

IAFC PPACA Task Force

KING, et al. vs. BURWELL, Secretary of Health and Human Services et al.

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Last week the United States Supreme Court issued its opinion in *King vs. Burwell*. This long-awaited decision is the second case involving the Patient Protection and Affordable Care Act (ACA) that has made its way to the Supreme Court. The issue in this case is whether ACA's reforms, specifically the tax credits, apply equally regardless of whether a state's insurance exchange is established by the state itself or by the federal government.

The Court begins by explaining that the ACA has three reforms designed to expand health insurance coverage for individuals. First, a health insurance company is barred from taking into account a person's health in determining whether to sell that person health insurance or how much to charge the individual. Second, the ACA generally requires that each person purchase health insurance or be penalized by the Internal Revenue Service. Third, the ACA gives tax credits to certain individuals to make the insurance they must purchase more affordable. The Court also notes that the states have the opportunity to create "Exchanges" or marketplaces where individuals can go to purchase health insurance. If a state does not create its own Exchange, then the federal government will establish the Exchange.

The crux of this case turns on Congress' drafting of the ACA and the tax code provisions it created for the tax credits for individuals to purchase insurance on an Exchange. Specifically, Section 36B of the tax code states that the tax credits are available to individuals who purchase insurance through an Exchange *established by the State*. The Petitioners in the case argued that this language does not permit tax credits for individuals who purchase insurance through the federal Exchange because the statute was written to say "established by the State." Eventually, the majority opinion of the Court was that "Exchange established by the State" means an Exchange formally created by a particular state, and if a state chose not to create its own Exchange, then the Federal Exchange also met the definition of an Exchange established by the State. Essentially, the rationale for this decision was that the three reforms of the ACA are so intertwined that to interpret Section 36B any other way would defeat the purpose of the ACA and create a "death spiral" for health care reform in the United States.

Regardless of whether you agree with the Court's interpretation, the ACA stands as written. The implications for fire departments and fire-based EMS remain. As the ACA continues to unfold and develop, there are several important factors for fire departments to consider:

1. The mandate for health insurance coverage remains for any organization with 50 or more full-time equivalent employees. This will remain an employee benefit and expense that departments will continue to have to manage.
2. The “Cadillac tax” or penalty for “rich” health insurance plans will remain in place. As this penalty takes effect, it will undoubtedly affect the benefits that are afforded to employees and may force some departments to restructure their benefits packages and/or budgets over time.
3. The “Triple Aim” or quality standards imposed by Medicare/Medicaid must be addressed moving forward. Rather than a hardship, departments who provide EMS to their communities should look at this as an opportunity to revamp their emergency medical service delivery model. It is unlikely that fire-based EMS will continue to be reimbursed solely for their treatment and transport of patients. Departments will have to develop new models that include treat and release protocols and standards – community paramedicine or mobile integrated health care – and work closely with hospital systems, health insurance providers, and Medicare/Medicaid to secure funding programs to reimburse Departments for their new delivery models.

Health care and the delivery of fire-based EMS is an evolving system. Regardless of the ACA, the health care system fundamentally and financially cannot continue to support the transporting of every patient we encounter to an emergency department. The way we have provided emergency medical services in the past will not work in the future. If the fire service and fire-based EMS is to survive in the new health care paradigm, we must embrace the future and be the leaders in developing models and systems that proactively serve the needs of our communities into the future.

This article is provided for educationally and informational purposes only. It should not be construed as legal advice. If you have questions about this issue and/or the ACA, please contact competent legal counsel.

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