



4. In response to these questions, I reached the following conclusions. First, if the IRS *is not* allowed to provide subsidies in the West Virginia Insurance Exchange, the premiums for the least-costly "bronze" individual insurance plan available to Mr. Klemencic in 2014 *will* exceed 8 percent of his expected income. Second, if the IRS *is* allowed to provide subsidies in the West Virginia Insurance Exchange, the premiums (net of any subsidy) for the least-costly "bronze" individual insurance plan available to Mr. Klemencic in 2014 *will not* exceed 8 percent of his expected income.

#### **Analysis -- First Question**

5. At the time of the preparation of this affidavit, premiums for the individual insurance plans to be offered in the West Virginia Insurance Exchange for coverage in 2014 -- including the least-costly bronze plan -- were not publicly available. For this reason, I had to estimate what they will be. I used a three-step approach:

(1) I estimated the 2013 premiums for the least-costly individual insurance plan that is currently available to Mr. Klemencic and meets the standards for a bronze plan that could be offered in an Insurance Exchange in 2014.

(2) I estimated whether the premiums for a plan that meets the standards for a bronze plan that could be offered in an Insurance Exchange in 2014 will increase or decrease from 2013-14 as a result of the Affordable Care Act (the Act).

(3) I applied the 2013-14 change in premiums from (2) to the base level of premiums in (1) to estimate what the premiums will be for the least-costly bronze plan available to Mr. Klemencic in 2014.

#### **Step (1)**

6. To obtain the 2013 premiums for individual insurance plans that are currently available to Mr. Klemencic, I used ehealthinsurance.com (<http://www.ehealthinsurance.com>). I accessed the website as if I were a 54-year-old male living in Cairo, West Virginia. Table 1 presents the fifteen least-costly insurance plans returned by the website. As the table shows, they range in price from \$148 to \$300 per month.

7. Thirteen of the fifteen plans currently available to Mr. Klemencic do not meet the standards for a plan that could be offered in an Insurance Exchange in 2014 because their out-of-pocket maximum values -- the most that the policyholder could be expected to pay -- exceeds the limit imposed by the Act.<sup>1</sup>

8. Two plans -- the "Coventry One QHDHP 100/\$5000" and the "Highmark HDHP 5000" -- have out-of-pocket maximum values that are below the limit imposed by the Act. These

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<sup>1</sup> Under the Act, the maximum amount that a person with individual coverage could be expected to pay out-of-pocket in 2014 will generally be \$6,350.

plans also offer all of the "Essential Health Benefits" required by the Act.<sup>2</sup> The less costly of the two, the "Coventry One QHDHP 100/\$5000," is slightly more generous than the most-generous bronze plan that could be offered in an Insurance Exchange in 2014; the more costly of the two, the "Highmark HDHP 5000," meets all of the standards for a bronze plan.

9. The generosity of a health plan is measured by its "actuarial value." The actuarial value of a plan is the expected share of medical spending paid for by it, rather than out-of-pocket, for an average person. Plans with low expected out-of-pocket payments, such as those with a low deductible, therefore have high actuarial values. The actuarial value of a bronze plan offered in an Insurance Exchange must be between 58 and 62 percent: that is, a bronze plan must cover between 58 and 62 percent of the average person's anticipated medical spending.<sup>3</sup>

10. The Department of Health and Human Services has made public an Actuarial Value Calculator (the Calculator) that takes as inputs the characteristics of a health plan such as its deductible, coinsurance rates, copayments, and out-of-pocket maximum and returns as an output its actuarial value.<sup>4</sup> The Calculator was designed to help insurers design plans that meet the actuarial value standards imposed by the Act.

11. According to the Calculator, the "Coventry One QHDHP 100/\$5000" has an actuarial value of 63 percent. This plan is slightly more generous than the maximum that will be allowed for a bronze plan that could be offered in an Insurance Exchange in 2014. According to the Calculator, the "Highmark HDHP 5000" has an actuarial value of 61.5 percent. This plan meets all of the standards for a bronze plan that could be offered in an Insurance Exchange in 2014. I therefore estimate that the premiums for the least-costly individual insurance plan that is currently available to Mr. Klemencic and meets the standards for a bronze plan that could be offered in an Insurance Exchange in 2014 will be 5 percent lower than the premiums for the "Coventry One QHDHP 100/\$5000," or \$281 per month.<sup>5</sup>

### Step (2)

12. It is impossible to determine *a priori* whether the premiums for a plan that meets the bronze standards and could be offered in an Insurance Exchange in 2014 will increase or decrease from 2013-14 as a result of the Act. On one hand, premiums may decrease due to enhanced competition among insurers created by the Insurance Exchanges. On the other hand, premiums may increase due to guaranteed issue, community rating, and other regulations imposed by the Act. Whether premiums will increase or decrease, and by how much, is therefore an empirical issue.

13. To estimate how premiums will change from 2013-14, I searched for currently-available plans that will be closely comparable to bronze plans that will be offered in an

<sup>2</sup> Essential Health Benefits are specified in Patient Protection and Affordable Care Act: Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, 45 CFR 156.20 et seq., 78 Federal Register 12834 (February 24, 2013).

<sup>3</sup> 45 CFR 156.140.

<sup>4</sup> Available at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/av-calculator-final.xlsm>, with instructions at <http://www.cms.gov/CCIIO/Resources/Files/Downloads/av-calculator-methodology.pdf>, accessed July 22, 2013.

<sup>5</sup> \$281 = \$296 × 0.95.

Insurance Exchange in 2014. To ensure that the comparison between each currently-available plan and its 2014 analogue was "apples-to-apples," I required that the currently-available plans I selected cover all Essential Health Benefits; have an out-of-pocket maximum that is below the \$6,350 limit imposed by the Act; have an actuarial value of approximately 60 percent according to the Calculator; and have a 2014 analogue with publicly-available premium information and a similar benefits design and network of doctors and hospitals.

14. I found two plans that met these standards, which I describe in Table 2. The plans are offered by Kaiser Permanente in California and Colorado. Kaiser is the nation's largest Health Maintenance Organization that serves its enrollees with its own proprietary network of doctors and hospitals. Its network will be roughly the same in 2014 as it is today.

15. For a 54-year-old male, the premiums for these two plans will increase by 39.3 and 46.2 percent, respectively. For example, in California, the "Deductible 40/4000 with HSA" plan is currently available in San Francisco for a premium of \$346 per month; it has an actuarial value of 62.4 percent. Starting in 2014, the "Bronze DHMO 5000/30" plan will be available for \$482 per month; it has a (slightly lower) actuarial value of 60.6 percent. Thus, for a 54-year-old male in California, the premiums for a comparable bronze plan will increase by 39.3 percent.<sup>6</sup> A similar calculation shows that the premiums for a 54-year-old male in Colorado for a comparable bronze plan will increase by 46.2 percent.

16. I have also reviewed the premiums for individual Insurance Exchange plans that will be offered in 2014 in Virginia, Oregon, and the District of Columbia. I did not include these states in the analysis above because I was not able to find any currently-available plans offered in them that will be closely comparable to bronze plans that will be offered in their Insurance Exchanges in 2014. However, my informal review of their premiums is consistent with the calculations detailed above. I therefore estimate that the premiums for Mr. Klemencic for a plan that meets the standards for a bronze plan that could be offered in an Insurance Exchange in 2014 will increase from 2013-14 as a result of the Act.

### Step (3)

17. In paragraph 11., I estimate that the premiums will be \$281 per month for the least-costly individual insurance plan that is currently available to Mr. Klemencic and meets the standards for a bronze plan that could be offered in an Insurance Exchange in 2014. In paragraph 16., I estimate that the premiums for such a plan will increase from 2013-14 as a result of the Act. Thus, I estimate that the premiums for Mr. Klemencic for a bronze plan will be more than \$281 per month in 2014. If West Virginia experiences premium increases due to the Act similar to those in California and Colorado, the premiums for the least-costly bronze plan available to Mr. Klemencic in 2014 will be approximately \$401 per month.<sup>7</sup> Even if the Act allowed Mr. Klemencic to purchase the least-costly insurance plan that is currently available to him -- regardless of whether it met the standards for a bronze plan that could be offered in an Insurance Exchange in 2014 (which it does not) -- and the Act did not increase premiums at all

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<sup>6</sup>  $0.393 = (\$482 - \$346) / \$346$ .

<sup>7</sup> This assumes a 42.8 percent increase in premiums, the average of the California and Colorado increases.

(which is contrary to my estimate), the least-costly plan available to him in 2014 would cost \$148 per month.<sup>8</sup>

### Analysis -- Second Question

18. Subsidies for coverage purchased in an Insurance Exchange, or "premium assistance amounts," are specified in Section 1401 of the Act.<sup>9</sup> For individuals earning between 150 and 200 percent of the Federal Poverty Line (FPL), the subsidies in 2014 are whatever amount is necessary to bring the premium for the second-lowest cost "silver" plan, net of the subsidy, to between 4.0 and 6.3 percent of the individual's income.<sup>10</sup> The 4.0 percent threshold applies to individuals earning exactly 150 percent of the FPL; the 6.3 percent threshold applies to individuals earning exactly 200 percent of the FPL. Individuals who earn more than 150 percent but less than 200 percent of the FPL have their income threshold determined by linear interpolation between the 4.0 and 6.3 percent thresholds. So, for example, an individual who earns exactly 175 percent of the FPL (halfway between 150 and 200 percent) is entitled to whatever subsidy is necessary to bring the premium for the second-lowest cost silver plan, net of the subsidy, to 5.15 percent of his income (halfway between 4.0 and 6.3).<sup>11</sup>

19. According to Counsel, Mr. Klemencic's expected income in 2014 is \$20,000. The Act specifies that the FPL to be used for purposes of determining insurance subsidies is the most recently published one as of the first day of the regular enrollment period for the insurance to which the subsidies will be applied.<sup>12</sup> Because the FPL is not published until January of its calendar year,<sup>13</sup> the 2013 FPL will be the one that is used to determine insurance subsidies under the Act. Because the 2013 FPL for a single person in West Virginia is \$11,490,<sup>14</sup> Mr. Klemencic's expected 2014 income is 174 percent of the FPL for purposes of determining his insurance subsidy.<sup>15</sup> Thus, if a subsidy for coverage purchased in an Insurance Exchange is available to him, he will be entitled to whatever subsidy is necessary to bring the premium for the second-lowest cost silver plan (net of the subsidy) to 5.1 percent of his income.<sup>16</sup>

20. The second-lowest cost silver plan will have a higher premium, before any subsidies, than the least-costly bronze plan. The actuarial value of a silver plan must be between 68 and 72 percent;<sup>17</sup> that is, it must cover significantly more of the average person's anticipated medical spending than a bronze plan, which must have an actuarial value between 58 and 62 percent. The fact that any silver plan must be significantly more generous than any bronze plan

<sup>8</sup> See table 1, referenced in paragraph 6.

<sup>9</sup> 26 USC 36B.

<sup>10</sup> 26 USC 36B(b)(3)(A)(i).

<sup>11</sup>  $5.15 = 4.0 + \{[6.3 - 4.0] \times [(175 - 150) / (200 - 150)]\}$ .

<sup>12</sup> 26 USC 36B(d)(3)(B).

<sup>13</sup> Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2013 Poverty Guidelines, Frequently Asked Questions, available at <http://aspe.hhs.gov/poverty/faq.cfm#When>, accessed July 24, 2013.

<sup>14</sup> Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2013 Poverty Guidelines, <http://aspe.hhs.gov/poverty/13poverty.cfm>, accessed July 24, 2013.

<sup>15</sup>  $1.74 = \$20,000 / \$11,490$ .

<sup>16</sup>  $5.1 = 4.0 + \{[6.3 - 4.0] \times [(174 - 150) / (200 - 150)]\}$ .

<sup>17</sup> 45 CFR 156.140.

will translate into a higher premium, before subsidies. My informal review of premiums for individual Insurance Exchange plans that will be offered in 2014 confirms this.

## Conclusions

21. Regarding the first question, I conclude that if the IRS *is not* allowed to provide subsidies in the West Virginia Insurance Exchange, the premiums for the least-costly bronze individual insurance plan available to Mr. Klemencic in 2014 *will* exceed 8 percent of his expected income. According to Counsel, Mr. Klemencic's expected income in 2014 is \$20,000, or \$1,667 per month. In paragraph 17., I estimate that the premiums for the least-costly bronze individual insurance plan available to Mr. Klemencic in 2014 will exceed \$281 per month, or 16.9 percent of his expected income.<sup>18</sup> This is more than double the threshold of 8 percent. If West Virginia experiences premium increases due to the Act similar to those in California and Colorado, the premiums for the least-costly bronze plan available to Mr. Klemencic in 2014 will be approximately 24.1 percent of his expected income.<sup>19</sup> This is more than triple the threshold of 8 percent. Even if the Act allowed Mr. Klemencic to purchase the least-costly insurance plan that is currently available to him -- regardless of whether it met the standards for a bronze plan that could be offered in an Insurance Exchange in 2014 (which it does not) -- and the Act did not increase premiums at all (which is contrary to my estimate), the least-costly plan available to him would be 8.9 percent of his expected income.<sup>20</sup>

22. Regarding the second question, I conclude that if the IRS *is* allowed to provide subsidies in the West Virginia Insurance Exchange, the premiums (net of any subsidy) for the least-costly bronze individual insurance plan available to Mr. Klemencic in 2014 *will not* exceed 8 percent of his expected income. In paragraph 19., I calculate that the subsidy available to Mr. Klemencic will be equal to whatever amount is necessary to bring the premiums (net of the subsidy) for the second-lowest cost silver plan to 5.1 percent of his expected income. In paragraph 20., I explain why the second-lowest cost silver plan will have a higher premium, before any subsidies, than the least-costly bronze plan. Thus, Mr. Klemencic will necessarily have to spend less than 5.1 percent of his expected income (net of any subsidy) to purchase the least-costly bronze plan available to him in 2014.

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<sup>18</sup>  $0.169 = \$281 / \$1,667$ .

<sup>19</sup>  $0.241 = \$401 / \$1,667$ .

<sup>20</sup>  $0.089 = \$148 / \$1,667$ .

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this day, August 2, 2013.



\_\_\_\_\_  
Professor Daniel P. Kessler, J.D., Ph.D.

STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

Subscribed and sworn before me this 2nd. day of August, 2013.

*see attached document - AP*

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires on \_\_\_\_\_.

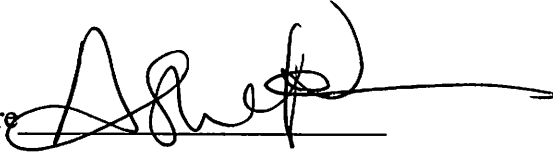
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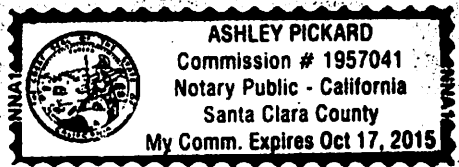
County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this 2 day of August,  
2013, by Daniel Kessler, proved to me on the basis of satisfactory evidence  
to be the person(s) who appeared before me.

(Seal) Signature



see attached  
document





**Table 1: Premiums for the Fifteen Least-Costly Health Insurance Plans Available to a 54-year-old Male in Cairo, West Virginia**

<b>Insurer</b>	<b>Plan Name</b>	<b>Premium Per Month</b>
United Healthcare	Saver 80/10000	\$148
United Healthcare	Copay Select Saver - 10000	\$177
United Healthcare	Copay Select Value - 10000	\$188
United Healthcare	Saver 80/5000	\$196
United Healthcare	Copay Select Saver - 7500	\$206
United Healthcare	Copay Select 70 - 10000	\$215
United Healthcare	Copay Select Value - 7500	\$218
United Healthcare	Saver 80/2500	\$232
United Healthcare	Copay Select Saver - 5000	\$241
United Healthcare	Copay Select 70 - 7500	\$250
United Healthcare	Copay Select Value - 5000	\$256
Coventry Health Care	Value Copay 20/40 \$5000	\$264
United Healthcare	Copay Select 70 - 5000	\$294
Coventry Health Care	QHDHP 100/\$5000	\$296
Highmark	HDHP 5000	\$300

Notes: Based on the Ehealthinsurance.com website (<http://ehealthinsurance.com>) for a 54-year-old male in Cairo, West Virginia 26337, accessed August 1, 2013.

**Table 2: Expected 2013-14 Changes In Premiums For  
Currently-Available, ACA-Compliant Health Plans  
With Actuarial Values of Approximately 60 Percent**

State	2013			2014			2013-14 Change in Premium
	Plan Name	Actuarial Value <sup>1</sup>	Premium Per Month <sup>2</sup>	Plan Name	Actuarial Value <sup>3</sup>	Premium Per Month <sup>3</sup>	
California	Deductible 40/4000 with HSA	62.4%	\$346	Bronze DHMO 5000/30	60.6%	\$482	+39.3%
Colorado	KP 5500/0/HSA /Rx	61.0%	\$260	KP CO Bronze 4500/50	60.9%	\$380	+46.2%

**Notes:**

1. Based on the Actuarial Value Calculator from the Department of Health and Human Services described in the text.
2. Based on the Kaiser Permanente website (<http://kp.org>), for a 54-year-old male in San Francisco, California 94118 and Denver, Colorado 80219, respectively, accessed August 1, 2013.
3. Based on publicly-available filings for a 54-year-old non-smoking male in San Francisco and Denver, respectively, from the California Department of Managed Health Care, available at <http://wps0.dmhc.ca.gov/RateReview> and the Colorado Department of Regulatory Agencies, Division of Insurance, available at <http://cdn.colorado.gov/cs/Satellite/DORA-HealthIns/CBON/DORA/1251627738584>, accessed July 23, 2013.

## **Appendix A: Curriculum Vitae**

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Stanford University  
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### **Education:**

Ph.D. Economics, Massachusetts Institute of Technology, 1994  
J.D. Stanford Law School, 1993  
B.A. Economics, Harvard University, 1988

### **Academic Positions:**

Professor, Stanford Law School, 2009-  
Professor, by courtesy, Stanford School of Medicine, Department of Health Research and Policy,  
2008-  
David S. and Ann M. Barlow Professor in Management, Graduate School of Business,  
Stanford University, 2007-10  
Visiting Professor, Harvard Law School, 2007  
Senior Fellow, Hoover Institution, Stanford University, 2006-  
Professor, by courtesy, Stanford Law School, 2004-2009  
Professor, Graduate School of Business, Stanford University, 2003-  
Visiting Associate Professor, Wharton School, University of Pennsylvania, 2002-03  
Associate Professor, Graduate School of Business, Stanford University, 1998-2003  
Assistant Professor, Graduate School of Business, Stanford University, 1994-98

### **Awards and Fellowships:**

Affiliate, Stanford Center on Longevity, 2008-  
Health Care Research Award, National Institute for Health Care Management Foundation, 2003  
Fellow, Center for Advanced Study in the Behavioral Sciences, 2003-04  
Graduate School of Business Trust Faculty Fellow, 2000-01  
Affiliate, Center for Social Innovation, Stanford Graduate School of Business, 2000-  
Research Associate, National Bureau of Economic Research, 1999-  
Public Policy Advising Award, Stanford University, 1998  
Kenneth J. Arrow Award for Best Paper in Health Economics, International Health Economics  
Association, 1997  
Affiliate, Center for Health Policy, Stanford University, 1997-  
Class of 1969 Faculty Scholar, Stanford Graduate School of Business, 1997-98  
National Fellow, Hoover Institution, 1997-98  
John M. Olin Faculty Fellow, 1996-97  
Faculty Research Fellow, National Bureau of Economic Research, 1994-99

**Academic Publications:**

- “Why Are Medicare and Commercial Insurance Spending Weakly Correlated?” with Laurence C. Baker and M. Kate Bundorf, *American Journal of Managed Care*, forthcoming.
- “Regulatory Neutrality Is Essential To Establishing A Level Playing Field For Accountable Care Organizations” with Gary E. Bacher, Michael E. Chernew, and Stephen M. Weiner, *Health Affairs*, forthcoming.
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