The Heritage Foundation

ISSUE BRIEF

No. 4400 | MAY 4, 2015

Responding to *King v. Burwell*: Congress's First Step Should Be to Remove Costly Mandates Driving Up Premiums

Edmund F. Haislmaier and Drew Gonshorowski

The Supreme Court is expected to issue its decision in *King v. Burwell* before the end of June. Should the Court reject the Obama Administration's regulatory interpretation of the provisions of the Affordable Care Act (ACA) at issue in the case, the Treasury would be barred from paying health insurance subsidies to individuals who obtained coverage thorough Healthcare.gov, the federally run exchange for the 34 states that have not established their own state-based exchanges.

In considering its response, Congress should keep in mind both that a fundamental flaw of the ACA was its imposition of new regulations that made health insurance more expensive for millions of Americans and that, in large part, the ACA's health insurance subsidies are intended to mask this effect.

Based on our analysis, exempting affected individuals and health plans from the biggest ACA insurance mandates could result in reductions of as much as 44 percent in premiums for younger adults and about 7 percent for pre–retirement age adults.

Consequently, any congressional response should first focus on exempting individuals, employers, and insurance plans in states without state-run exchanges from the ACA regulations and mandates that increased health insurance premiums to start with. Making the reduction of coverage cost the top priority is also a first step toward a post-Obamacare market in which more affordable coverage reduces the number of individuals who might need assistance, as well as the size and scope of such assistance.

Removing these costly mandates would also remedy one of the biggest inequities created by the ACA: Millions of Americans who have been forced to pay more for health insurance as a result of the ACA's mandates and regulations do not qualify for any offsetting subsidies. In fact, the number of such individuals is three times greater than the number of those whose eligibility for ACA subsidies is at issue in the *King* case.[1]

ACA Insurance Mandates Drive Up Premiums

The three insurance regulations in the ACA that most affect health insurance premiums are the restrictions on age rating premiums, the new benefit mandates, and the so-called minimum actuarial value requirements. These mandates drive up premiums both for those who receive subsidies and those who do not receive subsidies.

ACA Age Rating Restrictions. The ACA limits age variation of premiums for adults to a ratio of three to one.[2] For example, an insurer is not permitted to charge a 64-year-old a rate that is more than three times the rate that it charges a 21-year-old for the same plan. Yet the natural age variation in medical costs among adults is about five to one.[3] Thus, the effect of this mandated "rate compression" is to force insurers to artificially underprice coverage for older adults and artificially overprice coverage for younger adults. ***A review of the actuarial studies finds that the ACA three-to-one limitation increased premiums for younger adults by about one-third.***[4]

This paper, in its entirety, can be found at
http://report.heritage.org/ib4400

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Furthermore, while younger adults tend to be in better health, they also tend to earn less than older workers. That combination makes young adults more sensitive to changes in the price of health insurance and more likely to decline coverage if it becomes more expensive. Thus, imposing rating rules that artificially increase health insurance premiums for young adults is not only unfair, but also counterproductive since it increases the cost of coverage for those who are most likely to be uninsured already.

ACA Benefit Mandates. The ACA requires health plans to cover a set of "essential health benefits," as well as a list of "preventive services" for which plans are prohibited from charging enrollees any copayments.[5] Prior to implementation of the law, many states contracted for actuarial studies to determine the effects of those and other provisions on premiums in their health insurance markets.[6] ***A review of those studies finds that the ACA benefit mandates increased premiums by an average of 9 percent.***

States that imposed more benefit mandates prior to the ACA showed below-average premium increases, as their existing coverage requirements were closer to the new federal requirements. Conversely, states with fewer benefit mandates prior to the ACA experienced larger than average premium increases, as there was a larger gap between the new federal requirements and those in prior state law.

The majority of the average premium increase (about seven to eight of the nine percentage points) is attributable to the essential health benefits requirement, with the remainder (about one to two of the nine percentage points) attributable to the preventive services mandate.[7]

ACA Minimum Actuarial Value Requirement. The ACA's minimum actuarial value requirement effectively establishes a floor for what plans must pay toward the cost of covered services.[8] The law standardizes plans into four "metal" tiers (labeled Bronze, Silver, Gold, and Platinum) according to actuarial value. It specifies that the actuarial values must be 60 percent for Bronze plans, 70 percent for Silver plans, 80 percent for Gold plans, and 90 percent for Platinum plans. Thus, plans may no longer have an actuarial value below 60 percent. ***A review of the actuarial studies finds that this minimum actuarial value requirement increased the cost of the least expensive plans by an average of 8 percent.***

The studies also found that the affected plans typically had actuarial values in the range of 50 percent to 60 percent. That is noteworthy as, in response to complaints about the ACA increasing premiums,

1. In 2014, the combined total enrollment for the two market segments (individual and small-group) that are directly affected by the provisions discussed in this paper was just over 28 million individuals.
2. 42 USC § 300gg(a)(1)(A)(iii).
3. See Dale H. Yamamoto, "Health Care Costs—From Birth to Death," Society of Actuaries, Health Care Cost Institute *Independent Report Series* No. 2013-1, June 2013, http://www.healthcostinstitute.org/files/Age-Curve-Study_0.pdf (accessed May 1, 2015).
4. See, for example, James T. O'Connor, "Comprehensive Assessment of ACA Factors That Will Affect Individual Market Premiums in 2014," Milliman, Inc., April 25, 2013, http://www.ahip.org/MillimanReportACA2013/ (accessed May 1, 2015), and Oliver Wyman, "Impact of Changing Age Rating Bands in 'America's Healthy Future Act of 2009,'" September 28, 2009.
5. The essential health benefit mandates are at 42 USC § 18022 and are imposed on health insurance plans in the individual and small-group markets by 42 USC § 300gg–6. The preventive services mandate is at 42 USC § 300gg–13.
6. See, for example, O'Connor, "Comprehensive Assessment of ACA Factors," and America's Health Insurance Plans, Center for Policy and Research, "Research Findings: Independent Studies Estimate the Cost and Coverage Impact of the Affordable Care Act in Selected States," December 13, 2012.
7. In its July 2010 regulatory impact analysis that accompanied its regulation implementing the preventive services mandate, the Department of Health and Human Services (HHS) estimated that imposition of the preventive services mandate would increase premiums by about 1.5 percent. See "Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act," *Federal Register*, Vol. 75, No. 137 (July 19, 2010), pp. 41737–41738, http://www.gpo.gov/fdsys/pkg/FR-2010-07-19/pdf/2010-17242.pdf (accessed May 1, 2015). It is also relevant to note that the law authorizes HHS to revise and expand the list of required preventive services continually, which HHS has done. Specifically, the law requires coverage of any preventive service given a rating of "A" or "B" by the U.S. Preventive Services Task Force. The number of items on that list has grown from 45 in 2010 (when the requirement was first imposed) to 55 for 2015. (To compare the lists, see ibid., pp. 41741–41743, and "USPSTF A and B Recommendations," U.S. Preventive Services Task Force, October 2014, http://www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations [accessed May 1, 2015].) Consequently, the costs imposed by the preventive services mandate would now be marginally higher than what HHS estimated in 2010.
8. As specified in 42 USC § 18022 and imposed on individual and small-group market plans by 42 USC § 300gg–6.

CHART 1

Removing ACA Regulations Would Lower Insurance Premiums

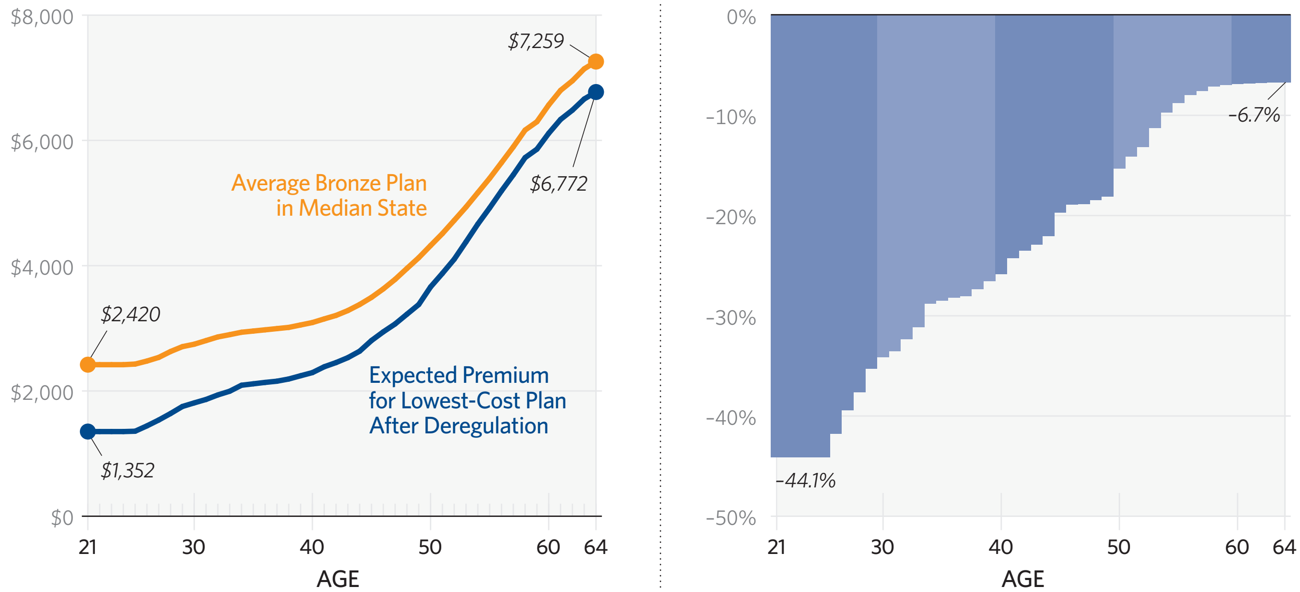
By repealing the Affordable Care Act's federal benefit mandates, actuarial value requirements, and age rating restriction, premiums would decrease in the individual health insurance market. Figures shown below are based on 2015 premiums for single adults with an average Bronze Plan in a median-cost state.

DIFFERENCES IN DOLLARS

Removing the regulations would save a 21-year-old nearly $1,100 a year and a 64-year-old would save nearly $500.

DIFFERENCES IN PERCENTAGES

Based on those lower premiums, those in their early 20s would save around 44 percent, while those in their 60s would save around 7 percent.



Source: Authors' calculations based on data from Healthcare.gov and analyses conducted for various state governments by actuarial consultants.

IB 4400 heritage.org

even some supporters of the ACA have suggested amending the law to create a new class of "Copper" plans with an actuarial value of 50 percent.

Eliminating Costly ACA Mandates Drives Down Premiums

Chart 1 illustrates the estimated combined effects on premiums of Congress's exempting affected individuals and plans from the ACA's benefit mandates, minimum actuarial value requirement, and age rating restrictions. It compares, by enrollee age, the average premium for a Bronze-level plan in a median-cost state with the expected premium for the likely lowest-cost plan that could be offered once the ACA's requirements and restrictions are removed. ***Based on our estimates, premiums for younger adults could be reduced by as much as 44 percent, and premiums for pre–retirement age adults could decrease by about 7 percent.***

Rolling Back Costly ACA Mandates

The ACA's flawed policies have resulted in an increase in the cost of health coverage, and ACA subsidies are intended to mask that effect. Thus, any response by Congress to the Supreme Court's ruling in *King v. Burwell* should start by clearing away those flawed policies and providing residents of the affected states with relief from the ACA insurance mandates that made their insurance more expensive in the first place.

Specifically, besides eliminating the ACA individual and employer mandates, Congress should exempt insurance plans in states that have no state exchange from the ACA's age rating restrictions, benefit mandates, and minimum actuarial value requirement. By bringing down the cost of premiums and restoring state authority over the regulation of health insurance, these exemptions would give states the freedom and flexibility to advance solutions that might further reduce coverage costs.

*—**Edmund F. Haislmaier** is Senior Research Fellow in the Center for Health Policy Studies, of the Institute for Family, Community, and Opportunity, at The Heritage Foundation. **Drew Gonshorowski** is a Senior Policy Analyst in the Center for Data Analysis, of the Institute for Economic Freedom and Opportunity, at The Heritage Foundation.*