

Compliance Alert

Supreme Court to Hear ACA Case

Issue Date: November 2014

On Friday Nov. 7th the Supreme Court announced they plan to consider challenges to the government's policy of providing subsidies to individuals who purchase health insurance through Healthcare.gov, the federally run Marketplace. The case will be heard early in 2015, with a decision likely at the end of the Court's term early in the summer of 2015.

Background

At issue is whether Congress intended the ACA tax credits and subsidies provided to low and middle income individuals to be available in states that have chosen not to operate their own public Marketplace, and instead rely on the federally operated platform. It is estimated that about 17 million people would qualify for the ACA subsidies nationwide if they were to purchase individual health insurance through a state or federal Marketplace.

Currently sixteen states and the District of Columbia operate their own Marketplace. Seven states have a hybrid, or partnership arrangement with the federal government, and twenty-seven states rely solely on the federal Marketplace. For details on where each state stands, see Kaiser Family Foundations Health Reform page at www.kff.org/health-reform.

In King vs. Burwell, a three-judge Appeals Court panel ruled unanimously that Congress intended to allow subsidies nationwide. In a separate case, Halbig vs. Burwell, a panel of the U.S. Court of Appeals for the D.C. Circuit had ruled 2 to 1 in favor of those challenging the law. However, the full D.C. Circuit vacated the panel's ruling and was planning for the full District court to decide the case in December.

What Does the Decision Mean to Employers?

The ACA requires applicable large employers (generally those with 50 or more FTEs) to provide health coverage to full-time employees, or pay an employer shared responsibility payment. However, the employer shared responsibility payments are triggered only if at least one full-time employee purchases individual health insurance, and receives an ACA subsidy, through a public (state or federal) Marketplace.

If ACA subsidies are not available to individuals in states using the federal Marketplace, employers who have employees only in those states would not be liable for the shared responsibility payments. It remains to be seen how the IRS would interpret the law in cases where the employers have employees in multiple states. Obviously, if the Supreme Court upholds the law as currently administered, application of the employer shared responsibility rules would move forward unchanged.

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