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Healthcare Law Alert - U.S. Supreme Court Rules In Affordable Care Act Subsidies Case

June 25, 2015 | Atlanta | Chicago | Columbus | Dallas | Delaware | Elkhart | Fort Wayne | Grand Rapids | Indianapolis | Los Angeles | Minneapolis | South Bend

The U.S. Supreme Court has upheld the use of subsidies in all 50 states to help finance insurance policies through tax credits for those citizens earning up to 400 percent of poverty-level income and buying mandated individual coverage on an exchange set up by the Affordable Care Act (ACA).

At issue in the 6-3 decision (*David King et al. v. Sylvia Mathews Burwell* et al., case number 14-114, in the Supreme Court of the United States) on June 25, is whether four words repeated seven times in the statute – "established by the state" – should limit those subsidies only to those citizens in the 16 states that plan to operate exchanges in 2016, or whether the plain meaning of those words are trumped by the context of the entire statute, which both sides agreed would not work properly without subsidies for all citizens. In other words, does plain language control, or should the court find that a "mistake" or "inartful" drafting mean that the court should give deference to what it believed Congress meant. The court chose the latter path.

The decision, written by Chief Justice John Roberts and joined by Justices Anthony Kennedy, Ruth Bader Ginsberg, Stephen Breyer, Sonia Sotomeyer and Elena Kagen, directly affects approximately more than five million people and about $30 billion in subsidies, since federally facilitated exchanges will proceed as they have since their 2014 implementation in the 34 remaining states.

As to the practical, indirect effects on industries that participate in the system established under the ACA, a variety of healthcare interests are breathing a sigh of relief -- as well as some politicians. Insurers selling individual policies in 34 states will have relatively more stable and predictable pricing, even if those prices may rise for other reasons; hospitals will not lose new customers; and makers of drugs and devices dependent on third-party financing will continue to see business grow. Importantly, Republican state and federal lawmakers who have opposed the ACA, and might have felt pressure to respond to constituents who lost subsidies, will get some breathing room to regroup without the immediate need to take action.

Although the plain language of the ACA provides that federal subsidies in the form of tax credits flow to residents buying an insurance policy on an "exchange established by the state," of which there are currently only 16, the court ascribed that repeated phrase to "inartful drafting," noting that in its haste to pass a bill this was but one of many errors. Rather than enforcing that language, the court found that another phrase directing the federal government to establish "such" an exchange, if a state did not, was proof enough that Congress likely intended subsidies to be available

RELATED PEOPLE

Mark E. Rust
Of Counsel (Retired)

P 312-214-8309
mrust@btlaw.com

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on both federal and state exchanges -- at least creating an “ambiguity” the court must interpret.

While determining that the phrasing contained in Section 36B of the ACA was ambiguous, the court said it disagreed with the reasoning of the U.S. Court of Appeals for the Fourth Circuit, which decided the case below, regarding how to deal with that ambiguity. Rather than giving complete deference to a regulatory agency, which the Fourth Circuit did, the court said such deference is due only when it is clear Congress intended to give such deference. If Congress did not make that clear, Justice Roberts declared, it is the court’s duty to read the ambiguous phrase in the full context of the statute and effectuate the purpose of Congress.

When read in that light, the case became an easy one, since both sides agreed that removing subsidies from the 34 states not planning to operate exchanges in 2016 would wreak havoc on the system implemented by the ACA.

In a blistering dissent, Justice Antonin Scalia, on behalf of Justices Clarence Thomas and Samuel Alito, argued that by doing so the court has distorted the time-honored approach it uses for interpreting federal legislation. He remarked that after straining to now uphold three such provisions in the law – the case at issue as well as the individual mandate and incremental federal funding of Medicaid expansion in the court’s 2012 decision upholding the ACA – the public should now refer to the ACA as “SCOTUScare.”

Either way, the issue now thrusts healthcare squarely into the 2016 presidential election without the intervening force of a Supreme Court decision changing the facts on the ground. The next shoe to drop will come later this summer, when insurers announce new premiums for 2016 in the individual market. They are expected to rise dramatically. If so, there will be no Supreme Court intervention to blame, and policymakers on the stump will be forced to defend or attack the law based on the realities experienced by patients and providers.

For more information, please contact Mark Rust at 312-214-8309 or mrust@btlaw.com or contact a member of the firm’s Healthcare Law Department in the following offices: Atlanta (404-846-1693), Chicago (312-357-1313), Columbus (614-628-0096), Delaware (302-300-3434) Elkhart (574-293-0681), Fort Wayne (260-423-9440), Grand Rapids (616-742-3930), Indianapolis (317-236-1313), Los Angeles (310-284-3880), Minneapolis (612-333-2111), South Bend (574-233-1171), Washington, D.C. (202-289-1313).

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