J. Y. Interpretation No.676（April 30, 2010）*

ISSUE: Is it constitutional for an administrative regulation to impose and adjust the scales of national health insurance premium, particularly on temporary laborers or self-employed that have no fixed income?

RELEVANT LAWS:

Articles 15, 23, 155, and 157 of the Constitution（憲法第十五條、第二十三條、第一百五十五條、第一百五十七條）；Article 10, Paragraph 5 of the Amendment of the Constitution（憲法增修條文第十條第五項）；Article 41, Paragraph 1, Subparagraph 7 of the Enforcement Rules of the National Health Insurance Act (amended August 2, 1995 and November 18, 1999; amended as subparagraph 4, November 29, 2002)（全民健康保險法施行細則第四十一條第一項第七款（中華民國八十四年八月二日及八十八年十一月十八日修正發布，九十一年十一月二十九日修正改列第四款）；Article 8, Article 21 Paragraph 1, Article 22, Paragraph 2, and Article 86 of the National Health Insurance Act (amended January 30, 2001)（全民健康保險法第八條、第二十一條第一項、第二十二條第二項、第八十六條（九十年一月三十日修正公布））；J.Y. Interpretation Nos. 426, 472, 473, 524 and 538（司法院釋字第四二六號、第四七二號、第四七三號、第五二四號、

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* Translated by Professor Tze-Shiou Chien.

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第五三八號解釋）.

KEYWORDS:

National Health Insurance（全民健康保險）, Insured Premium Table（投保金額分級表）, property right（財產權）, principle of statutory reservation (法律保留原則), principle of clarity of authorization of law (法律授權明確性原則), affordability (量能).**

HOLDING: Article 41, Paragraph 1, Subparagraph 7 of the Enforcement Rules of the National Health Insurance Act, as amended on August 2, 1995, stipulates: "For those … who join occupational unions but with no fixed employment or are self-employed, they shall file insurance from Level Six in accordance with the Table of Premium Levels." The same provision, as amended on November 18, 1999, stipulates: "For those who join occupational unions but with no fixed employment or are selfemployed, they shall file insurance from Level Six in accordance with the Table of Premium Levels" (Amended and redesignated as Subparagraph 4 on November 29, 2002.) It does not contravene the protection of people's property rights under Article 15

解釋文：中華民國八十四年八月二日修正發布之全民健康保險法施行細則第四十一條第一項第七款：「無一定雇主或自營作業而參加職業工會……者，按投保金額分級表第六級起申報。」及八十八年十一月十八日修正發布之同施行細則同條款：「無一定雇主或自營作業而參加職業工會者，按投保金額分級表第六級起申報。」之規定(九十一年十一月二十九日修正改列第四款)，與憲法第十五條保障人民財產權、第二十三條法律保留原則，以及法律授權明確性原則，尚無牴觸。惟於被保險人實際所得未達第六級時，相關機關自應考量設立適當之機制，合理調降保險費，以符社會保險制度中量能負擔之公平性及照顧低所得者之互助性，落實國家推行全民健康保險之憲法意旨，上開規定應本此意旨檢討改進，併予指

of the Constitution, as well as the principles of statutory reservation and clarity of authorization of law under Article 23 of the Constitution. However, for the insured whose actual income has not reached Level Six, the relevant agencies should certainly consider the establishment of an appropriate mechanism to reasonably reduce the premium so as to meet the fairness of burden-sharing based on affordability and the mutual assistance for low income individuals in the social insurance system, and to realize the constitutional mandate for the promotion of a national health insurance. Thus, it is also pointed out that the abovestated provision should be reexamined and reformed accordingly.

明。

REASONING: Articles 155 and 157 of the Constitution respectively and explicitly provides that the state, in order to promote social welfare, shall establish a social insurance system; and in order to improve national health, shall establish extensive services for sanitation and health protection. Article 10, Paragraph 5 of the Amendments to the Constitution

解釋理由書：國家為謀社會福利，應實施社會保險制度；國家為增進民族健康，應普遍推行衛生保健事業及公醫制度，憲法第一百五十五條及第一百五十七條分別定有明文。又憲法增修條文第十條第五項前段規定，國家應推行全民健康保險。全民健康保險法（下稱全民健保法）採強制納保並課被保險人繳納保險費之公法上金錢給付

further stipulates: “The State shall promote the national health insurance.” As the foundation of fairness to the national health insurance, the National Health Insurance Act adopts the compulsory insurance, imposes the insured the obligation to pay premium under the public law, and charges different premiums on individuals with different income, so as to meet the fairness of burden-sharing based on affordability. Yet the relevant laws and regulations concerning the calculation of and the criteria for the amount of the premium, given that it has the effect of restricting people’s property right, shall certainly comply with the principles of statutory reservation and clarity of authorization of law, as repetitively stated under J.Y. Interpretation Nos. 472, 473, and 524.

義務，並對於不同所得者，收取不同保險費，以符量能負擔之公平性，為全民健康保險賴以維繫之基礎。惟有關保險費之計算及額度決定方式之相關法令規定，涉及人民財產權之限制，自應遵守法律保留、授權明確性原則，迭經本院釋字第四七二號、第四七三號、第五二四號解釋在案。

Article 8 of the National Health Insurance Act places “those who join occupational unions but with no fixed employment or are self-employed” as the Second Category Insured. The level of premium for personnel at this level is regulated under Article 41, Paragraph

全民健保法第八條將「無一定雇主或自營作業而參加職業工會者」，列屬第二類被保險人，該類人員申報投保金額之等級則依八十四年八月二日修正發布之全民健保法施行細則第四十一條第一項第七款：「無一定雇主或自營作業而參加職業工會……者，按投保金額

1, Subparagraph 7 of the Enforcement Rules of the National Health Insurance Act, amended as of August 2, 1995: " For those… who join occupational unions but with no fixed employment or are self-employed, they shall file insurance from Level Six in accordance with the Table of Premium Levels[,]" and the same provision, amended as of November 18, 1999: "For those who join occupational unions but with no fixed employment or are self-employed, they shall file insurance from Level Six in accordance with the Table of Premium Levels." (Amended and re-designated as Subparagraph 4 on November 29, 2002, hereinafter disputed provision). The level of the insurance premium is for a critical element in determining the premium and the burden of ability to pay. Given that the application of the disputed provision concerns the public interest of government's finance and restrictions on people's property right, it is not merely a technical or detailed issue and, therefore, should in principle be stipulated explicitly by statute. If the legislative body should authorize the administrative agency to promulgate supplemental regulations, the

分級表第六級起申報。」及八十八年十一月十八日修正發布之同施行細則同條款規定：「無一定雇主或自營作業而參加職業工會者，按投保金額分級表第六級起申報。」（下稱系爭規定，九十一年十一月二十九日修正改列第四款）按投保金額之等級，係保險費實際應負擔數額之重要因素，並決定保險費量能負擔之標準。且系爭規定之適用，關係政府財務公共利益，並涉及人民財產權之限制，自非純屬技術性或細節性事項，是原則上應以法律明定之。若立法機關以法律授權行政機關發布命令為補充規定時，其授權之內容、目的、範圍應具體明確，命令之內容並應符合母法授權意旨。至授權條款之明確程度，不應拘泥於法條所用之文字，而應由法律整體解釋認定，或依其整體規定所表明之關聯意義為判斷（本院釋字第四二六號、第五三八號解釋參照）。

contents, objectives and scope of such authorization must be specific and unambiguous, and the content of the regulations must also comply with the meanings and objectives of the authorization. With regard to the degree of specificity of the authorization provision, it shall not be confined by the language of the statutory provision, rather shall be determined by the totality of statutory interpretation or the relevant meaning from the statute as a whole (see J.Y. Interpretation Nos. 426 and 538).

Article 86 of the National Health Insurance Act stipulates: "The enforcement rules of this Act shall be drafted by the governing agency and be submitted for approval by the Executive Yuan for its promulgation." While the disputed provision was based on this Article, yet from the perspective of the relevant meanings of the National Health Insurance Act as a whole, it actually connects to Article 21, Paragraph 1 of the Act, "[t]he premium amount for Categories One to Three of the insured shall be stipulated in a Table of Premium Levels by the governing agency

全民健保法第八十六條規定：「本法施行細則，由主管機關擬訂，報行政院核定後發布之。」系爭規定之訂定，固係以此一規定為依據。惟從全民健保法整體規定所表明之關聯意義上，實係聯結母法第二十一條第一項規定：「第一類至第三類被保險人之投保金額，由主管機關擬訂分級表，報請行政院核定之。」(經九十年一月三十日修正公布，修正前原規定「第一類至第四類」) 以及同法第二十二條第二項規定：「第一類及第二類被保險人為無固定所得者，其投保金額，由該被保險人依投保金額分級表所定數額自行申報，並由保險人

and be approved by the Executive Yuan." (Amended as of January 30, 2001, which changed the original language "from First to Fourth Categories") and Article 22, Paragraph 2 of the same Act: "For the insured under the First and Second Category who have no fixed income, they shall declare pro se the insurance premium in accordance with the Table of Premium Levels, and be subjected to the audit of the insurer. The insurer may summarily adjust [the premium] if it is inaccurate." (Originally with the language but designated as Paragraph 3 before the amendment on January 30, 2001). These provisions carry the objective to effectively implement the national health insurance program, and a rather clear authorization to calculate the amount of premium based on categorization methods as its contents and scope. It is with this authorization that the governing agency established the Table of Premium Levels as the basis for the calculation of premium the insured should undertake. In light of the fact that all the insured maintain certain independence in their working style and their income from workhours is diverse, taking

查核；如申報不實，保險人得逕予調整。」(經九十年一月三十日修正公布，修正前原列第三項，規定相同) 該等規定係以有效辦理全民健康保險為目的，而以類型化方式計算投保金額為內容與範圍，授權之意尚屬明確。依上開授權，主管機關乃以類型化方式訂定投保金額分級表，作為被保險人應負擔保險費之計算依據，而系爭規定鑒於被保險人均係於工作型態上具一定獨立性，工時勞務所得上有不特定性，衡酌行政效率及被保險人之所得狀況，指定投保金額分級表第六級為申報下限，尚難謂有違母法授權意旨致牴觸憲法第十五條保障人民財產權之規定。是系爭規定與憲法第十五條保障人民財產權、第二十三條法律保留原則，以及法律授權明確性原則，尚無牴觸。

into account the administrative efficiency and the insured's income status, the disputed provision designated Level Six of the Table of the Premium Levels as the minimum for submission can hardly be deemed to have violated the meanings and purposes of the authorization statute, and consequently, contravened the provision to protect people's property rights under Article 15 of the Constitution. Thus, the disputed provision does not contravene either the protection of people's property rights under Article 15 of the Constitution, or the principles of statutory reservation and clarity of authorization of law under Article 23 of the Constitution.

The National Health Insurance Act used the regular income of the insured as the basis of premium calculation, with the insured undertakes diverse financial responsibility that hinge on income level. Under this affordability test, a security system that entails both the common sharing of health risks and social assistance can be formed; therefore, the predesignation on the level of individual premium should match the actual income

全民健保法係以被保險人經常性所得為計算保險費之基礎，被保險人依所得高低承擔不同財務責任，於量能負擔下，形成兼具共同分擔健康風險與社會互助之安全保障制度，故個人投保金額等級之事先指定，應儘量與實際所得契合。然系爭規定所涉之被保險人職業種類不一，所得又經常隨社會或個人因素浮動，於其實際所得未達第六級時，仍應按第六級申報，造成該等本屬低所得之被保險人超額負擔保險費。是相關

as closely as possible. However, given that the insured under the disputed provision involve various occupations and their income levels constantly fluctuate due to social or personal factors, that they must still declare [insurance premium] as Level Six even though their actual income does not reached that level has resulted in excessive premium charge to those who belong to the low income [category]. The relevant agencies should certainly consider the establishment of an appropriate mechanism to reasonably reduce the premium so as to meet the fairness of burden-sharing based on affordability and the mutual assistance for low income individuals in the social insurance system, and to realize the constitutional mandate for the promotion of a national health insurance. Thus, it is also pointed out that the above-stated provision should be re-examined and reformed accordingly.

機關自應考量設立適當之機制，合理調降保險費，以符社會保險制度中量能負擔之公平性及照顧低所得者之互助性，落實國家推行全民健康保險之憲法意旨，系爭規定應本此意旨檢討改進，併予指明。

Justice Shin-Min Chen filed dissenting opinion in part.

本號解釋陳大法官新民提出部分不同意見書。

EDITOR'S NOTE:

Summary of facts:The Petitioners,

編者註：

事實摘要：(一) 聲請人等1,502人，

1502 in total, consist of members of seven unions concerning respective occupations, such as agricultural services in Kaohsiung City. They have been enrolled in the national health program since March 1, 1995, the day the program began to operate, as the Second Category insured (those with no fixed income or are selfemployed) under Article 8 of the National Health Insurance Act, declared their insurance premium as Level Six on the Table of Premium Levels and under the disputed provision, and paid premium until June 30, 1997.

自中華民國（下同）84年3月1日全民健保開辦時起，即分別參加高雄市之農事服務等7家職業工會，依全民健康保險法第8條規定，以第2類被保險人身分加保（無一定雇主或自營作業而參加職業工會者），依系爭規定按投保金額分級表第6級起申報，且繳納保險費至86年6月止。

In July 1997, with the higher adjustment of the basic salary, the amount for Level Six was adjusted accordingly to NT$19,200. In July 1998, with another adjustment of the basic salary, the amount for Level Six was again adjusted to NT$20,100.

(二)86年7月基本工資調高，第6級投保金額分級表隨之調整為19,200元；87年7月基本工資再次調整，第6級投保金額再調整為20,100元。

Petitioners claimed that their actual income was not comparable to the basic salary due to economic recession. With the help of their unions, Petitioners successfully received the governing agen-

(三)聲請人等以景氣低迷，實際所得無法反映基本工資，透過工會協商，得主管機關同意准予暫緩實施上述調整，而將86年7月至12月投保金額定為18,300元，87年1月以後則定為

cy's approval to delay the implementation of the above adjustment, to set the premium at NT$18,300 from July to December 2007 and NT$19,200 as of January 2008.

19,200 元。

Petitioners, however, still have not declared their premium in accordance with the modified amount. On February 21, 2002, the Bureau of National Health Insurance notified petitioners that their premium was adjusted to NT$18,300 and NT$19,200 and began to collect the differences backward.

(四) 惟聲請人仍未依上開調整後之投保金額申報，91 年 2 月 21 日健保局分別函將聲請人之投保金額，逕予調整為 18,300 元及 19,200 元，並按該金額補收每月保險費差額。

Petitioners challenged these decisions and filed suits in administrative courts. The Kaohsiung High Administrative Court ((92) Su Zi No. 1184 (2003)) and the Supreme Administrative Court ((95) Pan Zi No. 1751 (2006)) both dismissed the case for lack of reasons. Petitioners then filed the present interpretation, claiming that by allowing an administrative regulation under the disputed provision to designate the premium and prohibiting "selfdeclaration of premium with proof of evidence" so as to make adjustment to the [premium] level, [the

(五) 聲請人不服，依法提起行政訴訟，經高雄高等行政法院 92 年度訴字第 1184 號判決、最高行政法院 95 年度判字第 1751 號判決，均以無理由駁回。聲請人不服，主張：系爭規定逕以行政命令指定投保金額、不得「自行舉證申報投保金額」而為級別之調整者，違反平等權、財產權保障及法律保留、授權明確性原則，違背憲法第 23 條規定意旨，聲請解釋

disputed provision] contravenes the right of equal protection, protection of property rights, as well as statutory reservation and clarity of authorization of law under Article 23 of the Constitution