

Supreme Court upholds ACA subsidies

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In brief

Today, the Supreme Court ruled that subsidies under the Affordable Care Act (ACA) are available to eligible individuals who have purchased insurance under an Exchange in any state, whether established by the state or by the federal government, in the much anticipated *King v. Burwell* decision.

In detail

Background

In an effort to expand healthcare coverage in the United States, the ACA requires all individuals to have health insurance coverage or pay a tax penalty, unless the cost of insurance is too high for them. ACA provided for the establishment of state-based insurance marketplaces, or Exchanges, through which individuals may purchase health insurance to satisfy this individual mandate. The ACA requires each state to establish an Exchange, but provides that the federal government will establish the Exchange in any state that chooses not to establish its own Exchange.

Families whose income is between 100% and 400% of the Federal poverty line are eligible to receive refundable tax credits for the purchase of health insurance. The ACA provides a

subsidy to an applicable individual only if the taxpayer has enrolled in an insurance plan through 'an Exchange established by the State.' IRS regulations interpreted this language as making tax credits available on an Exchange regardless of whether the Exchange is established and operated by a state or by the federal government.

Four individuals living in Virginia, which has a federal Exchange, sued the Obama administration, alleging that the ACA does not provide for subsidies for the purchase of insurance under a federal Exchange. If these individuals were to receive subsidies, their insurance would cost less than 8% of their family income, so the individual mandate would apply to them. Without the subsidies, the cost of insurance would be so high for them that the individual mandate would not apply.

King v. Burwell decision

The Supreme Court has ruled in *King v. Burwell* that tax credits are available on both federal and state Exchanges, saying that this is a question of 'deep economic and political significance.' The Court reasoned that Congress would not have assigned a question of such magnitude to the IRS, and went on to analyze the statutory language in the context of other provisions of the ACA to which the language at issue related, and the impact of the two different interpretations on the reforms established under ACA. If the ACA does not provide tax credits for the purchase of insurance on a Federal Exchange, then, according to the Court, the coverage requirements also would not apply in a meaningful way, because so many individuals would be exempt from the requirement without the tax credits. The combination of no

tax credits and an ineffective coverage requirement could well “push a State’s individual insurance market into a death spiral.” The Court did not believe Congress could have meant the ACA to operate in this manner. The Court examined the statutory language of the ACA related to subsidies and the Exchanges as a whole and concluded that subsidies are available for insurance purchased at all Exchanges.

Implications of King v. Burwell

Now that the question of the availability of federal subsidies in all Exchanges has been answered, the implementation of the ACA may continue unabated. Many of its requirements have gone into effect in the years since its passage, but several of the major provisions are just now becoming effective. Chief among these are the individual mandate, which was first effective in 2014, and the employer mandate, which is effective this year, along with associated reporting by insurers and employers concerning coverage provided beginning in January, 2015 (with reporting first due early in 2016.)

Individual mandate

The individual mandate and associated subsidies became effective last year, and require that individuals obtain insurance, either through employer-provided group coverage or governmental coverage, or by purchasing their own coverage. The Court has now confirmed that subsidies are available for the purchase of insurance on any Exchange, to individuals whose family income is between 100% and 400% of the federal poverty level and who are not offered affordable minimum coverage by an employer or through Medicare, CHIP or Tricare.

Employer mandate and reporting

The employer mandate became effective this year. This ACA provision requires Applicable Large Employers (ALEs, employers with at least 50 full-time equivalent employees in the controlled group) to offer coverage to at least 95% of their full-time employees (those working on average 30 hours a week during the month). If coverage is not offered to the requisite number of full-time employees and any full-time employee obtains subsidized coverage on an Exchange in a month, a penalty is assessed for that month equal to 1/12 of \$2,000 multiplied by the total number of full-time employees, less 30 across the controlled group. If coverage is offered as required, but the coverage is not minimum coverage that is affordable for all employees, the employer must pay a penalty with respect to any employee who obtains a subsidy on an Exchange. That penalty is 1/12 of \$3,000 for each employee who obtains a subsidy in the month.

The ACA reporting requirements that are effective this year are among the most important and difficult aspects of the law. Insurers and self-insured employers must report on minimum essential coverage provided to individuals, including employees and retirees and their dependents, for each month of the year. ALEs also must report monthly information regarding affordable healthcare to full-time employees and the IRS starting for 2015. The reports are due in early 2016 via Forms 1095-C and 1094-C. Reporting is by each Federal EIN, including ‘disregarded entities.’ The timing of the distribution of these forms to employees and to the IRS is similar to the timing and delivery requirements for Forms W-2, as are the penalties for failure to file or an incomplete filing.

Data elements for this required reporting each month include the identity of full-time employees (as defined by ACA), information about the coverage offered and the employee cost, employee and dependent Social Security Numbers, information about applicable safe harbors and transition rules, including for employees in union health plans, the actual coverage provided each month to employees, dependents, retirees, and COBRA beneficiaries, full-time and total employee counts for each month, and information concerning the controlled group.

Market reforms

In addition to the individual and employer mandates, ACA made a number of ‘market reforms’ that continue to be implemented. Among these are the requirement to provide preventive care without coinsurance or copays, and a prohibition on annual and lifetime limits on essential health benefits. The Administration has recently published guidance interpreting these provisions as applying to employer reimbursement programs, so that such programs are no longer viable in many instances. Employers who have programs in place to reimburse employees for the cost of individual health insurance will need to review these programs in light of the recent guidance.

Certain types of benefits and plans are not subject to the ACA requirements. These benefits, called ‘excepted benefits’ may be provided to employees without causing the employees to lose eligibility for subsidies. Recent guidance on excepted benefits may be of interest to employers contemplating providing some coverage for part-time employees and retirees, as well as those offering certain voluntary benefits such as vision and dental plans and disability income.

Future guidance

Among the ACA provisions not yet in effect are a requirement to automatically enroll new employees in an employer's group health plan, and a nondiscrimination requirement for insured group health arrangements. These provisions will not become effective until the agencies issue regulations interpreting the requirements and explaining how they are to operate.

Finally, the ACA imposes an excise tax on high-cost plans (sometimes referred to as the 'Cadillac tax') that is to go into effect in 2018. Recently, the IRS requested guidance from taxpayers on issues arising under this tax, and provided some indications of how they may implement it. Many questions remain, and however they are answered, this tax will be the next major hurdle for employers and payors to overcome.

Let's talk

For more information, please contact our author:

Anne Waidmann, *Washington, DC*
(202) 414-1858
birgit.a.waidmann@us.pwc.com

or your regional Human Resource Services professional:

US Practice Leader
Scott Olsen, *New York*
(646) 471-0651
scott.n.olsen@us.pwc.com

Pat Meyer, *Chicago*
(312) 298-6229
patrick.meyer@us.pwc.com

Carrie Duarte, *Los Angeles*
(213) 356-6396
carrie.duarte@us.pwc.com

Jim Dell, *San Francisco*
(415) 498-6090
jim.dell@us.pwc.com

The takeaway

Full on implementation of the ACA may now proceed. Employers and insurers are facing the ACA mandates and associated reporting, and must be diligent to gather all the required information and implement the processes and procedures to comply with these requirements and provide the annual forms to individuals and the IRS next January. Planning to avoid the employer mandate penalties, as well as the 2018 tax on high cost plans, will occupy the attention of tax professionals, HR administrators and payroll departments, as well as internal audit and finance. Now is the time to confirm compliance with the ACA market reforms as well.

Charlie Yovino, *Atlanta*
(678) 419-1330
charles.yovino@us.pwc.com

Terry Richardson, *Dallas*
(214) 999-2549
terrance.f.richardson@us.pwc.com

Ed Donovan, *New York Metro*
(646) 471-8855
ed.donovan@us.pwc.com

Scott Pollak, *San Jose*
(408) 817-7446
scott.pollack@Saratoga.PwC.com

Craig O'Donnell, *Boston*
(617) 530-5400
craig.odonnell@us.pwc.com

Todd Hoffman, *Houston*
(713) 356-8440
todd.hoffman@us.pwc.com

Bruce Clouser, *Philadelphia*
(267) 330-3194
bruce.e.clouser@us.pwc.com

Nik Shah, *Washington Metro*
(703) 918-1208
nik.shah@us.pwc.com

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