ITUP Insure the Uninsured Project

Blog Post

March 28, 2018

Stabilizing the Individual Market after Federal Efforts Stall

When President Trump signed the federal Omnibus spending bill on March 23, 2018, the bill did not include language or funding to stabilize the individual market under the Affordable Care Act (ACA). A bipartisan group of lawmakers had been working on strategies to prevent major premium hikes in the 2019 coverage year.

Covered California, the state's ACA marketplace for individuals, recently estimated, absent state and/or federal action to address uncertainty in the individual market, premiums will increase between 12-30 percent in 2019. With federal efforts falling short, California is considering proposals to bolster the state's marketplace and reduce anticipated increases in premiums.

Federal Market Stabilization Legislation

In the lead up to passage of the omnibus spending bill, Senator Lamar Alexander (R-TN), the Chair of the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP), led bipartisan discussions that included Senator Collins (R-ME), Representative Walden (R-OR), Representative Costello (R-PA) and Ranking Member of the U.S. Senate HELP Committee, Senator Patty Murray (D-WA). Proposals that emerged from the federal discussions include:

- ***Section 1332 State Innovation Waivers (1332 Waivers)***. Under Section 1332 of the ACA, states can seek federal approval for innovative strategies to provide high quality, affordable health care coverage while retaining the basic protections of the ACA. Federal proposals would have increased state flexibility under 1332 Waivers.
- ***Reinsurance***. Federal funds for reinsurance to protect insurers from high cost claims by covering costs above a certain amount.
- ***Invisible High-Risk Pool***. Funding and authority for a behind-the scenes reinsurance program to cover the costs for higher-risk enrollees identified at the point of enrollment. Invisible to the consumer, high-risk enrollees are entered into a pool and funding from enrollee premiums and other sources, such as government payments or premium surcharges on all enrollees, cover their cost of care above a specified threshold.
- ***Cost-Sharing Reduction (CSR) Payments***. Reinstatement of CSR payments to insurers that help reduce out-of-pocket health care costs for lower-income individuals in the exchanges. The Trump Administration ended federal CSR payments last year. However, health plans in the exchanges must still reduce out-of-pocket costs for eligible enrollees.
- ***Catastrophic Health Plans or Lower Premium Plans***. High-deductible, lower premium health plans are currently limited to individuals under age 30 in the exchange but would have been available to all individuals seeking coverage.

The chart below briefly summarizes federal legislative proposals that had been under discussion.

Federal Market Stabilization Bills

Legislation	S. 1771 Bipartisan Health Care Stabilization Act of 2018	Proposed Bipartisan Health Care Stabilization Act of 2017	S. 1835 Lower Premiums Through Reinsurance Act of 2017
Sponsors	Senator Alexander (R-TN) Senator Collins (R-ME) Rep. Walden (R-OR) Rep. Costello (R-PA)	Senator Alexander (R-TN) Senator Murray (D-WA)	Senator Collins (R-ME) Senator Nelson (D-FL) Senator Murkowski (R-AK)
1332 Waivers	Allows state governors to apply for a 1332 Waiver independently without state legislation. Makes changes to 1332 Waivers to allow more state flexibility and streamline the application process. Provides for a 10-year budget neutrality review versus a year-by-year review.	Allows state governors to apply for a 1332 Waiver independently. Makes changes to 1332 Waivers to allow more state flexibility and streamline the application process. ▪ Allows for more variation in cost sharing. ▪ Allows funds from the ACA Basic Health Program[1] to be used in a 1332 Waiver.	Allows states to use 1332 Waivers to create reinsurance and invisible high-risk pool programs, see below.
Reinsurance and Invisible High-Risk Pool	Allocates $5 billion in reinsurance funding for 2018 and $10 billion annually for 2019-2021. States can also establish an invisible high-risk pool with these funds.	Allows states to use 1332 Waivers to redirect a portion of premium tax credits and other ACA subsidies to reinsurance and invisible high-risk pool programs.	Allows states to use 1332 Waivers to redirect a portion of premium tax credits and other ACA subsidies to reinsurance and invisible high-risk pool programs. Allocates $2.25 billion for 2018 and 2019 for state grants to create reinsurance and invisible high-risk pool programs
CSR Payments	Funds CSRs for 4 years: October 1, 2017 – December 31, 2021.	Funds CSRs for 3 years.	
Lower Premium Plans	Establishes a lower premium “copper” plan (also known as a catastrophic health plan), available to all exchange enrollees, not just those under 30.	Allows all individuals to purchase a lower premium copper plan, not just those under 30.	

Federal Market Stabilization Bills

Legislation	S. 1771 Bipartisan Health Care Stabilization Act of 2018	Proposed Bipartisan Health Care Stabilization Act of 2017	S. 1835 Lower Premiums Through Reinsurance Act of 2017
Multi-State Plans	Requires U.S. Health and Human Services Agency (HHS) to promulgate regulations allowing coverage products to be sold across state lines.	Requires HHS to promulgate regulations allowing coverage products to be sold across state lines.	
Short-Term Limited Duration Insurance	Requires a consumer warning that coverage and benefits under short-term insurance differs from coverage and benefits available in the exchange.		

Source: *Insure the Uninsured Project. March 2018.*

California Considers State Market Stabilization Policies

With the failure to reach agreement on market stabilization legislation at the federal level, it falls to states to take up the issue.

Despite the federal challenges, Covered California proved resilient with 2018 premium increases lower than the national average. However, experts warn that lingering uncertainty undermines efforts to contain premiums in future years.[2] The Urban Institute predicts that with no legislative changes rate increases could be as high as 18 percent for 2019 and up to 35 percent by 2021 in California.[3]

State-based policies to stabilize the individual market and build on the gains of the ACA could include:

- ***State Funded Reinsurance or Invisible High-Risk Pool***. According to the Congressional Budget Office (CBO) analysis of the reinsurance/invisible high-risk pool provisions in the Bipartisan Health Care Stabilization Act of 2018, premiums in 2019 would decrease by 10 percent, on average, if these provisions were implemented. Under its invisible high-risk pool, Maine cut premiums in half during 2011.[4] The reinsurance programs in Alaska and Minnesota are expected to reduce premiums by 20-40 percent.

  The anticipated and actual results of reinsurance and invisible high-risk pool programs provide incentives for California lawmakers to consider developing a state-based reinsurance program. In addition, reinsurance programs represent one of the policy areas where a federal partnership

is possible. In 2017, Alaska and Minnesota successfully negotiated waivers to create reinsurance programs with the federal Centers for Medicare and Medicaid Services.

- ***State Mandate to Maintain Coverage***. In 2019, the federal tax penalty for not maintaining adequate health insurance coverage will be eliminated. The elimination of the tax penalty is another contributing factor to uncertainty in the individual market. Covered California estimated that many enrollees will drop or lose coverage and premiums will increase with the elimination of the tax penalty.[5] In response, many states, including California, are considering imposing a state requirement that residents have health insurance, as well as potential consequences, such as waiting periods for coverage, higher premiums for delaying purchase or some other penalty for those that fail to obtain health insurance.[6]

  In a recent blog, ITUP highlighted how the Massachusetts' experience underscored the importance of a state-based individual mandate and penalty in motivating young and healthy individuals to secure coverage. The average age of enrollees dropped by almost two years after Massachusetts fully implemented its state-based individual mandate and penalty. The incidents of chronic illness among enrollees decreased by over 10 percent after the mandate and penalty became effective and new enrollees entered the market.[7]

- ***Protect ACA Market Rules***. Recently released federal regulations heighten concerns about administrative efforts to undermine the ACA. In February 2018, the U.S. Department of Labor, the U.S. Department of Health and Human Services and the U.S. Department of the Treasury released a proposed rule to expand the availability of short-term, limited-duration insurance (STDLI). Under current federal rules, STDLI that are non-ACA compliant plans can only be effective for three months or less. The proposed rule extends the duration of STDLI to a period of up to 12 months and makes STDLIs renewable.

  This proposed regulation raises concerns that consumers may be attracted to the lower premium without fully understanding the limitations of STDLI coverage. In addition, non-ACA compliant STDLIs could attract younger, healthier individuals and raise premiums for those who remain in the individual market. Based on concerns that this product undermines the ACA, California lawmakers are considering imposing state statutory restrictions on STDLIs. (See SB 910 [Hernandez].)

- ***State Subsidies to Address Affordability***. According to a recent UC Berkeley Labor Center (Labor Center) report, affordability is the top reason individuals eligible for Covered California remain uninsured.

  > *Even with ACA subsidies, combined premium and out-of-pocket spending in the individual market can exceed 10% of income for some Californians with median out-of-pocket spending, and can reach 10% to 30% of income for some with very high medical use.*[8]

The Labor Center offers state options to address affordability, including state subsidies beyond the federal ACA premium and CSR subsidies. According to the Labor Center, a 15 percent decrease in net premium contributions would make Covered California enrollment affordable for tens of thousands of individuals.[9] The Labor Center estimates that these new enrollees will be slightly healthier, on average, than existing enrollees.[10] Enrollment of healthier individuals would help decrease premiums for all enrollees.

California lawmakers will consider state subsidies in the current legislative session. (See AB 2459 [Friedman], AB 2565 [Chiu] and SB 1255 [Hernandez].)

Next Steps in California

With Congress failing to address the uncertainty caused by federal changes to the ACA, stabilizing the individual market in California falls to state lawmakers. California lawmakers have already introduced multiple bills to preserve ACA market rules and stabilize the marketplace. (See ITUP blog on 2018 bills here.) Stay tuned!

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[1] The ACA Basic Health Plan (BHP) is an option for states to establish a separate program for individuals not eligible for other government coverage, or without access to affordable employer coverage, up to 200 percent FPL. Under ACA rules, state BHP programs receive federal funds equal to 95 percent of the amount the federal government would have paid for premium and cost sharing subsidies in the exchange.

[2] John Holahan, Linda J. Blumberg, and Erik Wengle, "Changes in Marketplace Premiums, 2017 to 2018," *Urban Institute*, March 2018, obtained online at https://www.urban.org/sites/default/files/publication/97371/changes_in_marketplace_premiums_2017_to_2018_1.pdf.

[3] Editorial, *San Francisco Chronicle*, "Health insurance premiums will soar in California, nation, thanks to Congress," March 11, 2018, obtained online at https://www.sfchronicle.com/opinion/editorials/article/Editorial-Health-insurance-premiums-will-soar-in-12744060.php.

[4] Joel Allumbaugh, Tarren Bragdon, Josh Archambault, "Invisible High-Risk Pools: How Congress Can Lower Premiums And Deal With Pre-Existing Conditions," Health Affairs, March 2, 2017, obtained online at https://www.healthaffairs.org/do/10.1377/hblog20170302.059003/full/.

[5] ITUP Blog, "Tax Reform, the Individual Mandate, and the Vulnerability of the Individual Market in California," December 6 2017, online at http://www.itup.org/tax-reform-individual-mandate-vulnerability-individual-market-california/.

[6] Stephanie Armour, "States Look at Establishing Their Own Health Insurance Mandates," *Wall Street Journal*, February 4, 2018, obtained online at https://www.wsj.com/articles/states-look-at-establishing-their-own-health-insurance-mandates-1517659200?mod=e2tw.

[7] ITUP Blog.

[8] Laurel Lucia and Ken Jacobs, "Towards Universal Health Coverage: California Policy Options for Improving Individual Market Affordability and Enrollment," UC Berkeley Labor Center, March 5, 2018, available online at http://laborcenter.berkeley.edu/pdf/2018/CA-policy-options-individual-market-affordability.pdf.

[9] Lucia and Jacobs.

[10] Lucia and Jacobs.