



February 24, 2015

The Honorable Sylvia Mathews Burwell
Secretary of the U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Premium rate filing implications of *King v. Burwell*

Dear Madam Secretary:

On behalf of the American Academy of Actuaries¹ Health Practice Council, I would like to urge you to consider implementing measures to counter the potential adverse consequences on health insurance premium rate filings in the event the Supreme Court rules for the petitioners in *King v. Burwell*. If no action is taken to allow enrollees access to premium subsidies in states participating in the federally facilitated marketplace (FFM),² there will be fewer individual market enrollees and higher average health care costs in those states. As a result, premiums for 2015, which are already in place, and premiums for 2016, which need to be submitted prior to the court's ruling, would likely be inadequate to cover claims. The U.S. Department of Health and Human Services (HHS) and state authorities should consider allowing contingent premium rate submissions and/or revised submissions to help mitigate the potential for inadequate 2016 premiums in FFM states.

Eliminating subsidies in FFM states would likely result in significantly fewer individual market enrollees and higher average health care costs

Along with the individual mandate, and other provisions of the Affordable Care Act (ACA), the premium tax credits are designed to increase participation in the health insurance market and help ensure that the insurance risk pools include not only higher-risk individuals, but also lower-risk ones. Without these provisions, the law's guaranteed issue and modified community rating requirements would put upward pressure on premiums.

If federal premium tax credits are no longer available to eligible enrollees in FFM states, enrollment could decline precipitously. Moreover, individuals with high-cost health care needs would be more likely to remain enrolled, while those with low-cost health care needs would be more likely to exit the market. Such adverse selection would cause average health care costs, and therefore premiums, to rise. Estimates from the Urban Institute suggest that nearly 10 million

¹ The American Academy of Actuaries is an 18,000+ member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

² The federal government could act to make premium subsidies available in FFM states. FFM states could make premium subsidies available by establishing a state-based exchange.

fewer people would have coverage in the individual market and the change in the health mix of enrollees would increase premiums by 35 percent in the affected states.³ Another analysis from the RAND Corporation estimates that eliminating the premium subsidies in *all states* would result in a premium increase of nearly 45 percent.⁴

Issuers are limited in their ability to change premiums for 2015 and 2016

Although eliminating premium tax credits in FFM states would result in higher average health care costs in the individual market, the ability for issuers to increase premiums to meet those higher costs would be limited for the 2015 and 2016 plan years. For 2015, premiums are already in place and ACA regulations prohibit mid-year premium changes. If individual market plans experience significant disenrollment during the latter months of 2015, premiums likely would be insufficient to cover claims. This raises solvency concerns, especially among issuers for whom exchange business is a relatively large share of their book of business.

Based on the Centers for Medicare & Medicaid Services' (CMS) Center for Consumer Information and Insurance Oversight (CCIIO) 2016 letter to issuers in the FFM, issuers are required to file their 2016 plan year premiums by May 15, and the deadline for states to approve rates is August 25.⁵ The May 15 submission deadline likely will occur before the Court issues its ruling. Although some states have flexibility in holding rate filings open until the August 25 deadline, many states have strict timeframes regarding how much time can elapse between a rate-filing submission and when that filing must be approved or denied (e.g., 30 days). If issuers are not allowed to submit revised rates after the CMS deadline, premiums likely would be insufficient to cover claims if the Court rules in favor of the petitioners.

Allowing contingent premium rate submissions and/or revised submissions would help mitigate the potential for inadequate 2016 premiums

If no action is taken to allow enrollees access to premium subsidies in the affected states, there are options to help mitigate the potential for inadequate 2016 premiums. One option is for HHS and states to allow issuers to submit two sets of contingent premium rates—one set reflecting pricing assumptions that would be appropriate if premium tax credits continue to be available and the other reflecting pricing assumptions that would be appropriate if premium tax credits are no longer allowed. Although issuers can submit only one unified rate review template (URRT) to the federal Health Insurance Oversight System (HIOS), this option would allow issuers to submit both sets of rates and corresponding justifications in the rate filings submitted to states.

Submitting both sets of rates and corresponding justifications would make it feasible for revised rates to be approved within the timeframes needed to implement the rates by the start of the open enrollment period.

Another option is to allow issuers in affected states more flexibility to revise and resubmit their rates should the Court rule that premium tax credits are not available. States that can hold filings open until the approval deadline could consider doing so to allow issuers to amend the rates. In states that have stricter timeframes, HHS could consider allowing revised filings to be submitted after the May 15 submission deadline. Using an open enrollment period and approval deadlines

³ Linda J. Blumberg, Matthew Buettgens, and John Holahan, "[The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums](#)," Robert Wood Johnson Foundation and the Urban Institute. January 2015.

⁴ Christine Eibner and Evan Saltzman, "[Assessing Alternative Modifications to the Affordable Care Act: Impact on Individual Market Premiums and Insurance Coverage](#)," RAND Corporation. 2014.

⁵ Available from: http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2016_Letter_to_Issuers_2_20_2015.pdf.

that are similar to those used in the 2015 plan year would help provide adequate time to review any revised rate-filing submissions.

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The American Academy of Actuaries' Health Practice Council encourages you to consider implementing these options in affected states to help ensure that premiums for 2016 are adequate. Otherwise, insurer solvency could be threatened. We would welcome the opportunity to discuss our concerns and comments with you in more detail. If you have questions or would like to meet with us, please contact Heather Jerbi, the Academy's assistant director of public policy, at 202.785.7869 or Jerbi@actuary.org.

Sincerely,

Catherine Murphy-Barron, MAAA, FSA
Vice President, Health Practice Council
American Academy of Actuaries

Cc: Sen. Ben Nelson, Chief Executive Officer, NAIC
Monica J. Lindeen, President, NAIC
Members of the U.S. House of Representatives
Members of the U.S. Senate