



# Iowa General Assembly

## 2015 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### **AFFORDABLE CARE ACT—STATE EXCHANGE**

Filed by the United States Supreme Court

June 25, 2015

King et al v. Burwell, Secretary of Health and Human Services, et al

No. 14-114, 576 U.S. \_\_\_\_ (2015)

[http://www.supremecourt.gov/opinions/14pdf/14-114\\_qol1.pdf](http://www.supremecourt.gov/opinions/14pdf/14-114_qol1.pdf)

**Facts.** The Federal Patient Protection and Affordable Care Act (Act), enacted in 2010, adopted three key health reforms related to the individual health insurance market. First, the Act bars insurers from taking an individual's health into account when deciding whether to sell insurance or how much to charge. Second, the Act generally requires each individual to maintain insurance coverage or make a payment to the Internal Revenue Service (IRS), unless the cost of insurance is not affordable (exceeds 8 percent of that individual's income), in which case the individual is exempted from either requirement. Third, the Act gives tax credits to individuals with household incomes between 100 and 400 percent of the federal poverty line to purchase insurance.

The first reform makes insurance available to everyone at similar cost, even those who are sick or who have preexisting health conditions. The second reform discourages individuals from waiting until they are sick to purchase insurance by requiring them to either maintain insurance at all times or make a payment to the IRS. This ensures that the pool of individuals insured at any given time includes individuals who are healthy as well as sick, keeping premiums down. The third reform makes insurance more affordable for low-income individuals.

In addition, the Act requires the creation of an "exchange" in each state where individuals can shop for insurance. An exchange may be created and operated by a state, but if a state chooses not to establish its own state exchange, the Secretary of the United States Department of Health and Human Services (Secretary) is required to establish and operate a federal exchange in that state. The Act makes tax credits available to taxpayers enrolled in an insurance plan offered through an "exchange established by the state." The IRS has promulgated a rule providing that a taxpayer is eligible for such tax credits if enrolled in an insurance plan offered through either a state or a federal exchange.

**Procedural Background.** The petitioners are four individuals who reside in Virginia, which has a federal exchange. They do not want to purchase health insurance. They challenge the IRS rule and argue that the Act makes tax credits available only to individuals enrolled in a state exchange. Since Virginia's exchange was not established by the state, the petitioners maintain that they are not eligible to receive tax credits. Without the tax credits, the cost of buying insurance exceeds 8 percent of their incomes, exempting them from the Act's requirements to either buy health insurance or make a payment to the IRS.

When the petitioners challenged the IRS rule in federal district court, the district court dismissed the suit, holding that the Act unambiguously makes tax credits available to individuals enrolled through a federal exchange. The United States Court of Appeals for the Fourth Circuit (Fourth Circuit) affirmed, but on different grounds, holding that the Act was "ambiguous and subject to at least two different interpretations," thus requiring deference to the IRS's interpretation. On the same day that the Fourth Circuit issued its decision, the United States Court of Appeals for the District of Columbia Circuit vacated the IRS rule, holding that the Act "unambiguously restricts" the tax credits to insurance purchased through state exchanges.

**Issue.** Whether the Act's tax credits are available in states that have a federal exchange, not a state exchange.

**Holding.** The United States Supreme Court (Court) held that the text of the Act is ambiguous and interpreted the Act to make tax credits available to individuals who purchase health insurance through a federal exchange as well as a state

exchange.

**Analysis.** The Court found that because tax credits are among the Act's key reforms, interpretation of the Act is the task of the Court absent an express delegation of that authority to the IRS, which there is not. The Court then found that the phrase "an exchange established by the state," in describing eligibility for the tax credits, is ambiguous when looking at the phrase in the context of the Act as a whole. Since state and federal exchanges are otherwise equivalent under the Act, that is, they must meet the same requirements, perform the same functions, and serve the same purposes, if tax credits are available only on state exchanges, state and federal exchanges would instead differ in a fundamental way.

The Court stated that a fundamental canon of statutory construction is that the words of a statute must be read in context and with a view to the place of the words in the overall statutory scheme. The Court rejected the petitioners' interpretation of the Act because it would destabilize the individual insurance market in any state with a federal exchange and result in extending the coverage requirement of the Act to "a lot fewer" individuals.

The Court found that in 2014, approximately 87 percent of individuals who bought insurance on a federal exchange did so with tax credits and without those credits, virtually all of those individuals would become exempt from the Act's coverage requirement. The Court concluded that it is implausible that Congress meant the Act to operate in this manner and that the context and structure of the Act compelled the Court to depart from what would otherwise be the most natural reading of the pertinent statutory phrase.

The Court held that the Act allows tax credits for insurance purchased on any exchange created under the Act. The Court said that it must respect the role of the Legislature and take care not to undo what the Legislature has done. A fair reading of legislation demands a fair understanding of the legislative plan.

**Dissent.** Three justices dissented. The dissent bluntly opined that the Court's holding interpreting "exchange established by the state" to mean "exchange established by the state or the federal government," is absurd. Any effort to understand rather than to rewrite a law must accept and apply the presumption that lawmakers use words in "their natural and ordinary signification." The Court's interpretation nullifies Congress' use of the phrase "by the state" numerous times throughout the Act and does not come close to presenting the compelling contextual case necessary to justify departing from the ordinary meaning of the terms of the law. Statutory design and purpose matter only to the extent they help clarify an otherwise ambiguous provision.

The dissent argued that, like it or not, the express terms of the Act make only two of the three reforms mentioned by the Court applicable in states that do not establish exchanges. The fact that the statutory scheme contains a flaw does not show that the statute means the opposite of what it says. The Court does not have the power to rescue Congress from its drafting errors.

In addition, the Act displays a congressional preference for state participation in the establishment of exchanges. Even if making tax credits available on all exchanges advances the goal of improving healthcare markets, it frustrates the goal of encouraging state involvement in the implementation of the Act. It is plausible that the availability of tax credits was deliberately restricted to state exchanges to encourage states to establish their own exchanges. Rather than rewriting the law under the pretense of interpreting it, the Court should have left it to Congress to decide what to do about the Act's limitation of tax credits to state exchanges.

**Impact on Iowa.** In 2013, Iowa received approval from the Secretary to establish a state-federal partnership exchange in order to avoid default into a federal exchange. As a partnership state, Iowa assists mainly with plan management functions of the exchange but did not establish an operating structure because the Secretary established and is operating the exchange.

In June 2015, the Iowa Insurance Division released a statement in response to the Court's decision indicating that Iowans currently receiving tax credits while using the state-federal partnership exchange in Iowa appear to be able to continue doing so. The latest figures available at that time were from March 2015, and showed that 45,162 Iowans used the state-federal partnership exchange to get coverage and 86 percent of those individuals received a tax credit to help pay for their coverage. See Statement from the Iowa Insurance Division Regarding Supreme Court Decision in *King vs. Burwell*, available at <http://www.iid.state.ia.us/node/10976403> (last visited September 16, 2015)

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