Legal Sidebar

Another Court Rejects Premium Tax Credits in Federal Exchanges under ACA

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On September 30, 2014, a second court found that the Patient Protection and Affordable Care Act (ACA) does not authorize the provision of premium tax credits to the millions of individuals currently receiving them for health insurance purchased through federally run exchanges. In *State of Oklahoma ex rel. Pruitt v. Burwell*, a federal district court held that an IRS rule permitting premium tax credits for the purchase of health insurance in federal exchanges is an "invalid implementation" of ACA. The *Pruitt* case was brought by Oklahoma's Attorney General, who argued that based on the language of the Act, only individuals participating in state-run exchanges could receive these credits, not individuals in the majority of states (including Oklahoma) where the exchange is run by the federal government. *Pruitt* comes on the heels of two contradictory appellate court rulings on this issue, and a fourth case dealing with the IRS rule will soon be heard in a federal district court in Indiana.

Section 1311 of ACA specifies that each state must establish a health insurance exchange to provide health coverage to qualified individuals. However, if a state does not establish an exchange, section 1321 of the Act generally provides that the Secretary of Health and Human Services must establish and operate one within the state. In order to assist individuals in purchasing health insurance in an exchange, ACA provides that certain lower income taxpayers may receive a refundable tax credit that is applied toward the cost of their health insurance premiums. In addressing who may receive a premium tax credit, ACA refers to individuals who are "… enrolled in [a plan] through *an Exchange established by the State under section 1311 of [ACA]*..." (emphasis added). IRS regulations implementing this section specify that premium tax credits are available to taxpayers who obtain coverage in exchanges set up by both states and the federal government.

The meaning of this phrase, "*an Exchange established by the State under section 1311 of [ACA]*" is at the heart of the premium tax credit litigation. Plaintiffs have generally argued that this phrase clearly prohibits federally run exchanges from offering premium tax credits (i.e., because they are not "established by the state"), and nothing else in ACA or its legislative history conclusively indicates otherwise. Conversely, the Obama Administration has argued, e.g., that this flawed interpretation makes no sense when viewing the language of the Act as a whole and is in stark contrast to ACA's goal of expanding access to health insurance.

As discussed in an earlier Legal Sidebar post, in July 2014, two appeals courts reached opposite conclusions on the availability of premium tax credits under ACA**.** In *Halbig v. Burwell*, a three-judge panel on the U.S. Court of Appeals for the District of Columbia held that ACA "unambiguously restricts" the offering of premium tax credits to health insurance purchased on state-established exchanges. It found that the applicable language of ACA is plain and clearly distinguishes between the creation of state and federally created exchanges for purposes of the credit. The *Halbig* decision was later vacated pending review by the full appeals court of the D.C. Circuit, and a hearing in the case is scheduled for December 17. Conversely, on the same day, the Fourth Circuit issued its decision in *King v. Burwell*, holding that the relevant statutory language of ACA is ambiguous and subject to multiple interpretations. The court found the IRS regulations to be a permissible exercise of the agency's discretion and entitled to judicial deference. Plaintiffs in the *King* case took a different route than those in *Halbig*, appealing their case directly to the Supreme Court. Their petition is currently pending.

In *Pruitt*, the district court examined these two appellate rulings and found the *Halbig* decision to be more persuasive. The court applied the judicial test articulated by the Supreme Court in *Chevron, U.S.A., Inc. v.*

Natural Resources Defense Council (see more here) and concluded, similar to *Halbig*, that the plain text of ACA is clear that premium tax credits are only available in exchanges established by a state. It noted that "as [ACA] presently stands, 'vague notions of a statute's basic purpose are nonetheless inadequate to overcome the words of its text regarding the specific issue under consideration'" (citations omitted). The district court ordered the IRS rule to be vacated, but stayed the decision pending an appeal.

Is this issue now headed to the Supreme Court? We may have more insight on this question soon, as it appears the Court could evaluate the petition for review in the *King* case as early as October 2014. Given that the Obama Administration is expected to appeal the *Pruitt* decision to the 10th Circuit Court of Appeals, the D.C. Circuit is scheduled to reconsider the *Halbig* case, and another case is before a district court in Indiana, the Court may be reluctant to get involved at this juncture. However, the Court may see the availability of premium tax credits as an issue of national importance that warrants imminent action. Stay tuned.

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