State Options for Responding to Federal Changes to the Individual Market

January 4, 2018

STATE Health & Value STRATEGIES

Driving Innovation Across States

A grantee of the Robert Wood Johnson Foundation

About State Health Value Strategies

State Health and Value Strategies (SHVS) assists states in their efforts to transform health and health care by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's Woodrow Wilson School of Public and International Affairs. The program connects states with experts and peers to undertake health care transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies, and brings together states with experts in the field. Learn more at www.statenetwork.org.

About the Presenters

Jason Levitis, Levitis Strategies LLC. Jason is a health policy technical expert focusing on the Affordable Care Act's (ACA) tax measures and state innovation waivers. Until January 2017 he led ACA implementation at the U.S. Treasury Department. He is also a senior fellow at Yale Law School's Solomon Center for Health Law and Policy, and a non-resident fellow at the Brookings Institution.

Joel Ario & Patricia Boozang, Manatt Health. Deborah Bachrach and Arielle Traub also contributed to this presentation. Manatt Health is a division of Manatt, Phelps & Phillips, LLP, an integrated legal and consulting practice. Manatt Health supports states, providers, and insurers with understanding and navigating the complex and rapidly evolving health care policy and regulatory landscape. For more information, visit www.manatt.com/ManattHealth.aspx

Sabrina Corlette, Georgetown's Center on Health Insurance Reforms (CHIR). CHIR is comprised of a team of experts on private health insurance and health reform that conduct research and policy analysis, provide technical assistance to federal and state policymakers, regulators, and consumer advocate. CHIR is based at Georgetown University's McCourt School of Public Policy.

State Individual Mandate

Background

- The tax bill repeals the ACA's individual mandate penalty, effective 1/1/2019
- CBO estimates 10% premium increase, 13 million lose coverage
- Massachusetts' mandate, included in 2007 health reform, is still in effect

Why States Should Consider a Mandate

- Replaces federal policy
- Favorable fiscal calculus
- Tool for limiting substandard plans
- Expands 1332 options by improving baseline
- Manageable implementation

Key Statutory Elements

- Mandate legislation
  - Definition of qualifying coverage
  - Exemptions
  - Penalty amount
- Mechanism for granting certain exemptions
- Reporting by coverage providers
- Notification of uninsured about coverage options (optional)

Design Considerations

- Federal vs. Massachusetts as starting point
- Changes to adapt legislation for state use
- Additional optional policy changes
- Special considerations for states with no income tax

Reinsurance

Overview

- Reinsurance is efficient mechanism for spreading the costs of high cost enrollees
- Federal reinsurance program kept premiums down for first three years of ACA
- Three states were approved for 1332 reinsurance waivers in 2017 (AK, MN, OR)
- Congress considering a second round of federal funding for reinsurance
- Elimination of mandate penalties for 2019 will build pressure for premium relief, especially for unsubsidized individuals

Benefits of Reinsurance

- Proven track record of reducing premiums
- Increased insurer participation; insurer participation declined when federal reinsurance ended
- Reduced market volatility

Overview of Three Approved 1332 Waivers

	Alaska	Minnesota	Oregon
Approval Date	7/11/17	9/22/17	10/19/17
Reinsurance Type	Condition Based	Attachment Based	Attachment Based
Targeted Premium Reduction	20%	20%	Approximately 7%
Reinsurance Funding			
2018 Total Reinsurance Program Funding[1]	$60 M	$271 M	$90 M
Federal Pass Through Funding (1 yr/5 yr)	$48.4 M/ $322.7 M	$139 M/ $1.003 B	$30 M/ $150 M (pending federal approval)
2018 State Funding Required (after pass through funding)	$11.6 M	$132 M	$60 M (estimate pending federal approval)
Percent of Program Covered by Federal Dollars[2]	80%	51.3%	33%
Authorizing Legislation	Reinsurance Program; Health Ins. Waivers. HB 374. 29th Legis., 2nd Session	Minnesota Premium Security Plan. Chapter 13, HF 5, 90th Legis., Regular Session	Enrolled. HB 2391. 79th Leg, 2017 Regular Session

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.

A Closer Look at Collins-Nelson

- Provides $4.5 B* over two years for grants to help states establish two types of programs
- Requires expedited review by CMS (90 days)
- Not clear if federal grant would replace or supplement state funding
- No allocation formula (funds “remain available until expended”)
- Bill could be considered as part of January 19 continuing resolution
- Timeline will be tight for 2019 implementation

*Funding could be increased

A Short Primer on State Planning

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

Early planning positions states to influence federal policy and to respond successfully to federal policy shifts

Short-term and Association Health Plans

Imminent: Proposed Regulations on STLD Plans and AHPs

- Short-term Limited Duration Plans (STLDPs)
  - Likely return to 364-day plans
  - Possibly MEC?
- Association Health Plans (AHPs)
  - Ability to gain status as large-group plan
  - Possible inclusion of self-employed?
  - Possible preemption of state law?

STLDPs and AHPs: Potential impacts

- Impact compounded by zeroing out of mandate penalty
- 2018:
  - Some carriers poised to jump into this market
  - IM carriers will watch enrollment, attrition closely
  - Deceptive marketing, consumer complaints
- 2019:
  - Rates/plans filed after Q1 2018
  - Increase in premiums:
    - Unsubsidized priced out of major medical coverage
  - “If you can’t beat ‘em, join ‘em”

State Options to Stabilize Market and Protect Consumers: STLD Plans

- Ban or limit short-term plans
  - Limit duration, renewability
  - Require compliance with some or all individual market rules
- Reduce risk of market segmentation
  - Require contributions to reinsurance
  - Minimum MLR
- Improve consumer disclosures & increase oversight
  - Monitor, respond to deceptive marketing
  - Require more, better consumer information

State Options to Stabilize Market and Protect Consumers: AHPs (MEWAs)

- State Rules Not Preempted
  - Require level playing field
  - Limit membership to small businesses
  - Require contributions to reinsurance
  - Assert jurisdiction over out-of-state MEWAs
- State Rules Preempted
  - Solvency oversight preserved?
    - Require level playing field with commercial carriers
    - Require participation with state guaranty funds

Looking Ahead:

Impact on Entitlement Programs

Tax Bill Adds to Federal Deficit

- Estimated to add $1.46 trillion to the federal deficit over 10 years before accounting for potential economic growth
- Even after economic growth, estimated to add $1 trillion in new debt
- Congress expected to look for ways to cut the federal deficit

Sources: Joint Committee on Taxation deficit projections: http://thehill.com/policy/finance/365446-analyses-cost-of-gop-tax-plan-could-exceed-2-trillion-if-made-permanent, http://www.businessinsider.com/trump-gop-tax-reform-bill-impact-economy-business-debt-income-2017-12; What comes next: https://www.axios.com/tax-bill-adds-to-debt-problem-with-no-easy-solution-2518731988.html

Entitlement Programs at Risk

Medicare, Medicaid and Social Security account for 50% of federal spending, making these programs a target for federal spending cuts

"[Entitlement cuts will] take place right after taxes, very soon, very shortly after taxes."

President Donald Trump

"We're going to have to get back next year at entitlement reform…It's the health care entitlements that are the big drivers of our debt, so we spend more time on health care entitlements—because that's really where the problem lies."

House Speaker Paul Ryan

"You also have to bring spending under control. And not discretionary spending. That isn't the driver of our debt. The driver of our debt is the structure of Social Security and Medicare for future beneficiaries."

Sen. Marco Rubio (R-FL)

Source: Federal spending: https://www.cbpp.org/research/federal-budget/policy-basics-where-do-our-federal-tax-dollars-go; Trump quote: http://www.newsweek.com/tax-policy-social-security-medicare-republicans-730777; Ryan and Rubio quotes: Washington Post, 12/6, https://www.washingtonpost.com/news/wonk/wp/2017/12/01/gop-eyes-post-tax-cut-changes-to-welfare-medicare-and-social-security/?utm_term=.d804a5466df0

Graham-Cassidy Bill: Waiting in the Wings?

After the Senate failed to pass repeal and replace legislation this summer, Senators Cassidy and Graham crafted a new bill for Senate consideration in September 2017; the Graham-Cassidy bill failed as well.

Key Graham-Cassidy provisions included:

- Converting federal funding for Medicaid expansion and Marketplace subsidies to a block grant
- Redistributing expansion and subsidy funding among states
- Reducing federal funding under the block grant relative to current federal funding levels
- Reducing and capping federal funding for the traditional Medicaid program

"**My goal for 2018 is to block grant the money for Obamacare back to the states…I am more committed than ever to replacing Obamacare**. I think it would be a huge mistake for a Republican to believe that we're done with Obamacare."

Sen. Lindsey Graham (R-SC)

Source: Lindsay Graham quote: http://www.breitbart.com/big-government/2017/12/21/exclusive-sen-lindsey-graham-slams-mitch-mcconnells-unpardonable-sin-of-surrendering-on-obamacare/; Graham-Cassidy proposal: Manatt Health, http://www.statenetwork.org/wp-content/uploads/2017/09/SHVS_Graham-Cassidy-Proposal-Takeaways_Final.pdf

Q&A

Thank You

Joel Ario
jario@manatt.com

Deborah Bachrach
dbachrach@manatt.com

Patricia Boozang
pboozang@manatt.com

Sabrina Corlette
sabrina.corlette@georgetown.edu

Jason Levitis
jason.levitis@gmail.com

Heather Howard
heatherh@princeton.edu
609-258-9709
www.statenetwork.org