Industry Analysis

Fate of ACA Subsidies Lies in Supreme Court

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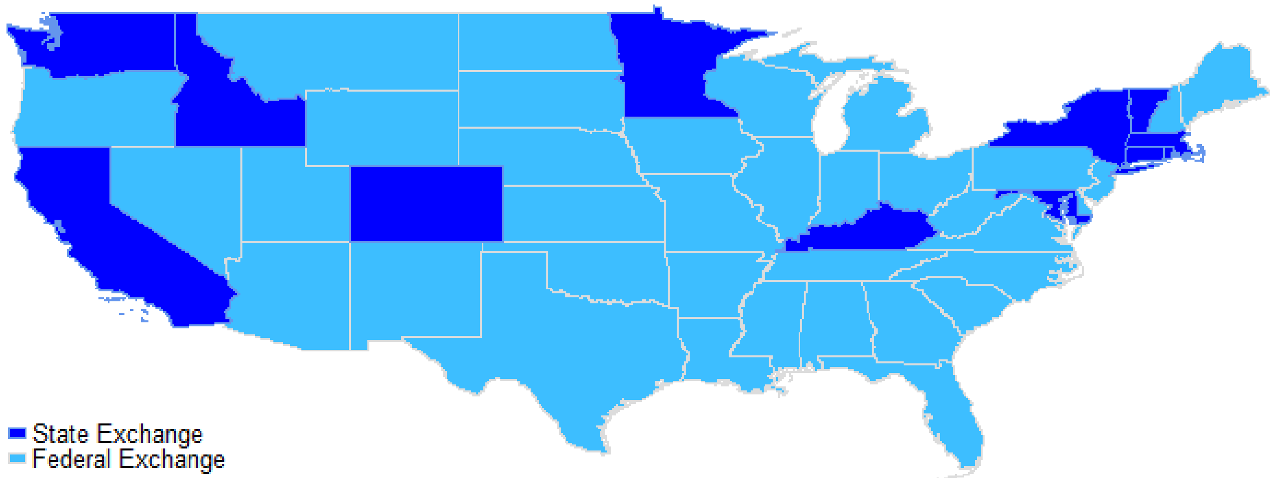
- **Subsidies for over 9 million people in federally-run exchanges in 34 states at risk**
- **Non-group premiums could rise over 30% in states enrolled in federal exchanges**
- **Healthcare providers face financial challenges if Court rules against federal subsidies**
- **Downward trend in healthcare costs and number uninsured could be jeopardized**

The Supreme Court started hearing arguments today in *King v. Burwell*, a case which could have major implications for the Affordable Care Act (ACA). The petitioners in the case insist that people buying insurance in the federal exchanges are not entitled to subsidies (tax credits), as text in the law states that financial assistance shall only be available for those enrolling through exchanges "established by the *state*." Arguments for and against the federally-based subsidies will focus on whether the law's intent was to limit subsidies to those who buy them in state-run exchanges. Part focus will be on a rule passed by the IRS in 2012 declaring that subsidies should be made available to all, regardless of whether insurance was bought through a state or federally-run exchange. This rule was based on what they believed was the best reading of what Congress had originally intended (*contextual interpretation*).

Aside from the legalese and political undertones of the petition are the economic realities associated with undoing subsidies in a non-trivial share of states. Currently there are 34 states that use the federal healthcare marketplace in place of a state-run exchange, including many Southern states which tend to have higher levels of poverty and larger minority populations. These states would thus be ineligible for subsidies if the Supreme Court was to rule in favor of the petitioners (against the ACA). In those states, over 9.3 million people could lose the subsidies designed to help low-to-moderate income individuals afford insurance. As a result, 8.2 million would likely become uninsured, thereby increasing the risk pool within these states– healthy individuals are more likely to opt out without subsidies. In fact, some estimates suggests that average annual non-group premiums for the 4.9 million people that previously could afford insurance would increase by $1400, or 35%.

In terms of the broader implications for the industry, healthcare providers, especially hospitals or ambulatory care services in low-income or rural areas, will be especially at risk. Many healthcare providers have made significant investments to adapt to and benefit from the influx of newly insured patients ACA subsidies would bring; therefore, a ruling in favor of the petitioners would likely have an adverse effect on business conditions. This is evidenced by the submission of briefs in favor of maintaining the subsidies in states where exchanges are managed by the federal government. These factors would imply upward pressure on aggregate healthcare costs and undo the recent slowdown in healthcare spending (bending of the cost curve), returning healthcare spending to its previous unsustainable path. On the other hand, a ruling in favor of the petitioners could allow Congress to improve upon existing provisions or to completely overhaul the ACA; however, this would generate a great deal of uncertainty for all stakeholders. Ultimately, *King v. Burwell* has the potential to undermine one of the most tangible achievements of the ACA thus far — the undeniable increase in the rate of insured Americans.

Figure 1
Breakdown of Federal and State Run Exchanges



Source: Urban Institute
*CSRs- cost-sharing reductions

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