State Options for Responding to Federal Health Policy Changes

NCSL Executive Committee Task Force on Insurance

Heather Howard
Princeton University

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Agenda: Federal Changes & State Options

• Federal Changes Affecting Individual Market
  – Congressional Action
    • Repeal of individual mandate
    • Failure of stabilization measures
  – Administrative action
    • Defunding CSRs and cutting advertising and outreach
    • Deregulation: new rules offer opportunity to offer skinnier, less expensive plans (proposed rules on Short-term Limited Duration Health Plans and Association Health Plans)

• State Options to Stabilize/Roll Back ACA
  – State individual mandate
  – Reinsurance
  – Responses to short-term plans
  – State policy entrepreneurship to roll back the ACA (what are limits of state flexibility?)
Impact of Federal Action on Rates

• 2018 Open Enrollment: enrollment down slightly, greater drop in FFM states
  – Gallup: uninsured rate up 1.3% to 12.2% nationally
• CBO estimates repeal of individual mandate will increase rates by 10%
• Urban Institute reports that insurers remaining in ACA markets are preparing for continued uncertainty, impact on risk pools and market participation
• Initial filings confirm concerns: insurers seek significant rate increases for 2019 in filings in Maryland and Virginia
  – Virginia: range from 5.6% to 32.1%
  – Maryland: range from 18.5% to 37.4%
Market Stability

There is no accepted definition or score to determine the stability of a health insurance market, as perceived by the consumer.

Symptoms
- Extreme rate increases (>20%)
- Carriers leaving market
- Bare coverage areas

What leads to symptoms?
- High risk / High utilization risk pool
- Small pool of lives
- Payment discrepancies between carriers
- Population churn (both into/out of market and among carriers)
- External policy decisions
Federal Response

- Alexander/Murray, Collins, Costello
  - Federal Reinsurance
  - Replacement of Cost-sharing Reductions

Did not pass – Alexander and Murray have abandoned efforts
State Responses

• Reinsurance
• State-Level Mandate Penalty
• Short Term Plan Regulation
• Medicaid Buy-In
• Policy Entrepreneurship Rolling Back the ACA
# State Responses

## Reinsurance

<table>
<thead>
<tr>
<th>States</th>
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<tbody>
<tr>
<td>Alaska, California, Colorado, District of Columbia, Hawaii, Iowa, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin</td>
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## State Mandate

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<tr>
<th>States</th>
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<tbody>
<tr>
<td>California, Connecticut, DC, Hawaii, Minnesota, New Jersey, Vermont, Washington</td>
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## Action on Underwritten Products

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<th>States</th>
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<tbody>
<tr>
<td>Arkansas, California, Colorado, Indiana, Maryland, New York, New Jersey, Oregon, Washington</td>
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## Policy Entrepreneurship – Rolling Back the ACA

<table>
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<tr>
<th>States</th>
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<tr>
<td>Idaho, Iowa, Tennessee</td>
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Reinsurance and 1332 Waivers
Overview

- Reinsurance is an efficient mechanism for spreading the costs of high cost enrollees.
- Temporary federal reinsurance program kept premiums down for the first three years of ACA.
- Three states were approved for 1332 reinsurance waivers in 2017 (AK, MN, OR), several considering in 2018 (WI, ME, MD, NJ, LA, CO, VA).
- Elimination of mandate penalties for 2019 will build pressure for premium relief, especially for unsubsidized individuals.
- Congress failed to pass a second round of federal funding for reinsurance.
Benefits of Reinsurance

• Proven track record of reducing premiums by guaranteeing carriers don’t face large losses
• Increased insurer participation
  – Insurer participation declined when federal reinsurance ended
• Reduced market volatility
• Use of 1332 waiver allows states to access federal funds to seed reinsurance program
# Overview of Three Approved 1332 Reinsurance Waivers

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<thead>
<tr>
<th></th>
<th>Alaska</th>
<th>Minnesota</th>
<th>Oregon</th>
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<tbody>
<tr>
<td><strong>Approval Date</strong></td>
<td>7/11/17</td>
<td>9/22/17</td>
<td>10/19/17</td>
</tr>
<tr>
<td><strong>Reinsurance Type</strong></td>
<td>Condition Based</td>
<td>Attachment Based</td>
<td>Attachment Based</td>
</tr>
<tr>
<td><strong>Targeted Premium Reduction</strong></td>
<td>20%</td>
<td>20%</td>
<td>Approximately 7%</td>
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## Reinsurance Funding

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<tr>
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<th>Minnesota</th>
<th>Oregon</th>
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<tbody>
<tr>
<td><strong>2018 Total Reinsurance Program Funding</strong></td>
<td>$60 M</td>
<td>$271 M</td>
<td>$90 M</td>
</tr>
<tr>
<td><strong>Federal Pass Through Funding for 2018</strong></td>
<td>$58 M</td>
<td>$131 M</td>
<td>$54 M</td>
</tr>
<tr>
<td><strong>2018 State Funding Required (after pass through funding)</strong></td>
<td>$2 M</td>
<td>$140 M</td>
<td>$36 M</td>
</tr>
<tr>
<td><strong>Percent of Program Covered by Federal Dollars</strong></td>
<td>97%</td>
<td>48%</td>
<td>61%</td>
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### Authorizing Legislation

- **Alaska**: Reinsurance Program; Health Ins. Waivers. HB 374. 29th Legis., 2nd Session
- **Minnesota**: Minnesota Premium Security Plan. Chapter 13, HF 5, 90th Legis., Regular Session
- **Oregon**: Enrolled. HB 2391. 79th Leg, 2017 Regular Session

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1) These amounts are set by the states, which have the flexibility to decide on the size of reinsurance program, typically based on what percentage of premium reduction they have targeted. 2) If state uses all of the federal funds to replace state dollars, this is the percentage of the total program covered by federal dollars.
Primer on State Planning for 1332 Application

- Market assessment
- Scale of program
- State financing
- Legislative approval
- Infrastructure
- Timeline
- Federal funding

Early planning positions states to respond successfully to federal policy shifts
Reinsurance Activity Map

- **Active Reinsurance**
- **Current Application**
- **Actively seeking legislation or public application**
1332 Waiver Basics

- Flexibility to waive major ACA coverage provisions and try out solutions tailored to the state’s specific needs
- Opportunity to stabilize insurance market and reduce premiums
- Access to federal funds to help fund a substantial portion of reinsurance program

1332 waivers are a tool to achieve a policy goal – not a policy solution
State Individual Mandate
Tax Bill’s Repeal of Individual Mandate

- The tax bill repeals the ACA’s individual mandate penalty, effective January 1, 2019
- CBO estimates 10% premium increase, 13 million lose coverage
- Massachusetts’ mandate, included in 2007 health reform, is still in effect
- States may consider instituting their own mandate
  - Replaces federal policy
  - Favorable fiscal calculus
  - Tool for limiting substandard plans
  - Creates outreach opportunities
  - Expands 1332 options by improving baseline
  - Manageable implementation
Options: States Considering a Mandate

- NJ legislation, modeled on federal penalty, awaits Governor’s signature
- Vermont, DC proposals still under consideration
- Maryland created a study commission
- More activity next year when effect of repeal is felt?
Short-Term Limited Duration Health Plans
Key Provisions of Proposed Regulations on STLD Plans

• Reverses 2016 rule’s 3-month duration limit
  – Return to pre-ACA definition (policy less than 12 months)
  – Renewable (but with medical underwriting)
• Revises consumer disclosure to say
  – Coverage not required to comply with ACA
  – No eligibility for SEP
  – Not MEC (potential mandate penalty in 2018)
• Effective date – 60 days after final rule (this fall?)
STLD Plans: Potential Impacts

• Impact compounded by zeroing out mandate penalty
• Smaller, sicker individual market enrollment
  – HHS estimates 100-200k enrollment loss; Urban Institute estimates 2.1 million
  – Higher premiums for ACA-compliant plans
  – Higher federal outlays for APTCs ($96-$168M estimate)
  – Fewer plan choices
• Consumer-level impacts
  – Young, healthy get cheaper options (if unsubsidized)
  – Old, sick, or seeking comprehensive coverage pay more
  – Increased financial liability if get sick, injured
  – History of deceptive marketing tactics
Issues, Implications for States

- States retain primary role as regulator of STLD plans
- Comments requested on (comment period now closed)
  - Effective date
  - Appropriate duration for STLD policies
  - Conditions for renewal & reapplication
  - Any estimates of impact on STLD and ACA-compliant markets, including premiums and federal APTC spending
State Options to Protect Markets and Consumers

• Protect market stability*
  – Ban outright
  – Require compliance with all individual market rules
    • NY, NJ
  – Require compliance with selected individual market rules, i.e., benefit mandates, underwriting limits
    • AR, RI, potentially WA
  – Limit duration, renewability
    • OR, MD, CO, IN
  – Minimum MLR
    • RI
  – Require contributions to reinsurance

*Depending on state, some options can be implemented administratively, some will need legislation.
State Options to Protect Markets and Consumers

• Improve consumer disclosures & increase oversight
  – Monitor, respond to deceptive marketing
    • See e.g. consumer fraud alerts in IN, IA, AK, WY
    • Secret shopper scans
  – Require more, better consumer information
    • I.E. prominent disclosures on marketing materials, broker websites
State Policy Entrepreneurship:
Alternatives to the ACA
Rolling Back the ACA?

**Iowa** – Developed a “new” model of coverage that is not defined as health insurance under the ACA – underwritten products, no protections for pre-existing conditions, not regulated by insurance department

**Idaho** – Governor and insurance commissioner encouraged health plans to submit plans for sale that do not comply with ACA standards

**Tennessee** – Supports “Grandmothered” plans through farm bureau. Plans are not fully ACA compliant; less comprehensive, cheaper options draw healthy lives out of marketplace risk pool
Issues to Consider in Rolling Back ACA

• New cheaper, less comprehensive products will be attractive to some, but may siphon healthy risk out of individual market, further destabilizing

• Consumer impact?
  – Expanding access to plans that do not meet ACA requirements may result in fewer choices in ACA-compliant market
  – Less comprehensive benefits: short-term plans unlikely to cover maternity, substance abuse treatment, or to do so with limits
  – Will consumers understand the new products?

• Testing limits of state flexibility
Thank you

Heather Howard
Lecturer in Public Affairs
Princeton University
Director, State Health & Value Strategies
heatherh@princeton.edu
609-258-9709
www.shvs.org