

# Missouri & Kansas Impacted by Federal Appeal Court's Split on Legality of Affordable Care Act Subsidies

In June 2012 the U.S. Supreme Court upheld the constitutionality of the



individual mandate contained in the Patient Protection and Affordable Care Act (commonly referred to as Obamacare). That holding paved the way for the ACA to move forward but recent developments may cause the Supreme Court to consider a related issue: the ability of individuals in states that have not created a healthcare exchange to take advantage of financial subsidies and tax credits in purchasing health care. How we got here is quite interesting and we will examine that, along with possible next steps, in this week's post. **The Statute** The ACA contemplates how federal financial subsidies are calculated when insurance is purchased through an exchange "established by the state." However, it remains silent on how to calculate such subsidies when insurance is purchased through an exchange established by the federal government. And since 36 states do not have exchanges, the availability of federal subsidies to individuals in those states is in now in question because two appellate level courts have reached conflicting rulings on the issue. **The Split** On July 22, 2014, the U.S. Court of Appeals for the District of Columbia held that the above-mentioned provision is invalid because the calculations, according to the statute, don't apply to insurance policies purchased through a federally operated exchange. However, on that very same day the 4<sup>th</sup> Circuit Court of Appeals reached an opposite conclusion. It held that, although the statute is ambiguous and subject to multiple interpretations, the logical conclusion is that Congress intended the subsidies to be available to individuals purchasing insurance through both state and federal exchanges. It thus upheld the law. **What's Next** In situations like these it is common for the Supreme Court to take the case to resolve the conflicting holdings. However, it may end up there for quite some time as the Obama administration has already requested the full 11 member DC Circuit hear the case. And since seven of the 11 judges sitting on that bench were appointed by Democratic presidents, it is possible that the three-judge opinion stating the provision is invalid may be overruled. In an effort to outflank the administration on procedure, the plaintiffs in the 4<sup>th</sup> Circuit Court case asked the Supreme Court for expedited review of their case citing the D.C. decision as creating a conflict the Supreme Court should step in to resolve. In the meantime, it is important for individuals purchasing insurance from a federal exchange (which includes individuals in Kansas and Missouri) to understand that the availability of tax credits and subsidies are now in question. Even worse for such individuals is the fact that there is an open question as to whether subsidies already issued will have to be paid back. It is equally important for Missouri and Kansas employers considering their options to understand that dropping coverage for their employees may leave the employees without an affordable option to buy health insurance if the decision by the D.C. Circuit Court is upheld. These questions will continue to linger until resolved by subsequent action by the D.C.

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Circuit Court or the Supreme Court and our attorneys will stay on top of developments in these cases. If you have any questions about your insurance coverage, please contact our Health Care Attorneys today. *\*This article is very general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.*