American Hospital Association

How Will a Win for *King* Impact State Insurance Markets?

Frequently Asked Questions

In *King vs. Burwell*, the U.S. Supreme Court (Court) will make a determination on the future of premium tax credits under the Affordable Care Act (ACA) in states with a Federally Facilitated Exchange (FFE) or State Partnership Exchange (SPE). These premium tax credits are commonly referred to as "premium subsidies." There are several possible legal scenarios that may be result from the Court's ruling. In addition, numerous federal and state legislative or regulatory actions may be pursued to lessen the negative impact of a decision in favor of *King*. This document is intended to address many of the potential implications on the commercial insurance markets if the decision results in a cessation of premium subsidies in the 34 FFE and SPE states.

Who would be most affected by a Court decision in favor of *King*?

A Court decision in favor of *King* could result in a loss of coverage for approximately 8.2 million people who get individual coverage in FFE or SPE states.[1] According to the U.S. Department of Health and Human Services (HHS), 87 percent of individuals in states using Healthcare.gov received a premium subsidy to help them purchase individual coverage in 2015.[2]

Purchasers of individual health care insurance through individual markets will be at risk for: (1) large premium increases and (2) a loss of individual coverage options. This will result in what is called by the insurance industry a "death spiral."

What is an insurance "death spiral?"

Health insurers design their products and set their prices to attract a balance of healthy and unhealthy enrollees for their risk pools.* The various products or plans are priced so that the insurers have adequate revenue from premiums to cover their share of the enrollee's health care costs, administrative costs, and margin expectations. A "death spiral" occurs when healthy people who incur little or no claims costs drop their insurance coverage, leaving less revenue to cover the costs of the less healthy population that require more health care services. Rates then increase the following year or cycle, causing healthier, less expensive enrollees to leave the plan because of the increased premiums. This results in an even greater proportion of sicker people. Without healthy, low-cost enrollees joining the plan to replace those that leave, the cycle continues until the insured population becomes very small, very sick, and very expensive. At this point, or in anticipation of this point, the insurer may withdraw from the market in that state.

* Insurance works by pooling risk. What does this mean? It simply means that a large group of people who want to insure against a particular loss pay their premiums into an insurance pool. Because the number of insured individuals is so large, insurance companies can use statistical analysis to project what their actual losses will be within the given class. They know that not all insured individuals will suffer losses at the same time or at all. This allows the insurance companies to operate profitably and at the same time pay for claims that may arise. Read more: http://www.investopedia.com/university/insurance/insurance2.asp#ixzz3a9MG9zid

Why would there be a "death spiral" in the individual market in FFE or SPE states?

The ACA is predicated on a three-pronged approach: guaranteed issue, an individual mandate, and premium subsidies. Guaranteed issue requires insurers to accept everyone that applies for coverage regardless of their health status. The ACA's individual mandate requires all Americans to have health care coverage. The ACA also provides premium subsidies and cost-sharing reductions for those that cannot afford to purchase coverage. All three principles are required to create large and balanced risk pools for insurance companies. However, by removing any of these three prongs, the risk pools will become unbalanced, leading to a "death spiral" for the individual markets.

Studies show that a Court ruling in favor of *King* will force low income enrollees who rely on the subsidies to drop coverage because they no longer will be able to afford the premiums. Several experts predict the costs of coverage to rise between 35 and 50 percent for 2016 under this scenario, resulting in escalating prices and shrinking enrollment, and ultimately leading to a downward spiral.[3]

Will the "death spiral" impact those who purchase individual coverage outside their state's exchange?

Yes. Individual coverage can be purchased through the insurance exchange or outside of the exchange (non-exchange market) but insurers must treat coverage on the exchange and off the exchange as part of one single risk pool, meaning that pricing must be the same on and off the exchange. Subsidies are not available for coverage purchased on the non-exchange market. The ACA requires that products offered by insurers through the exchange also must be offered through the non- exchange market and at the same premium amount, so that one market does not become more favorable to consumers. Insurers may offer additional individual coverage products through the non-exchange market, but they must be ACA compliant and priced as part of the same single risk pool. Because these markets are linked by the ACA, the loss of healthy, low-cost enrollees on the exchange market will drive up prices in the non-exchange market as well, resulting in a market-wide death spiral in affected states.

What is the impact on the individual mandate?

The individual mandate remains in effect regardless of the Court ruling. However, there is a statutory exemption for those that have to spend more than 8 percent of their family income to purchase insurance. The exemption is based on the lowest cost coverage available to them, typically a bronze level plan. Therefore, a rapid rise in individual market premiums would result in many more people qualifying for the exemption.

The Kaiser Family Foundation estimates that 83 percent of those losing subsidies would qualify for the exemption in 2016.[4] Currently, only 3 percent of those eligible for subsidies are exempt. For those that do not qualify for an exemption, the penalty for not having qualified insurance coverage in 2015 is the greater of 2 percent of annual household income or $325 per adult and $162.50 for children 18 and under. The maximum penalty per household per year in 2015 is $975. Without an exemption, and with a sharp rise in premium costs, some still may choose to pay a penalty rather than purchase insurance coverage. The end result will be that the individual mandate will do little to stem the loss of coverage for millions of Americans if subsidies are no longer available.

Will the number of uninsured increase?

Without a doubt. An additional 8.2 million people, a 44 percent increase, are likely to become uninsured in 2016 if *King* prevails.[5] The majority of people who purchased health coverage for the first time are likely to return to the ranks of the uninsured due to the loss of subsidies and rising premiums. A small number of individuals without coverage may find affordable options through local charity care programs. A small number of enrollees that qualified for subsidies because their employer coverage cost more than

9.5 percent of their income or did not provide adequate coverage, may revert back to their employer-based coverage. In all situations, the specter of losing coverage or enrolling in coverage that lacks adequate protection against incurring high health care expenses will result in increased numbers of uninsured and a surge in uncompensated care for providers.

Will a *King* decision limit the options available to individuals?

Yes. With subsidies no longer available to enrollees and a rapidly escalating insurance "death spiral," insurers are likely to scale back product offerings or may exit the mark in the FFE and SPE states. For 2015, insurers that offer plans in FFE or SPE states have a contractual clause that may allow them to exit the market mid-year in the event of an adverse Court decision regarding subsidies. Many experts anticipate that insurers with large enrollment and extensive group insurance business will have the resources to continue individual coverage options into 2016, albeit with fewer plans and rising premiums. On the other hand, smaller insurers are more likely to exit the market entirely in anticipation of a rapidly deteriorating risk pool. In either case, the number of health plan options available to individuals will decrease coupled with a significant rise in premiums. The impact resulting from insurers leaving a state's market will result in fewer plan options for individual coverage and higher numbers of uninsured. It should be noted that under current ACA rules and similar rules in most states, an insurer that exits a state's individual market entirely (as opposed to reducing the number of products offered) would be unable to return to that state's individual market for five years, unless these rules are waived because of the extraordinary circumstances.

Will the loss of premium subsidies affect the group insurance market?

It is likely that there will be a spillover effect across the commercial insurance market, but experts disagree on the extent of that impact. Some factors to consider are:

The Employer Mandate: Under the ACA, employers are required to offer employees a minimum level of coverage, with some exceptions. Currently, the employer mandate applies to employers with more than 100 full time employees. Starting in 2016, employers with more than 50 employees will be subject to the employer mandate. If an employer fails to offer a minimum level of coverage to 70 percent of its employees or if the employee is required to pay more than 9.5 percent of their income to purchase the employer-provided coverage, the employee is eligible to purchase coverage through the exchange, and may be eligible to receive subsidies. If the employee purchases coverage from the exchange and receives a subsidy, the employer has to pay a penalty, called a "Shared Responsibility Payment." If the employee does not receive a premium subsidy, there will be no employer penalty because the employer will be in compliance of the current ACA employer mandate. Therefore, employers in FFE and SPE states will no longer have to pay a penalty for providing minimal or unaffordable coverage as defined by the ACA and subsequent regulations.

Insurer Margins: Some large insurers with products in multiple lines of business, such as large groups, small groups, individuals, and government programs, have historically made a disproportionately larger margin on their non-group business. Although insurers generally resist subsidizing rates in one market segment with profits from another market segment, a significant "death spiral" in the non-group market could impact pricing in the small and large group markets. Self-funded groups would not be as greatly impacted since the employer pays the claims while the insurer only provides administrative services, such as enrollment, claims processing, and network management. Small group employers, those with less than 50 employees as currently defined by the ACA, are typically too small to self-fund and would likely bear the greatest rate increases among employer group segments, which could result in greater employee contributions or coverage reductions.

Do the ACA premium stabilization programs prevent significant rate increases that result from the loss of subsidies?

The ACA established premium stabilization programs to protect health plans while enrollment on the exchanges grew and the exchange population stabilized. These programs are not adequate to stabilize a market in the throes of a "death spiral." Two of the three premium stabilization programs, the risk corridors and reinsurance pools, only are available through the end of 2016. Reinsurance provides insurers protection against high cost claims, while risk corridors protect against significant underpricing but both have limited financing available. The third program, risk adjustment, is permanent and redistributes money from insurers with lower than average risk enrollees to plans with higher the average risk enrollees but does not address the situation where the average risk gets worse. HHS operates the risk adjustment program for all but one state, but will have no extra funds available through risk adjustment to help stabilize the market if healthy people drop their coverage and all plans have increasingly unbalanced risk pools.

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[1] "The Implications of *King v. Burwell*: Highlights from Three Analyses of the Consequences of Eliminating ACA Tax Credits in 34 States," Linda J. Blumberg, Matthew Buettgens, and John Holahan, Robert Wood Johnson and Urban Institute, March 2015

[2] "Health Insurance Marketplace 2015: Average Premiums After Advance Premium Tax Credits Through January 30 in 37 states Using the HealthCare.gov Platform," Aprpit Misra and Thomas Tsai, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, February 9, 2015

[3] Ibid

[4] "Insurance Markets in a Post-King World," Larry Levitt, Gary Claxton, Kaiser Family Foundation, February 25, 2015.

[5] "The Implications of *King v. Burwell*: Highlights from Three Analyses of the Consequences of Eliminating ACA Tax Credits in 34 States," Linda J. Blumberg, Matthew Buettgens, and John Holahan, Robert Wood Johnson and Urban Institute, March 2015