohio, have opted for a federal exchange.

To incentivize individuals to purchase insurance plans through their state's exchange, the ACA provides a tax credit for any applicable taxpayer who enrolls in an insurance plan through "an exchange established by the State." These tax credits are given to individuals whose household incomes are between 100 percent and 400 percent of the

federal poverty line.

Significantly, the ACA does not explicitly distinguish whether the clause "established by the State" also includes exchanges created and maintained by the federal government. With that, the IRS broadly interpreted the clause to apply the tax credit to all exchanges, regardless of whether the state or federal government created the exchange.

Tax Credits for Federal Exchanges, too?

In *King v. Burwell*, Virginia residents challenged the IRS's application of the tax credit to federally-established exchanges. The residents argued that the words "established by the State," as specifically provided in the ACA, preclude the tax credit for individuals who enroll with any federal exchange.

Thus, according to the Virginia residents and petitioners in the *King v. Burwell* case, without the tax credit incentive, purchasing health insurance would exceed eight percent (8%) of their income—meaning they were wholly exempt from the mandate and thereby not required to purchase health insurance.

Accordingly, the issue before the Supreme Court was the following: did the ACA's tax credit, applicable to taxpayers who enroll in an insurance program through "an exchange established by the State," apply to exchanges established by the federal government?

The Risks: Rise in Uninsured and Threat to Hospital Industry

At the time of the *King* decision, more than half of the states' exchanges, including that of Ohio, were established and administered through the federal government. There was a significant concern that should the Court decide that the tax credit did not apply to the federal exchanges, it would exempt a substantial number of individuals from receiving tax credits, thus placing a larger group of individuals below the eight-percent

(8%) of income cut-off for mandatory health insurance.

Several hospital organizations, including the Federation of American Hospitals and the American Hospital Association, filed friend-of-the-court briefs in support of retaining the tax credit incentive for federally-established exchanges. In its brief, the American Hospital Association noted that an estimated five million Americans will rely on tax subsidies to obtain health insurance coverage in 2015 alone. In fact, by the year 2022, 19 million Americans will need subsidies to purchase health insurance, 72% of whom reside in states with federally-facilitated exchanges. Eliminating the tax subsidy for federal exchanges would result in a substantial decrease in individuals who would be required to maintain health insurance.

Financial and economic harm to hospitals and medical providers was also an overwhelming concern. The Federation of American Hospitals highlighted the substantial funding cuts for hospitals by the ACA and potential financial peril in the event the Court eliminated tax credits for federal exchanges:

Hospitals will incur significant financial harm if subsidies suddenly disappear across most of the country. In the ACA, Congress imposed deep cuts to federal funding for hospitals. But it expected that the subsidies it included in the statute would bring newly insured patients to hospitals, helping them offset the loss. An ACA without subsidies would leave hospitals unable to make up the loss in their funding. That could imperil some hospitals, and will make it more difficult for others to carry out their missions, including effectively serving their communities.

The American Hospital Association also recognized the substantial burden that uninsured patients pose to hospitals. In 2011, the value of uncompensated care to patients, for which hospitals were never reimbursed, added up to \$41.1 billion dollars. Denying subsidies to states with federal exchanges would lead to "more uninsured patients than anyone anticipated," who would be forced to

(Continued on page 16)

The Affordable Care Act: Exchanges & Tax Credits In The Supreme Court's *King v. Burwell* Decision (Continued from page 15)

rely on hospitals to provide unreimbursed care. The Urban Institute estimated that the hospital industry would lose \$6.3 billion in revenue if the Court eliminated the tax credit for federal exchanges.

The *King v. Burwell* Decision

The Supreme Court ultimately found the tax credit does apply to both federal and state exchanges. In a 6-3 opinion written by Chief Justice John Roberts, the Court looked to the "statute as a whole" to conclude tax credits are available for insurance purchases on any exchange created under the ACA. According to the Court's majority opinion, because eliminating tax subsidies in federal exchanges would frustrate the ACA's major reforms, it is "implausible" that Congress meant the ACA to operate in state exchanges differently than in federal exchanges.

Notably, while the Court ultimately agreed with the IRS's interpretation of the ACA, the Court concluded it is the judiciary's role, not the role of an administrative agency, to interpret the statute.

Several friend-of-the-court briefs were also cited in the Court's opinion, recognizing the potential chilling effect on the insurance market if the Court found that the tax credit applied only to state exchanges. The Court noted the anticipated rise in insurance premiums and the significant decline in the

number of individuals subject to the insurance mandate. The Court specifically acknowledged that in 2014 "approximately 87 percent of people who bought insurance on a federal exchange did so with tax credits, and virtually all of those people would become exempt."

Three Supreme Court Justices dissented in a critical, colorful opinion written by Justice Antonin Scalia. The dissenters criticized the Court's interpretation that exchanges "established by the State" included exchanges not established by the states. Justice Scalia even remarked that "normal rules of interpretation seem always to yield to the overriding principle of the present Court: The Affordable Care Act must be saved."

Despite Justice Scalia's sharp dissent, the Court's opinion remains: tax credits apply to all exchanges, regardless of whether the exchange is state or federally-created.

Now What?

Because the Court's decision affirmed the applicability of tax credits to enrollees in state and federal exchanges, it is anticipated the states that currently maintain their own exchanges will opt for a federally facilitated exchange, rather than incurring the cost and expense of maintaining their own.

Administrative agencies are also bound by the Court's interpretation and cannot reinterpret

the ACA to outlaw tax subsidies. Due to the Court's finding that interpreting the ACA was its role, and not the role of the IRS or any other administrative agency, tax subsidies for both federal and state exchanges cannot be challenged in another administrative forum.

To some extent, the Court's decision has allayed the concerns of increased premiums, of an increased number of people exempt from the insurance mandate, and of the increased costs of care. Applying the tax credits to each exchange in every state reinforces the insurance requirement. So long as the cost of health insurance does not exceed eight percent (8%) of an individual's income, which includes the tax credit, health insurance remains mandatory.

For Ohio, the Court's decision affirmed that the tax credit incentive applies to Ohio's federally-facilitated exchange.

All in all, *King v. Burwell* was a significant decision for individuals, families, health care organizations, and the insurance market. It is certainly not the end of the road for the debate over the ACA, although most agree it is here to stay in some form or fashion. Given the controversial and heavily politicized nature of the ACA, coupled with the statute's ambiguous and "inartful drafting," further challenges to the ACA are to be expected. But for now, the tax credit incentive applies to all exchanges, regardless of whether they are state or federally-created. ■

Community Leaders will Gain Insight into a Physician's "Typical" Day

It's time once again for the AMCNO Annual Mini-Internship program, a unique 2-day experience that allows community leaders to shadow physicians during their daily routines. This year's event will take place October 26-28.

Physicians will be introduced to their assigned "interns" during the Orientation Dinner on the 26th, and the pairs will attend their scheduled assignments on the 27th and 28th. The program will conclude on the 28th with a Debrief Dinner, where all participants will have the opportunity to share their personal experiences.

The program is designed to improve understanding and communication between the medical profession and those in the community who influence, establish and report on healthcare policy in Northeast Ohio. It is a two-way information exchange that is intended to broaden the perspectives of all participants.

The AMCNO is still looking for physicians willing to volunteer for this important program. AMCNO members interested in participating in the mini-internship program may contact Ms. Abby Bell at the AMCNO offices at 216-520-1000, ext. 101 or email her at abell@amcno.org.