The Heritage Foundation

ISSUE BRIEF

No. 4356 | FEBRUARY 23, 2015

Eight Groups Harmed by the ACA's Flawed Policies

Alyene Senger

The Supreme Court will hear oral arguments on March 4 in the case of *King v. Burwell*—a challenge to an IRS rule under the Affordable Care Act (ACA) allowing the payment of premium subsidies to individuals enrolled in the federal exchange. Supporters of the ACA have made various claims about the harm that would supposedly occur were the court to find for the plaintiffs (King) in this case.[1] While it is not surprising that those claims have attracted attention, an important, though often missing, context is the harm being caused by the ACA itself.

Following are eight groups of individuals who have been, or will be, specifically harmed by the law's flawed policies:

1. **Taxpayers.** The federal government continues to run annual budget deficits, incurring ever-mounting levels of national debt largely fueled by the existing entitlement programs. Despite the nation's current fiscal issues, the ACA creates a new entitlement program (exchange subsidies) and expands an already broken one (Medicaid), costing almost $2 trillion over the next decade.[2] To offset some of this new spending, the law includes 18 new or increased taxes that cost taxpayers an estimated $771 billion from 2013 to 2022.[3]

2. **Seniors.** To partially offset the ACA's new spending, the law contains spending cuts to Medicare that amount to $716 billion from 2013 to 2022.[4] The Medicare Trustees have warned since the law's passage that if these cuts are implemented as the law requires, they will significantly impact seniors' access to and quality of care.[5] For example, the law reduces payments in the Medicare Advantage (MA) program, the private insurance option under Medicare, by $156 billion from 2013 to 2022.[6] These cuts are already causing MA plans to adjust their benefit packages by restricting provider networks. The end result of course is that seniors have fewer provider options and in some cases are forced to find new doctors.[7]

3. **Workers**. The ACA requires employers with 50 or more full-time workers (defined as a minimum of 30 hours a week), to either offer government-approved health coverage or pay a penalty, starting in 2014. However, the Obama Administration issued regulations that delayed and then phased in the implementation and enforcement of the employer mandate and related provisions of the ACA.[8] There is a plethora of anecdotal evidence that employers are cutting workers' hours to fall below the 30-hour threshold.[9] Moreover, in the first nine months of 2014, nearly 5 million people were no longer receiving employer-sponsored coverage.[10]

4. **Faith-Based Employers.** The ACA requires all employers that offer non-grandfathered health plans to pay for coverage for contraception, sterilization, and abortion-inducing drugs and devices. While this mandate exempts formal houses of wor-

This paper, in its entirety, can be found at
http://report.heritage.org/ib4356

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

ship, other religious employers, such as hospitals, schools, social-service organizations, as well as for-profit businesses, must comply or risk steep fines of up to $100 per employee per day. Many employers believe that complying with this mandate would violate the tenets of their faith. Over 300 plaintiffs in more than 100 cases have filed lawsuits over the rule, with the vast majority of plaintiffs winning temporary or permanent injunctions against the coercive anti-conscience mandate.[11]

5. **Doctors.** The ACA exacerbates the worst features of our health care system by doubling down on the third-party payment arrangement that compromises the independence and integrity of the medical profession. As the government expands its role as payer, doctors face new layers of bureaucracy and administrative burden.[12] All of this contributes to physicians' already low morale. One survey found that in 2014, 46 percent of physicians gave the ACA a failing grade as the vehicle for health care reform.[13]

1. Edmund F. Haislmaier, "*King v. Burwell*: Assessing the Claimed Effects of a Decision for the Plaintiffs," Heritage Foundation *Issue Brief* No. 4349, February 20, 2015, http://www.heritage.org/research/reports/2015/02/king-v-burwell-assessing-the-claimed-effects-of-a-decision-for-the-plaintiffs.
2. Congressional Budget Office, "Insurance Coverage Provisions of the Affordable Care Act—CBO's January 2015 Baseline," Table B-1, https://www.cbo.gov/sites/default/files/cbofiles/attachments/43900-2015-01-ACAtables.pdf (accessed February 20, 2015).
3. Joint Committee on Taxation, "Estimated Revenue Effects of a Proposal to Repeal Certain Tax Provisions Contained in the 'Affordable Care Act ("ACA"),'" June 15, 2012, and Congressional Budget Office, "Table 2: CBO's May 2013 Estimate of the Budgetary Effects of the Insurance Coverage Provisions Contained in the Affordable Care Act," https://www.cbo.gov/sites/default/files/cbofiles/attachments/43900-2013-05-ACA.pdf (accessed February 20, 2015). The total amount of tax revenue collected from the individual mandate, employer mandate, and 40 percent excise tax on high-cost health plans comes from the CBO's May 2013 estimate. For all other taxes, the amount of tax revenue totaled comes from the Joint Committee on Taxation's June 2012 estimation.
4. Douglas W. Elmendorf, letter to Speaker of the House John Boehner (R–OH), July 24, 2012, pp. 13–14, http://www.cbo.gov/sites/default/files/cbofiles/attachments/43471-hr6079.pdf (accessed September 25, 2014). The CBO estimates the cost of repealing the ACA, which would increase Medicare spending due to the absence of the ACA's Medicare cuts. If the law were repealed, "[w]ithin Medicare, net increases in spending for the services covered by Part A (Hospital Insurance) and Part B (Medical Insurance) would total $517 billion and $247 billion, respectively. Those increases would be partially offset by a $48 billion reduction in net spending for Part D."
5. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *2014 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds,* July 28, 2014, pp. 208 and 209, http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/downloads/tr2014.pdf (accessed February 17, 2015).
6. Elmendorf, letter to Speaker of the House John Boehner (R–OH), July 24, 2012, p. 14.
7. Melinda Beck, "UnitedHealth Culls Doctors From Medicare Advantage Plans," *The Wall Street Journal*, November 16, 2013, http://www.wsj.com/news/articles/SB10001424052702303559504579200190614501838?mod=WSJ_hp_LEFTWhatsNewsCollection (accessed February 17, 2015).
8. "Shared Responsibility for Employers Regarding Health Coverage; Final Rule**,**" *Federal Register,* Vol. 79, No. 29, February 12, 2014, http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/html/2014-03082.htm (accessed February 20, 2015). The authority of the Administration to take those actions is being challenged in another lawsuit, *United States House of Representatives v. Sylvia Mathews Burwell*, Case No. 14-cv-01967, http://online.wsj.com/public/resources/documents/HouseACAcomplaint112014.pdf (accessed February 20, 2015).
9. Jed Graham, "ObamaCare Employer Mandate: A List Of Cuts to Work Hours, Jobs," *Investor's Business Daily*, September 5, 2014, http://news.investors.com/politics-obamacare/090514-669013-obamacare-employer-mandate-a-list-of-cuts-to-work-hours-jobs.htm (accessed February 13, 2015).
10. Edmund F. Haislmaier and Drew Gonshorowski, "Q3 2014 Health Insurance Enrollment: Employer Coverage Continues to Decline, Medicaid Keeps Growing," Heritage Foundation *Backgrounder* No. 2988, January 29, 2015, http://www.heritage.org/research/reports/2015/01/q3-2014-health-insurance-enrollment-employer-coverage-continues-to-decline-medicaid-keeps-growing.
11. Becket Fund for Religious Liberty, "HHS Information Central," http://www.becketfund.org/hhsinformationcentral/ (accessed February 17, 2015).
12. Amy Anderson, "The Impact of the Affordable Care Act on the Health Care Workforce," Heritage Foundation *Backgrounder* No. 2887, March 18, 2014, http://www.heritage.org/research/reports/2014/03/the-impact-of-the-affordable-care-act-on-the-health-care-workforce.
13. The Physicians Foundation, "2014 Survey of America's Physicians: Practice Patterns and Perspectives," p. 15, http://www.physiciansfoundation.org/uploads/default/2014_Physicians_Foundation_Biennial_Physician_Survey_Report.pdf/ (accessed February 12, 2015).

6. **Young Adults.** The ACA imposes age-rating rules that limit how much premiums can vary based on age. Younger adults typically consume less care, yet these rating rules required them to pay artificially high premiums, while older adults typically consume more care and pay artificially low premiums. Indeed, in 11 states, average premiums for 27-year-olds increased by 100 percent or more for comparable plans from 2013 to 2014, when Obamacare's changes were implemented.[14]

7. **Current Medicaid Enrollees.** The Medicaid program has a long and well-documented history of less access to care and poorer health outcomes than private insurance.[15] However, instead of reforming the program to work better for existing beneficiaries, the ACA expands the program. The Congressional Budget Office (CBO) estimates that 16 million more people will be added to the Medicaid roles by 2025.[16]

8. **The Uninsured.** After a decade of full implementation, the CBO estimates that 31 million people will be without insurance in 2025.[17] The ACA requires Americans to purchase government-approved health coverage or pay an individual mandate penalty. Although the majority of uninsured will qualify for an exemption, millions will not. In fact, the CBO expects that in 2016, 4 million individuals will face the mandate penalty, totaling $4 billion.[18] Of those facing the penalty, 69 percent are expected to be below 400 percent of the federal poverty level.

Finally, even those individuals receiving premium subsidies through an exchange may face unexpected challenges. Due to the complex design of the ACA premium subsidy, it is much more likely that the subsidy will be inaccurately calculated. Any enrollee who receives a greater subsidy than he was eligible for will be required to repay the excess subsidy to the Internal Revenue Service when he files his annual tax returns. Repayments could be significant, depending on the enrollee.[19]

While *King v. Burwell* is currently in the spotlight, in the end, the ACA and its flawed policies are at the root of the problems plaguing this law and are responsible for its harmful effects.

*—**Alyene Senger** is a Research Associate in the Center for Health Policy Studies, of the Institute for Family, Community, and Opportunity, at The Heritage Foundation.*

14. Drew Gonshorowski, "How Will You Fare in the Obamacare Exchanges?" Heritage Foundation *Issue Brief* No. 4068, October 16, 2013, http://www.heritage.org/research/reports/2013/10/enrollment-in-obamacare-exchanges-how-will-your-health-insurance-fare.
15. Kevin D. Dayaratna, "Studies Show: Medicaid Patients Have Worse Access and Outcomes than the Privately Insured," Heritage Foundation *Backgrounder* No. 2740, November 7, 2012, http://www.heritage.org/research/reports/2012/11/studies-show-medicaid-patients-have-worse-access-and-outcomes-than-the-privately-insured.
16. Congressional Budget Office, "Insurance Coverage Provisions of the Affordable Care Act—CBO's January 2015 Baseline," Table B-2, https://www.cbo.gov/sites/default/files/cbofiles/attachments/43900-2015-01-ACAtables.pdf (accessed February 20, 2015).
17. Congressional Budget Office, "Insurance Coverage Provisions of the Affordable Care Act—CBO's January 2015 Baseline," Table B-2.
18. Congressional Budget Office, "Payments of Penalties for Being Uninsured Under the Affordable Care Act: 2014 Update," June 2014, Table 1, https://www.cbo.gov/sites/default/files/45397-IndividualMandate.pdf (accessed February 20, 2015).
19. Alyene Senger, "Obamacare Makes Tax Time More Taxing," The Daily Signal, February 6, 2015, http://dailysignal.com/2015/02/06/obamacare-makes-tax-time-taxing/.