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TO: Deans of United States Dental Schools
Directors of Advanced Dental Education Programs
Directors of Allied Dental Education Programs
ADEA Board of Directors
ADEA Legislative Advocacy Committee

FROM: Rick Valachovic, D.M.D., M.P.H., ADEA President and CEO
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RE: Supreme Court's Decision in *King v. Burwell*

On June 25, 2015, the Supreme Court of the United States (Court) in a 6-3 decision handed down a ruling in *King v. Burwell* (*King*). The case centered on four words in the *Patient Protection and Affordable Care Act* (ACA), "established by the state." Strict statutory constructionist called into question whether the Internal Revenue Service (IRS) may promulgate regulations to extend tax credit subsidies to health coverage purchased through insurance exchanges established by the federal government. Challengers to the four words argued that the phrase limited tax credits to the 16 states that established their own exchanges and not federally established exchanges. The Obama Administration vigorously defended the statutory language and the IRS rule that interpreted the law as allowing tax subsidies in both state and federally established exchanges. The Court sided with the Obama Administration, affirming that tax credits are available to individuals in both state and federally established exchanges. This memorandum provides an analysis of the *King* decision and its potential impact.

Background

President Obama signed into law, on March 23, 2010, the ACA. The ACA statutorily required each state to establish an "exchange or marketplace" through which people could purchase health care coverage. If a state elected not to establish an exchange or marketplace, the ACA provided that the federal government would establish one through the Secretary of the U.S. Department of Health and Human Services. Furthermore, the ACA required consumers to obtain the minimum essential coverage or pay a tax penalty unless they fell within an unaffordability exemption for low-income individuals. To limit the number of people that would qualify for such an exemption, the ACA provided tax credits calculated based on the health plan in which an individual enrolled through the exchange. Although the legislative language of the ACA pertaining to the tax credits only referred to the exchanges "established by the states," the IRS created a regulation (Section 36B) that made the tax credits available to those enrolled in health plans through both state and federally established exchanges.

Thirty-four states opted not to establish a state-run exchange; the State of Virginia was one of the states. The federal government established a federal exchange for Virginia and offered tax credit subsidies to residents of Virginia. A group of Virginia residents argued that the tax subsidies exceeded statutory authority. Led by the plaintiff King, the Virginia residents filed a lawsuit to challenge the tax subsidies offered in federally established exchanges. The suit made its way through lower courts and on November 7, 2014, the U.S. Supreme Court agreed to take the case; oral arguments were heard on March 4, 2015 and a decision in *King* was handed down on June 25, 2015.

The *King* Decision

The Supreme Court's decision validates the use of tax credits in the thirty-four states that currently have federally established exchanges and any future federally established exchanges. The Court's decision was based upon the Court's interpretation of the ACA's statutory language, "established by the state." In arriving at its decision, Chief Justice Roberts, writing for the majority, stated, "If a State chooses not to . . . establish an Exchange, the Act [ACA] tells the Secretary of Health and Human Services to establish such Exchange. And by using the words 'such Exchange,' the Act indicates that State and Federal Exchanges should be the same."

The Court acknowledged the ambiguity of the statutory language, however, the Court took the view that the four words, upon which the case revolved, needed to be considered in light of the larger context of the statutory provisions. Roberts wrote, "But while the meaning of the phrase "an Exchange established by the State . . . may seem plain, when viewed in isolation such a reading turns out to be untenable in light of [the statute] as a whole."

Writing for the dissent, Justice Scalia vehemently disagreed with the *King* decision. Scalia concluded, "Words no longer have meaning if an Exchange that is *not* established by a state is *established by the State*."

Despite the dissents' views, the Court held that notwithstanding the four words that were the subject of the challenge, "established by the state," tax subsidies are valid and available in both state and federally established health insurance exchanges.

Takeaway

This decision essentially maintains the *status quo*, pediatric oral care is an "essential benefit" under the ACA; the ruling will help ensure continued coverage for children, a very vulnerable population most affected by dental caries. Furthermore, the pediatric dental benefit is a mandated coverage "option" in the exchange; the decision will safeguard that option.

The significance of the decision cannot be overstated, thirty-four states with approximately 75 percent of the people nationwide who qualify for premium subsidies, depend on the federal exchanges for health insurance. Moreover, in light of the decision in *King,* approximately eight million Americans will be able to keep their tax credits. In the end, another substantial challenge to the ACA has been defeated; it continues to be the "law of the land."

If we can be of further assistance in this regard, please do not hesitate to contact Yvonne Knight, J.D., Senior Vice President for Advocacy and Governmental Relations, at knighty@adea.org.