

# Overview of the Potential Effects of a Supreme Court Finding for the Plaintiffs in the Pending King v. Burwell Case

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Timely Analysis of Immediate Health Policy Issues

JUNE 2015

The Supreme Court will soon announce their finding in the King v. Burwell case. At stake is whether or not the federal government can continue to provide premium tax credits and cost-sharing reductions to residents of states that have not established their own health insurance marketplaces (a.k.a. exchanges) under the Affordable Care Act (ACA). If the Court finds for the plaintiffs, considerable uncertainty is likely to remain as to what will be required of a state in order to be deemed to have established its own marketplace. However, such a decision would put residents of at least 34 states at risk of losing financial assistance to purchase private nongroup insurance coverage under the ACA. Without changes by these 34 states or federal legislative action to re-instate the assistance, our *analyses* indicate that:

- In 2016, the number of uninsured people would be 8.2 million higher than it otherwise would have been.
  - **This increase includes:**
    - 6.3 million people losing tax credits,
    - 1.2 million people losing insurance who would not have had tax credits but would become uninsured due to large premium increases resulting from the changes in the market, and
    - Smaller additional decreases in coverage through employer-based insurance (300,000 on net) and through Medicaid and CHIP (445,000).
  - The size of the private nongroup insurance markets in the affected states would drop by about 70 percent, due

to the loss of financial assistance, the pool of insured individuals becoming higher cost on average, and the consequent large increase in premiums in these markets.

- In order for the typical person to keep the same insurance coverage they would have had otherwise, even if they would not have been eligible for tax credits in any case, they would have to pay a premium that is 55 percent higher.<sup>1</sup> The premium increase for those who would have had a tax credit would be much larger.
- Of those losing nongroup insurance and becoming uninsured, three-fourths are low or middle income, but are not poor; over 60 percent are white, non-Hispanic; over 60 percent live in the south; two-thirds have at least one family member employed by a small firm; and more than three fourths of the adults are workers.<sup>2</sup>
- Health care spending on behalf of those becoming uninsured would fall by 35 percent, and declines could be greater if governments and providers do not continue to contribute to uncompensated care at historic rates.
  - These reductions are likely to be particularly problematic for hospitals, given already planned for reductions in disproportionate share hospital funding beginning in 2017.
- 20 states that would be affected by such a decision are also states that chose not to expand eligibility for Medicaid under the ACA. For these states, a Supreme Court finding for the

plaintiffs would compound the financial consequences of state decisions not to expand Medicaid eligibility. The 20 states would forego \$61 billion federal dollars in 2016, \$41 billion from not expanding Medicaid and \$21 billion from not establishing a state marketplace.

## How do the Urban Institute's Estimates on the Effects of This Decision on the Uninsured Differ from Department of Health and Human Services Estimates of Marketplace Enrollment?

As shown above, the Urban Institute estimates that 8.2 million people would become uninsured in 34 states due to a finding for the plaintiffs in the case, absent other changes. However, Department of Health and Human Services (DHHS) Assistant Secretary for Planning and Evaluation (ASPE) estimates that, in 2015, 6.4 million people living in these 34 states receive premium tax credits through federally facilitated marketplaces.<sup>3</sup> Why are these numbers different?

- The DHHS ASPE estimate is the total number of people in these states receiving tax credits in the current year. However, while the majority would become uninsured without tax credits, *some will remain insured*. In addition, because the premiums in the entire nongroup insurance markets in these states would be affected (in and outside the marketplaces), *some of those not receiving tax credits would also become uninsured* due to facing much higher premiums. DHHS ASPE estimates that about 900,000 people were enrolled in federally facilitated marketplaces without receiving tax credits.

They do not provide an estimate for the number of people enrolled in the nongroup market outside the marketplaces in 2015.

- The Urban Institute estimates take into account that *enrollment in the marketplaces and nongroup insurance outside the marketplaces*, both among those eligible for tax credits and those not, *is still*

*growing*. All analysts agree that it takes at least a few years for people to learn about available financial assistance and the changes to the insurance markets. Therefore, if the tax credits continue to flow, enrollment in nongroup insurance will be higher in 2016 than it is in 2015. *Our estimates account for the loss of coverage of those additional people who would have been insured in these*

*states in the presence of tax credits but would not have insurance if the Supreme Court finds for the plaintiffs*. In this way, our estimates take into account the full implications of such a finding.

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***The views expressed are those of the authors and should not be attributed to the Robert Wood Johnson Foundation or the Urban Institute, its trustees, or its funders.***

### ABOUT THE AUTHORS & ACKNOWLEDGMENTS

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### Notes

- 1 In our *first brief*, we estimated that the average nongroup premium would be 35 percent higher under a finding for the plaintiffs. This first estimate took changes in the expected age and smoking status of the enrollees into account and it took into account that many would shift from more comprehensive coverage (e.g., silver, gold, platinum) down to less comprehensive (bronze) plans as premiums rose. In our *second brief*, we held the characteristics of those who would enroll and the type of coverage they would choose constant, calculating a 55 percent premium increase for the median individual/family ineligible for tax credits to purchase the same coverage they would have otherwise post a decision for the plaintiffs. The brief showed this difference in dollars as opposed to the percentage difference shown here.
- 2 Note that because 60 percent of those affected live in the south and 60 percent are white, non-Hispanic does not mean that 60 percent of those affected both live in the South and are white, non-Hispanic.
- 3 DHHS/ASPE. March 31, 2015 Effectuated Enrollment Snapshot. <http://cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-06-02.html>