

Supreme Court Upholds Treasury Rule on Resident Employment Taxes

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On January 11, 2011, the United States Supreme Court unanimously held that the Treasury Department acted reasonably in promulgating a rule that says medical residents are not exempt from paying employment taxes under the Federal Insurance Contributions Act (Mayo Foundation for Medical Education and Research v. United States, U.S., No. 09-837). The case is considered to be the highest profile health care matter before the court this term, affecting most hospitals and involving an estimated \$700 million in employment taxes annually.

In an opinion by Chief Justice John G. Roberts, Jr., the high court found the regulations, which say that medical residents who work more than 40 hours per week do not qualify for the student exception under Section 3121(b)(10) of the Internal Revenue Code, address an area “to which Congress has not directly spoken” and that, because the regulations were “a reasonable construction of what Congress has said,” they had to be upheld.

The ruling affirms a June 2009 decision by the U.S. Court of Appeals for the Eighth Circuit and is consistent with views of oral argument attendees who in November said the majority of the sitting justices appeared poised to uphold the regulations. Justice Elena Kagan recused herself from the case.

AHRQ Reports Rising ED Visits, Overcrowding

In a statistical brief (#100) released by the Agency for Healthcare Research and Quality (AHRQ), the growing numbers of ED visits are cited as cause for concern. In the report, AHRQ states, “As visits to the ED rise, policymakers are increasingly concerned about potential cost, quality and long-term health and health care system consequences of ED overcrowding, overuse and inappropriate use.”

Some of the significant findings in the report are:

- Of the 124.9 million ED visits in 2008, 98.5 million (or three in four) were for adults age 18 or older needing care.
- Four out of five were treated and released, while 18.5% had illnesses serious enough to warrant admission. Of those released, 93.7% were discharged home and 1.7% left against medical advice. Another 1.7% were transferred to another acute care facility, and 1.6% went to a long-term or intermediate care facility (nursing home or psychiatric treatment facility).
- Women had 26% higher ED utilization rates than men.
- Rates of ED visits were 90% higher for those from the lowest incomes areas than for those from the highest income areas.
- Rates of ED use were 39% higher for people from rural areas than for those from urban areas.
- Injuries accounted for 22.7% of all adult visits.
- More than nine in ten ED visits were for acute conditions, half of which were also associated with chronic conditions.

The complete brief is available at www.hcup-us.ahrq.gov/reports/statbriefs/sb100.pdf.

Census Bureau Reports Highest Number of Uninsured to Date

The Census Bureau Report, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, states that the number of people without health insurance in 2009 was 50.7 million, up from 46.3 million in 2008. That is the highest number of uninsured people since the government began collecting data on health insurance in 1987. Percentage-wise, people without health insurance increased to 16.7% in 2009 from 15.4% in 2008. The decrease in the number of people with health insurance – 253.6 million in 2009 from 255.2 million in 2008 – also set a record for being the first year since the Census Bureau began collecting health insurance data that the number of people with coverage decreased.

Other significant decreases were seen in the number of people with private health insurance (194.5 million in 2009 from 201 million in 2008) and the percentages of people covered by private health insurance and by employment-based health insurance (respectively, 63.9% in 2009 from 66.7% in 2008, and 55.8% in 2009 from 58.5% in 2008). In commenting on this data, David Johnson, chief of the Census Bureau's Housing and Household Economic Division, said, “The rates of coverage for both private and employment-based coverage have shown a downward trend for the last nine years.” In contrast, the percentage of people covered by government health insurance programs, including Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and military coverage has increased for the third consecutive year to 30.6% in 2009.

Johnson also noted some demographics related to the uninsured rates. The rates for children younger than age 18 (10%) and those age 65 and older (1.8%) were not statistically different from 2008, but for adults age 18-64 the uninsured rate increased by two percentage points to 22.3% in 2009. With respect to income, Johnson said that, while the 2009 uninsured rate for people in households with incomes between \$25,000 and \$50,000 was not statistically different from 2008, the uninsured rate for other income groups increased. For people living in households with incomes less than \$25,000, nearly 27% were uninsured, and for people in households with incomes greater than \$75,000, 9.1% were uninsured.

Full-time workers had a 0.6 percentage point increase in their uninsured rate between 2008 and 2009, but the number of full-time, year-round workers decreased by five million between those years, and, for people that were not full-time, year-round workers, the uninsured rate went up by 2.7 percentage points. Johnson suggested that the rise in the number of uninsured was due to the changes in employment status experienced by many workers.

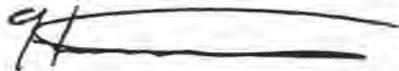
In commenting on the Census Bureau's data, Robert Zirkelbach, spokesperson for America's Health Insurance Plans, blamed the economy and medical costs for the rise in uninsured people. “Families and employers are struggling to cope with a slow economy and continually rising medical costs. The new Census numbers confirm the trend that we have been seeing over the past couple of years of younger and healthier people dropping their insurance because of the weak economy. This results in an older and sicker risk pool and higher costs for people with insurance. In order to make it easier for people to get and maintain health care coverage, far more needs to be done to address [the] rising cost of medical care,” Zirkelbach wrote.

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Thank you for your attention to this important matter.

Sincerely,



Howard Blumstein, MD, FAAEM
President, AAEM

(1) <http://www.aaem.org/commonsense/commonsense0110.pdf> (page 8)

Enclosures

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But Senate Finance Committee Chair Max Baucus (D-MT) issued a release saying that the increase in the number of Americans without health insurance is due to "egregious insurance company abuses." The increase in uninsured people "is clear evidence of how critical it was to take action to protect patients, and that's exactly what the [Patient Protection and Affordable Care Act (PPACA, Pub. L. No. 111-148)] will do," he said.

Robert Greenstein, executive director of the Center on Budget and Policy Priorities, also issued a statement. Greenstein said the Census data "show a striking divergence between declines in private insurance and expanded

coverage through federally supported programs." He added, "Without the expansion the increase in the number and percentage of people who are uninsured would have been much larger." Both Greenstein and Ron Pollack, executive director of Families USA, credited government programs such as Medicaid, CHIP, and Medicare with preventing an even greater increase in the ranks of the uninsured; and they cited the further help coming from the new requirements of PPACA that will take effect soon.

The Census Bureau report is available at <http://www.census.gov/prod/2010pubs/p60-238.pdf>.

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One cannot overestimate the value of the social interactions and networking that comes as a result of meetings like Scientific Assembly. Besides meeting with peers and former residents, I've always enjoyed the opportunity to rub elbows with some of the "big names" in emergency medicine and talk with various experts after their lectures. In addition, every single member has easy access to AAEM's leaders and can have their voice heard on any aspect of the organization's activities. Meetings of the board of directors are open to all members, who can learn about and influence the direction of the Academy. Unlike some other organizations, the board is elected through a completely democratic process involving board certified emergency physicians.

As a democratic organization, your thoughts and ideas are highly valued by AAEM. If you have something to say to your fellow members of AAEM, you may want to start by sending some comments to us here at *Common Sense* as a letter to the editor or by submitting an original article for publication. Feel

free to contact me directly at cseditor@aaem.org with your opinions about anything you read in *Common Sense*. In addition, direct communication with the leadership of AAEM is merely an email away (<http://www.aaem.org/boardofdirectors/boardlisting.php>). Through my own service on the board of directors, I can say that the board is completely dedicated to the promotion of AAEM's mission and willing to go far beyond what is necessary to respond to the needs of individual members.

Start planning now to attend next year's Scientific Assembly, February 8-10, at the Hotel Del Coronado in San Diego. This beachfront resort, designated as a National Historic Landmark, is sure to be a great location for the best conference in emergency medicine. And while you're looking at your schedule, don't forget that the Sixth Mediterranean Emergency Medicine Congress (MEMC VI) will be held September 10-14 this year in Kos, Greece. Co-sponsored by AAEM, this meeting is expected to see nearly 2,000 emergency medicine specialists from more than 75 countries converge on the island of Kos to share in academic and scientific exchange.