



## More patients, bigger practices likely the long-term outcome of King v. Burwell

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The Supreme Court's *King v. Burwell* decision that allowed the continuation of Obamacare subsidies via federal exchanges is expected to maintain and perhaps increase not only the influx of patients to physician practices, but also the pace of change in the practice market, leading to greater consolidation, experts tell *Part B News*.

The 6-3 decision, handed down June 25, upheld a previous win for the U.S. government in the Fourth District, saying that despite some ambiguous wording, the Affordable Care Act (ACA) intended to allow the federal government to subsidize health insurance via exchanges created for the states that did not opt to create their own. The federal exchanges use tax subsidies to make health insurance affordable to low-income citizens. Had those subsidies been found illegal, as the plaintiffs had sought, it was widely assumed that the result would not only have made insurance dramatically less affordable in the states without their own exchanges, but also would have had a negative ripple effect on the national program.

This victory for the government, along with the 2012 Supreme Court decision that affirmed the constitutionality of other parts of the ACA, signals that the high court is not inclined, at least in its current incarnation, to strike down the law (PBN 7/2/12).

"Chief Justice Roberts was appointed by a Republican president and everyone thought he would be very conservative on the bench," says Fletcher H. Brown, a partner at Waller Lansden Dortch & Davis LLP in Austin, Texas. "Yet he has voted twice with his liberal colleagues on Obamacare. That and the 6-3 majority tell me that the chances for future legal challenges [to ACA] are not great."

The ruling probably won't reduce the number of cases brought against Obamacare by committed opponents, but "on the part of SCOTUS and what kind of case it will accept — and probably on the part of circuit courts as well — it may," says Jean Hemphill, leader of the health care practice at Ballard Spahr LLP in Philadelphia.

A good sign for Obamacare is that the *King* plaintiffs did not get the "more literal conservative statutory construction" they were clearly hoping for, says Hemphill. "This challenge was based on an interpretation of the wording of the statute and whether or not it was ambiguous," she says. "The majority said 'That's one sentence [and] taken in context of the law, it's ambiguous so we'll interpret it.' They could have said, 'it's not ambiguous, it's just bad law and therefore Congress's problem.' The Court sort of said, 'let's not put everybody through that misery.'"

### Upshot: More patients with insurance

The government's two Supreme Court victories also mean that practices can look forward to a continuing increase in patients nationwide.

The government recently reported 16.4 million newly insured individuals in the last five years, representing a 40-year low in the number of uninsured Americans. With the survival of the subsidies, "there will be more people seeking health care on a regular basis," says David Walsh of Chamblee Ryan PC in Dallas. "Practices will need to take care that they have sufficient staffing to ensure that they can appropriately care for the new patient loads."

Also, says Stuart Gerson of Epstein, Becker & Green in Washington, D.C., insurers "now know for sure that the tax credit subsidized population will be included in their risk pools." That is, when the subsidies were in danger, observers feared healthy beneficiaries who suddenly had to pay the full price would abandon insurance, making the cost of insuring the remaining beneficiaries prohibitive; the ruling removes that fear. Also, the ruling "will encourage smaller covered employers who don't provide health insurance to encourage their employees to do so," adding still more beneficiaries to the pools, Gerson says.

### How certainty of ACA will affect industry

The decision also may affect the way state governments and market players react toward Obamacare. Medicaid may get a boost, says Greg Hagood, managing director of SOLIC Capital in Evanston, Ill. Companies such as Lifepoint Health and Community Health Systems have been "exiting their hospital investments" in states that are not accepting Obamacare's Medicaid expansion, which is voluntary, and pushing into states that have accepted it. "Lifepoint recently sold hospitals in Alabama and Louisiana and bought several hospitals in Michigan, Wisconsin and Pennsylvania," he notes. "Community Health sold hospitals in Alabama, South Carolina and Texas and has bought hospitals in Michigan, Indiana and Oklahoma." That kind of activity may draw more state governments to expand Medicaid. Also, states that have rejected

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running their own exchanges may be willing to do that now, adds Phil Bluestein of Bluestein Law in Boulder, Colo.

Finally, the Obamacare win suggests that federal involvement in health care will continue to grow and may encourage medical businesses toward models that take advantage of those dollars — usually by going bigger.

For example, this decision should “encourage consolidations that demonstrably promote efficiency as well as ACOs and other ventures that might previously have looked too risky,” says Gerson.

“The ability of practices to remain private is increasingly challenged,” adds Hagood. “We’re seeing more value-based reimbursement. Medicare and Medicaid just don’t make ends meet anymore.”

After the decision was announced, “publicly traded hospital stock was leading S&P 500 gainers. So it seems the market views this as a favorable impact for for-profit health care and hospital systems,” Brown notes.

But Bluestein thinks some doctors may push back on this. Many providers have worked for hospitals and found “employment with them is not what they thought it would be — not as much money as they expected, less autonomy; they can’t decide who to hire or fire or whether to buy a new piece of equipment,” he says. “So many doctors are not satisfied, and a percentage will say, ‘OK, I see how the system works, I’ll try to do it myself.’ Maybe the answer is a larger group practice — particularly in primary care — or a concierge or hybrid business for services that are not covered.”

**Resource:**

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



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