

# LOCKE LORD LEGAL ISSUE Q&A Series

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## King v. Burwell Aftermath: Where Does the Health Care Industry Go From Here?

*Editor's Note: This is one in a continuing series of Q&As with Locke Lord lawyers on key legal issues confronting companies engaged in industries that have national and global impact.*

### What was at stake in King v. Burwell?

**DH:** Perhaps more than initially meets the eye. If the U.S. Supreme Court had sided with the *King v. Burwell* plaintiffs, federal tax subsidies to reduce the cost of insurance premiums would have been lost to low and moderate income Americans residing in the 34 states in which the federally-run health insurance exchange is operating, forcing many to drop coverage. Moreover, if the plaintiffs in *King v. Burwell* secured the relief they were seeking, then, in the 34 federal exchange states, the individual coverage mandate would have been significantly weakened and the employer "pay or play" provisions would have been rendered unenforceable. Without these key underpinnings, the ACA might have slowly crumbled under the weight of rising insurance premiums from health insurers.

### How did intent figure into the Supreme Court's ruling?

**DS:** The Chief Justice stated in his conclusion that "a fair reading of legislation demands a fair understanding of the legislative plan." After reviewing the vague or contradictory provisions of the ACA, the Chief Justice focused on the intent of Congress in interpreting the law as a whole and concluded: "Congress passed the ACA to improve markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter."

### What role did the 2006 Massachusetts health reform law play in the majority opinion?

**DS:** The Chief Justice pointed out that state reforms based only on guaranteed issuance and community rating in the non-group market had failed to achieve universal coverage due to adverse selection. He cited the 2006 Massachusetts health reform law as adding two elements to insurance market reform: an individual mandate and premium support, which together reduced the state's uninsured rate to 2.6%, noting: "The ACA adopts a version of the three key reforms that made the Massachusetts system successful." The Chief Justice's point here was that premium support, whether through direct payments or tax credits, was essential to the success of the Massachusetts law, and figured significantly in the intent of Congress in designing the ACA.

### In the wake of the ruling, how will this increased sense of certainty affect the health care industry?

**DH:** It is too simplistic to conclude "business as usual." Attention has turned to what strategies health insurers can utilize to reduce costs and offer competitive products to individuals and small businesses. Consolidation among health insurers is aimed at creating more efficiencies in their health insurance operations, especially in view of the ACA's regulation of health insurers' administrative costs and profits through the use of minimum MLR requirements. Some health insurers considering whether to offer exchange products in certain states delayed their decision-making until the Court's decision was announced. We may see more competition as the exchange health insurance markets become predictable. With less focus on replacing the ACA, we are likely to see more public and private sector efforts to reform the health care delivery and provider payment systems. Initiatives and tools to support payment of health care providers and facilities for value and to engage patients in population health management and care coordination programs will be a strategic priority for the health industry.

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