SEYFARTH SHAW

Health Care Reform Management Alert Series

Health Reform Continues its Work in Progress

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This is the eighty-third issue in our series of alerts for employers on selected topics in health care reform. (Click here to access our general summary of health care reform and other issues in this series) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

On July 22, 2014, two federal appeals courts issued contradictory rulings on the legality of the subsidies associated with the Affordable Care Act (ACA). At issue in each case was whether the IRS exceeded its statutory authority in authorizing tax credits and cost-sharing subsidies for individuals enrolling in a state health exchange established by the federal government.

First, a three-judge panel of the Court of Appeals for the DC Circuit ruled that the penalties can apply only in a state with a state-established exchange. Later the same day, a decision from the Fourth Circuit took the opposite stance, ruling that tax credits are available regardless of whether the exchange was established by a state or the federal government.

This debate regarding the ACA tax credits is one of statutory interpretation. The text of the ACA states that tax credits are intended only for those individuals who purchase health insurance through a *state exchange*. Individuals purchasing health insurance through a federal exchange are not explicitly afforded the same subsidy.

The Obama administration argues that the ACA is ambiguous in context. They argue that courts should defer to the government's view that tax credits should be available for federal exchanges as well.

Invalidation of the Obama administration view would have significant effects on the implementation of the ACA. To date only 14 states and the District of Colombia have established exchanges, leaving inhabitants of the 36 remaining states to rely on federally established exchanges. A textual ruling would deny the tax credit to an estimated 4.7 million individuals currently obtaining health insurance through these federal exchanges.

What's Next

Both decisions in the DC and Fourth Circuits were heard by three-judge panels. The decisions may be reheard en banc. The Supreme Court could accept one or both for review. Additionally, both the Seventh and Tenth Circuits are in line to rule on this issue.

Under health care reform, employers are subject to penalties if they fail to offer adequate health coverage to full-time employees who obtain subsidized coverage on an exchange. If an employee does not receive a subsidy, the employer penalty is not triggered. Even so, employers would be best served to continue to assume that the risk of a penalty for noncompliance with the employer mandate remains. Even if the logic of the DC Circuit ruling ultimately prevails, the only large employers without any risk of penalty would be those with employees who exclusively reside in states with exchanges established by the federal government.

Our message is: health care reform itself is far from being fully reformed by administrative edicts and judicial decisions. The ACA remains a work in progress that warrants careful attention.

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