

May 19, 2016

Court Finds Faulty Funding Provisions in Affordable Care Act Affect Low-Income Affordability Provisions

On Thursday, May 12, 2016, a federal district court judge ruled against the Obama administration, finding that no appropriations have been made to fund payments under Section 1402 of the Affordable Care Act¹ to reimburse qualified health plan issuers for reducing deductibles, copayments and other types of out-of-pocket costs for lower income consumers.²

Section 1402 works in tandem with Section 1401 of the Act to help make mandated coverage more affordable for lower-income consumers. Section 1401 provides tax credits to lower-income consumers who buy “silver” level plans on the exchanges. Section 1402 requires qualified health plan issuers to reduce out-of-pocket costs for eligible consumers, which helps make the higher copayments under the silver plans more affordable. These reductions are required for silver plans sold on the exchanges to consumers with household incomes not exceeding 400 percent of the applicable poverty guidelines.³ As noted, the federal government reimburses the qualified health plan issuers to offset the added costs they incur for complying with Section 1402.

Section 1401 was funded by adding it to a preexisting list of permanently-appropriated tax credits and refunds. This was not done expressly for Section 1402. The Obama administration has interpreted that permanent appropriation as also applying to Section 1402, but Republican House members disagreed with that interpretation.

In anticipating her ruling will be appealed to a higher court, the judge has stayed her ruling pending a decision on appeal. There has been no word yet whether the Obama administration will appeal this decision. Many believe the cost-sharing subsidies are required by law to be paid to the health plan issuers that make reductions in the out-of-pocket costs of lower-income consumers. But, if this decision stands, the question becomes where does the money come from to pay those subsidies?

The decision potentially could have a significant negative effect on the individual market under the Affordable Care Act. According to CMS, as of June 2015 about 56 percent of Americans who were receiving coverage through the exchanges – about 5.6 million people – received cost-sharing reductions, which lowered their out-of-pocket costs for deductibles, coinsurance and copayments.⁴ Congress may be asked to start appropriating funds to pay the subsidies. One can anticipate any request for additional funding would be a politically charged issue. If funding gets stymied in Congress, would insurance companies take the drastic step of filing lawsuits against the federal government to receive the reimbursements?

Employers can anticipate that any negative impact of this decision on the Affordable Care Act’s implementation in the individual market will put pressure on employer-sponsored health plans and possibly increase their costs. Employers concerned about this issue should consider whether this court decision provides an opportune moment for [government relations involvement](#).

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¹Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (March 23, 2010) (the “Affordable Care Act” or the “Act”).

²U.S. House of Representatives v. Burwell (D.D.C. May 12, 2016).

³For 2016, this income limit is \$47,080 for an individual and \$97,000 for a family of four (except for Alaska and Hawaii). See, <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/> and <https://aspe.hhs.gov/2015-poverty-guidelines>.

⁴See, June 30, 2015 Effectuated Enrollment Snapshot, found at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-09-08.html>.