

# Halbig v Burwell: Potential Implications for ACA Coverage and Subsidies

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A ruling from the U.S. Court of Appeals for the D.C. Circuit on Halbig v. Burwell expected imminently. The case challenges the Obama Administration's interpretation of the Affordable Care Act (ACA), relying upon a single phrase in the law's text. The plaintiff claims the phrase prohibits residents of moderate income from receiving financial assistance (i.e., federal subsidies) for the purchase of private insurance coverage if their state does not run its own Health Insurance Marketplace (a.k.a. exchange), and has instead left this responsibility to the federal government. As of this writing, 34 states have chosen to leave administration of their Marketplaces to the federal government, with 15 of those states taking on some of the responsibilities of administering the law themselves via either formal or informal partnership with the federal government. As a result, a decision for the plaintiff could have widespread implications across the country.

As others have indicated, a ruling for the plaintiff at this time is far from a final decision in this case.1 However, we can estimate the implications of an ultimate ruling in their favor using the Urban Institute's Health Insurance Policy Simulation Model (HIPSM).2 Estimates are for 2016, assuming that individual and employer behavioral changes associated with the ACA's coverage provisions will be fully phased in, and taking into account current state decisions regarding the expansion of Medicaid. This analysis demonstrates that prohibiting individuals from receiving federal subsidies for health insurance coverage in states that rely on the federal government to administer their Marketplaces would broadly undermine implementation of the

ACA in those 34 states, with substantial coverage and financial implications for their residents.

Table 1 shows that 11.8 million individuals are expected to enroll in the 34 Federally Facilitated Marketplaces (FFMs) in 2016. Of those, 7.3 million people are estimated to receive federal subsidies to assist in the purchase of private insurance through the new Marketplaces. Many of the lowest income among those 7.3 million people also receive cost-sharing subsidies to lower their co-payments, deductibles and co-insurance. A decision in favor of Halbig translates into a loss of \$36.1 billion in 2016 of funds that would otherwise go to individuals and families with incomes below 400 percent of the federal poverty level, with spillover effects to state economies also expected from the sizable reduction in federal dollars flowing into these states. Losses would be as high as \$4.8 billion in Florida and \$5.6 billion in Texas.

Twenty-four of these 34 states also rejected the ACA's Medicaid expansion, meaning they are also foregoing large amounts of federal dollars while their providers are experiencing the Medicare and Medicaid payment cuts included in the law.<sup>3</sup>

Elimination of the financial subsidies would have a domino effect on other components of the ACA as well:

 The individual mandate, which requires most Americans to have health insurance coverage or pay a penalty is predicated on the presence of financial support for the purchase of coverage for those who could not otherwise afford it. Eliminating the subsidies means that many more residents of these states would face premium costs in excess of 8 percent of family income, exempting them from the penalties, making coverage unaffordable for many of them, and increasing the number of uninsured.

- In turn, the regulatory reforms prohibiting insurance companies from discriminating against those with past, current, or anticipated health problems, along with other consumer protections, are predicated on the individual mandate. If almost everyone participates in the insurance pools, all types of individuals can be covered at essentially an overall average price. However, if the pool shrinks appreciably without the subsidies available to draw in many healthy individuals, insurers are likely to advocate strongly for the repeal of these new protections. And they would have a strong case to make.
- 3. FFM states have the option of taking over responsibility running their state Marketplaces, transforming them into State Based Marketplaces (SBMs) and avoiding the consequences of a potential decision in favor of Halbig. In fact, a number of states continue to explore this as an option regardless of the case. As a practical matter, however, many of these states would find such a change extremely challenging from an administrative, resource, or political perspective.

Table 1. Estimated Enrollment and Subsidies for Purchase of Marketplace Plans in the 34 Federally Facilitated Marketplace States, 2016

State	Projected 2016 Total Marketplace Enrollment	Projected 2016 Subsidized Marketplace Enrollment	Estimated Subsidy Spending
Alabama	252,000	153,000	\$725,985,000
Alaska	51,000	36,000	\$156,420,000
Arizona	391,000	249,000	\$1,166,316,000
Arkansas	147,000	95,000	\$495,615,000
Delaware	34,000	21,000	\$93,975,000
Florida	1,437,000	931,000	\$4,756,479,000
Georgia	608,000	383,000	\$2,083,903,000
Illinois	566,000	315,000	\$1,420,965,000
Indiana	369,000	231,000	\$1,256,871,000
lowa	145,000	78,000	\$396,084,000
Kansas	169,000	98,000	\$435,610,000
Louisiana	305,000	187,000	\$1,019,337,000
Maine	82,000	55,000	\$279,510,000
Michigan	467,000	290,000	\$1,271,070,000
Mississippi	162,000	106,000	\$641,512,000
Missouri	349,000	215,000	\$1,039,095,000
Montana	98,000	60,000	\$264,780,000
Nebraska	136,000	71,000	\$330,008,000
New Hampshire	79,000	47,000	\$183,770,000
New Jersey	396,000	229,000	\$969,815,000
North Carolina	615,000	376,000	\$1,792,392,000
North Dakota	54,000	29,000	\$144,884,000
Ohio	498,000	322,000	\$1,383,312,000
Oklahoma	235,000	152,000	\$797,240,000
Pennsylvania	677,000	402,000	\$2,138,640,000
South Carolina	283,000	183,000	\$871,446,000
South Dakota	66,000	37,000	\$206,756,000
Tennessee	378,000	225,000	\$1,216,575,000
Texas	1,683,000	1,092,000	\$5,582,304,000
Utah	208,000	127,000	\$630,047,000
Virginia	451,000	260,000	\$1,159,860,000
West Virginia	68,000	48,000	\$210,000,000
Wisconsin	269,000	164,000	\$882,976,000
Wyoming	45,000	27,000	\$139,644,000
<b>Total FFM States</b>	11,773,000	7,293,000	\$36,143,196,000

Source: Health Insurance Policy Simulation Model (HIPSM) Notes:

Federally Facilitated Marketplace (FFM) states include states in which the federal government performs all Marketplace responsibilities, those with formal partnership agreements between the state and the federal government, and those taking on plan management responsibilities under informal or quasi-partnership arrangements.

<sup>2.</sup> Estimates assume individual and employer behavior is fully phased in by 2016.

Subsidy estimates include advanced premium tax credits and cost-sharing assistance.

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### **ABOUT THE AUTHORS & ACKNOWLEDGMENTS**

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# **Notes**

- See for example, Timothy Jost, "Courts won't void the Affordable Care Act over Semantics," Washington Post, July 9, 2014, <a href="http://www.washingtonpost.com/opinions/courts-wont-void-the-affordable-care-act-over-semantics/2014/07/09/5910c9d0-060b-11e4-a0dd-f2b22a257353">http://www.washingtonpost.com/opinions/courts-wont-void-the-affordable-care-act-over-semantics/2014/07/09/5910c9d0-060b-11e4-a0dd-f2b22a257353</a> story.html.
- <sup>2</sup> For more information on the Urban Institute's Health Insurance Policy Simulation Model (HIPSM), see: "The Urban Institute's Health Microsimulation Capabilities," <a href="http://www.urban.org/uploadedpdf/412154-Health-Microsimulation-Capabilities.pdf">http://www.urban.org/uploadedpdf/412154-Health-Microsimulation-Capabilities.pdf</a> for an overview and <a href="http://www.urban.org/UploadedPDF/412471-Health-Insurance-Policy-Simulation-Model-Methodology-Documentation.pdf">http://www.urban.org/UploadedPDF/412471-Health-Insurance-Policy-Simulation-Model-Methodology-Documentation.pdf</a> for a more detailed description of the model's methodology.
- John Holahan, Matthew Buettgens, Caitlin Carroll, Stan Dorn. November 2012. "The Cost and Coverage Implications of the ACA Medicaid Expansion: National and State-by-State Analysis." Report prepared for the Kaiser Commission on Medicaid and the Uninsured. <a href="http://www.urban.org/UploadedPDF/412707-The-Cost-and-Coverage-Implications-of-the-ACA-Medicaid-Expansion.pdf">http://www.urban.org/UploadedPDF/412707-The-Cost-and-Coverage-Implications-of-the-ACA-Medicaid-Expansion.pdf</a>.