

A pending case before the United States Supreme Court has significant implications for health care coverage and the insurance market in Arkansas. At issue in the case, styled *King v. Burwell*,¹ is whether tax credits for low- and middle-income individuals can be accessed by individuals in states that have elected not to establish state-based health insurance marketplaces as provided by the Patient Protection and Affordable Care Act (PPACA).² A decision in the case is not expected until late June 2015, but states like Arkansas that have not yet established a state-based marketplace—meaning that a court decision in favor of the petitioners (*King*) could potentially eliminate access to tax credits and disrupt coverage for their citizens—are struggling to find alternative solutions. Some states view a decision for the petitioners as another opportunity to impede the implementation of the PPACA in their state. This fact sheet will discuss Arkansas's planned transition to a state-based marketplace, the determinants, issues presented in the *King* case and potential outcomes, and pending legislation in Arkansas related to the establishment of a state-based marketplace.

ARKANSAS'S HEALTH INSURANCE MARKETPLACE

Following a legislative decision not to pursue a state-based marketplace in 2011, Arkansas formally began the implementation of a federally-facilitated marketplace (FFM) partnership, wherein the state ceded control over most aspects of the FFM, including the information technology functions to the federal government with the exceptions of plan management and consumer assistance.³ In October 2013, the Arkansas FFM partnership became active, and Arkansans began selecting and enrolling in health insurance coverage. Importantly, the state's alternative to a traditional Medicaid expansion—the premium assistance model formally known as the Health Care Independence Program (HCIP)—relied and continues to rely on the backbone of the FFM partnership for plan certification and eligibility.⁴

In addition to the HCIP, the 89th General Assembly also passed the Arkansas Health Insurance Marketplace Act of 2013, signaling intent to establish a private, nonprofit Arkansas Health Insurance Marketplace (AHIM) board and to transition from the FFM partnership to a state-based marketplace.⁵ Currently, the AHIM board and staff plan to establish the small business functionality of the marketplace in 2016, with the goal to have a fully functional individual marketplace in 2017. The pending litigation before the Supreme Court in *King v. Burwell*, in addition to the recent failures of state-based marketplaces in Oregon and Nevada, however, have caused uncertainty for the AHIM board and local policymakers about whether and how to move forward with establishing a state-based marketplace.

KING V. BURWELL CASE

In the *King* case before the Supreme Court, the petitioners question the Internal Revenue Services' (IRS) interpretation of Section 1321 of the PPACA⁶ regarding whether premium tax credits and cost sharing reductions are legal in states that have not established their own marketplace and instead rely on the FFM.⁷ The IRS interpreted the statute in a way that extended tax-credits to individuals in states relying on the FFM, in addition to individuals purchasing coverage through state-based marketplaces. The outcome of this case is particularly important for the 34 states—and individuals residing in those states—that have not yet established a state-based marketplace, including Arkansas. Potential ramifications of a ruling in favor of the *King* petitioners are described in Table 1.

Table 1: Implications of Losing Tax Subsidies in States Without a State-Based Marketplace*

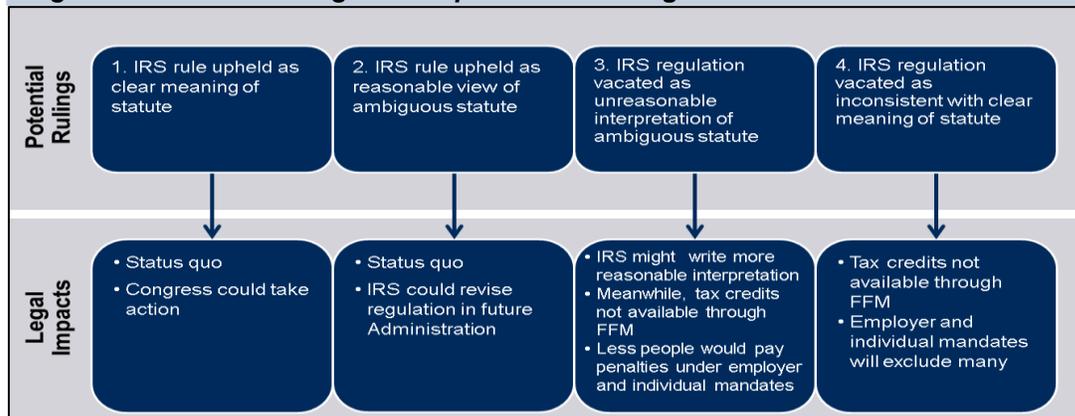
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|------------------------------|---|
| Insurance Carriers | <ul style="list-style-type: none"> • 70% decline in enrollment in individual plans in FFM⁸ • Young, healthy consumers discontinuing coverage – leave a risk pool of older, less healthy people with higher medical costs⁹ |
| Health Care Providers | <ul style="list-style-type: none"> • More than \$9 billion in lost revenue in a year⁷ • Closures or reduced services among hospitals and community health centers serving low-income patients¹⁰ |
| Consumers | <ul style="list-style-type: none"> • 9.6 million fewer people covered through FFM⁸ • 47% increase in insurance premiums as healthy people drop coverage⁸ • 9,800 more preventable deaths a year¹¹ • Millions of consumers at increased risk of medical debt¹² |

*Note: These statistics consider the 34 states in their entirety

KING V. BURWELL CASE, CONTINUED

A recent study indicated that in Arkansas, 128,000 tax-credit eligible individuals will lose access to these credits, and \$418.8 million will be lost from the value of tax credits and cost-sharing reductions.¹³ Even in the event of a ruling in favor of the petitioners, the legal impact on states—and ultimately on their citizens—may vary as described in Figure 1.¹⁴

Figure 1: Potential Rulings and Implications of King v. Burwell for Arkansas¹⁴



FUTURE OF ARKANSAS'S STATE-BASED MARKETPLACE

In anticipation of a June 2015 ruling in the *King* case, members of the Arkansas legislature filed two bills regarding Arkansas's progress toward a state-based marketplace. House Bill 1492 would repeal the Arkansas Health Insurance Marketplace Act of 2013⁴ and the Arkansas Health Insurance Marketplace Navigator, Guide, and Certified Application Counselors Act of 2013¹⁵—which requires licensure to assist with marketplace enrollment—and would remove references to the Arkansas Health Insurance Marketplace in the Health Care Independence Act of 2013. The intent of the bill is to terminate AHIM activities, dissolve the AHIM board, and prohibit the state's planned transition from a FFM-partnership model to a state-based marketplace.¹⁶

A second bill, Senate Bill 343, which was passed and is now Act 398 of 2015, explicitly references the *King* case.¹⁷ First, the bill calls for a halt in Arkansas's transition to a state-based marketplace until the final ruling of the case is announced. Second, the bill sets forth two paths concerning a state-based marketplace in Arkansas depending on the outcome of the case:

- If the petitioners (*King*) prevail and the ruling is clear that individuals in states relying on the FFM cannot access tax credits, a state-based marketplace will not be implemented in Arkansas without action by the General Assembly.
- If the respondents (*Burwell*) prevail, the state will continue on its current path toward a state-based marketplace.

The pending Supreme Court case has undoubtedly created uncertainty about the state's undertaking of a state-based marketplace. The case has significant implications for Arkansas beyond the availability of tax credits for Arkansans. The state relies on the marketplace plans to enroll eligible individuals for its innovative Health Care Independence Program, which has led to a more competitive insurance market. The state has also relied on the marketplace to extend the reach of its payment and delivery system reform efforts. These efforts could be at risk depending on the Supreme Court's ruling.

RESOURCES

¹ *King v. Burwell*, 759 F.3d 358 (4th Cir. 2014), cert. granted, 135 S. Ct. 475 (2014).

² *The Patient Protection and Affordable Care Act*, 2010.

³ Governor Beebe Letter to Secretary Sebelius, December 12, 2012.

⁴ *Act 1497* and *Act 1498* of 2013.

⁵ *Act 1500* of 2013.

⁶ 45 C.F.R. § 155

⁷ Buettgens M, Holahan J, Recht H. "Health Care Spending by Those Becoming Uninsured If the Supreme Court Finds for the Plaintiff in King v. Burwell Would Fall by at Least 35 Percent." Washington, DC: *The Urban Institute*, February 2015. Accessed March 4, 2015, http://www.rwif.org/content/dam/farm/reports/issue_briefs/2015/rwif418006.

⁸ Saltzman E, Eibner C. "The Effect of Eliminating the Affordable Care Act's Tax Credits in Federally Facilitated Marketplaces." Santa Monica, CA: RAND Corporation, 2015.

Accessed March 4, 2015, http://www.rand.org/pubs/research_reports/RR980.html.

⁹ "King v. Burwell: What a Subsidy Shutdown Could Mean for Insurers." *The Commonwealth Fund Blog*, February 2015. Accessed March 3, 2015,

<http://www.commonwealthfund.org/publications/blog/2015/feb/king-v-burwell-what-shutdown-could-mean-insurers>.

¹⁰ "King v. Burwell: What a Subsidy Shutdown Could Mean for Health Care Providers." *The Commonwealth Fund Blog*, February 2015. Accessed March 3, 2015,

<http://www.commonwealthfund.org/publications/blog/2015/feb/king-v-burwell-what-shutdown-could-mean-providers>.

¹¹ Sommers B, Long S, Baicker K. "Changes in Mortality After Massachusetts Health Care Reform: A Quasi-Experimental Study." *Annals of Internal Medicine*, 2014; 160(9): 585-93. doi:10.7326/M13-2275.

¹² "King v. Burwell: What a Subsidy Shutdown Could Mean for Consumers." *The Commonwealth Fund Blog*, February 2015. Accessed March 3, 2015,

<http://www.commonwealthfund.org/publications/blog/2015/feb/king-v-burwell-what-shutdown-could-mean-consumers>.

¹³ Blumberg L, Buettgens M, Holahan J. "The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums." Washington, DC: *The Urban Institute*, January 2015. Accessed March 3, 2015, <http://www.urban.org/UploadedPDF/2000062-The-Implications-King-vs-Burwell.pdf>.

¹⁴ "Potential Outcomes and Implications of King v. Burwell Decision." *Manatt Health Solutions*, February 27, 2015. Conference call document provided to the Arkansas Center for Health Improvement.

¹⁵ *Act 1439* of 2013.

¹⁶ *HB 1492* of 2015.

¹⁷ *Act 398* of 2015.