

Legislative Brief

HCR - FEDERAL SUBSIDIES

Nov. 14, 2014

U.S. SUPREME COURT TO RULE ON FEDERAL HEALTH CARE SUBSIDIES

SUMMARY:

- Several lawsuits challenge the government's ability to provide subsidies in states that did not establish their own Exchanges.
- On Nov. 7, 2014, the U.S. Supreme Court agreed to hear one of these cases, *King v Burwell*. A ruling is not expected until Summer 2015.
- Despite these pending cases, a White House statement on Nov. 7, 2014, confirms that the subsidies remain available.

On Nov. 7, 2014, the U.S. Supreme Court [agreed to review](#) a lawsuit challenging the ability of the federal government to provide subsidies under the Affordable Care Act (ACA) to individuals in states that did not establish their own Exchange (that is, states with federally-facilitated Exchanges, or FFEs).

This case, *King v. Burwell*, is one of several cases filed in response to an Internal Revenue Service (IRS) [rule](#) authorizing subsidies in all states, including those with FFEs. The Supreme Court will review this case following a [unanimous ruling](#) from the 4th U.S. Circuit Court **upholding the availability of the ACA's subsidies in states with their own Exchanges and in states with FFEs**. A ruling from the Supreme Court is not expected until the end of the current Term, in late June or early July 2015. The 2015 Exchange open enrollment period begins Nov. 15, 2014.

Health Insurance Exchanges

The ACA requires each state to have an Exchange for individuals and small businesses to purchase private health insurance. The ACA delegated primary responsibility for establishing the Exchanges to individual states. However, HHS will operate the FFE in any state that refuses or is unable to set up an Exchange. For 2014, only 16 states and the District of Columbia established their own Exchanges. HHS operates FFEs in the remaining 34 states (with state assistance in some cases, but in most cases, with no state assistance). The ACA also created health insurance subsidies to help eligible individuals and families purchase coverage through an Exchange. The subsidies are designed to make Exchange coverage more affordable by reducing out-of-pocket health care costs.

There are two federal subsidies available with respect to coverage through an Exchange, which vary in amount based on the taxpayer's household income.

- **Premium tax credits** are available for people with somewhat higher incomes (up to 400 percent of the federal poverty level, or FPL), and reduce the taxpayer's out-of-pocket premium costs.
- **Reduced cost-sharing** is available for individuals with lower incomes (up to 250 percent of FPL), and provide lower out-of-pocket costs at the point of service (such as lower deductibles and copayments).

Of the approximately 8 million people who selected private health plans from October through mid-April, over 5 million obtained coverage through an FFE. In addition, more than 4.5 million people have been determined to be eligible for subsidized insurance in the FFE.

Lawsuits Challenging Subsidies in Federally Facilitated Exchanges (FFE)

Several lawsuits have been filed in response to an [IRS rule](#) authorizing subsidies in all states, including those with FFEs. These cases challenge the ability of the federal government to provide subsidies to individuals in states with FFEs. A number of lawsuits are still pending in federal courts. However, on July 22, 2014, two federal appeals courts issued inconsistent rulings on the availability of subsidies in states with FFEs. These cases, *Halbig v. Burwell* and *King v. Burwell*, were filed by individuals and employers in states that have FFEs. They argued that the IRS rule authorizing subsidies in all states conflicts with the text of the ACA. They assert that, according to the law's plain language, the ACA only authorized subsidies to be provided in states that have established their own Exchanges. Initially, these rulings resulted in a **split between the federal appeals courts**.

However, on Sept. 4, 2014, the District of Columbia (D.C.) Circuit Court [agreed to reconsider](#) its ruling in *Halbig v. Burwell*, eliminating the inconsistency between federal courts.

Halbig v. Burwell

In [Halbig v. Burwell](#), a three-judge panel from the D.C. Circuit Court **struck down the IRS' rule** authorizing subsidies in all states, including those with FFEs. In a 2-1 ruling, the court concluded that the ACA “unambiguously restricts” the subsidies to insurance purchased through Exchanges established by the states. Thus, the court said that subsidies are only available to individuals who obtain insurance through state-based Exchanges. The Obama administration disagrees with the D.C. Circuit Court’s ruling and sought further review of the decision. The Justice Department asked that the entire 11-person D.C. appeals court review the decision. In response to the government’s petition for a rehearing, on Sept. 4, 2014, the D.C. Circuit Court [announced](#) that the full appeals court will revisit whether subsidies should be available in states with FFEs. As a result, **the court’s initial ruling is vacated**, meaning that the inconsistency between federal courts on this issue no longer exists. Oral arguments are scheduled for Dec. 17, 2014, but a decision is not expected until 2015. In the meantime, a Justice Department spokesperson has stated that the **subsidies will continue to remain available**.

King v. Burwell

In [King v. Burwell](#), the 4th U.S. Circuit Court unanimously **upheld the availability of the ACA’s subsidies in states with their own Exchanges and in states with FFEs**. The court ruled that the text of the ACA is ambiguous and subject to multiple interpretations. For this reason, the court **upheld the IRS’ rule** that authorizes subsidies in all states, including those with FFEs, as a permissible exercise of the agency’s discretion. Thus, the court said that the subsidies are available to individuals who obtain insurance through either state-based Exchanges or through FFEs. The plaintiffs in *King v. Burwell* asked the U.S. Supreme Court to hear the case. Although the Supreme Court was not required to review the 4th Circuit Court’s decision, it is more likely to review a case when there is a split in decisions between the federal appeals courts.

Supreme Court Review

On Nov. 7, 2014, the U.S. Supreme Court [agreed to review](#) *King v. Burwell*. This announcement ensures that the Supreme Court will issue a ruling during the current Term. The federal government had asked the Supreme Court to wait until the D.C. Circuit Court reviews its decision in *Halbig v. Burwell*. However, the plaintiffs in *King v. Burwell* argued that a quick resolution is necessary because the subsidies impact a large number of Americans and involve billions of dollars in taxpayer money. Still, the Supreme Court’s decision to review *King v. Burwell* has surprised many, given the fact that there is currently no inconsistency between federal courts on this issue. Oral arguments have not yet been scheduled, but are expected to take place in February or March 2015. A ruling from the Supreme Court is not expected until the end of the current Term, in late June or early July 2015. As a result, this issue will not be resolved before the start of the 2015 open enrollment period, which begins Nov. 15, 2014.

Impact on Employers

Despite these pending cases, the Obama Administration indicated that federal subsidies will continue to be available to eligible individuals in all states, including those with FFEs. On Nov. 7, 2014, the White House posted a [statement](#) to confirm that nothing has changed at this time for individuals receiving advance payments of the premium tax credit and that tax credits remain available. The White House’s statement mirrors an IRS [statement](#) issued on Aug. 1, 2014, following the two July 22, 2014, federal appeals court decisions. Whether enrolled in coverage through an FFE or a state-run Exchange, the IRS statement provides that individuals do not need to take any additional action or make any changes in response to the court rulings.

Going forward, the availability of subsidies may have significant implications for employers as a result of the ACA’s employer mandate. Under the employer mandate, certain large employers may face penalties if they do not offer coverage that meets certain requirements to their full-time employees. However, penalties apply only if an employee receives a subsidy to buy coverage through an Exchange. If the subsidy is available only in state-based Exchanges, employers would not be subject to penalties for employees living in states with an FFE.

More Information

Please contact Kapnick Insurance Group for more information on the ACA’s federal subsidies or the employer mandate.

The health care reform law—the Affordable Care Act (ACA)—has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the health care reform requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding health care reform and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.

MAR