Statement on
"The Individual Mandate under the Affordable Care Act"

Submitted to the
House Ways and Means Committee
Subcommittee on Oversight

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America's Health Insurance Plans (AHIP) is the national association whose members provide coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access and well-being for consumers.

We appreciate this opportunity to comment on the individual mandate established by the Affordable Care Act (ACA). Our members have strongly supported an approach to health reform that brings everyone into the system. Broad coverage can ensure the availability of affordable coverage options. Health insurance only works when everyone is covered: those who utilize insurance to obtain quality care as well as those who are healthy but have insurance to protect them in case they get sick. Both types of consumers must be insured for coverage to remain affordable.

As the committee examines this issue, we recognize that the individual market has been a challenge for many years – both before the ACA and after. We recognize that certain parts of the ACA have not worked as well as intended, particularly for individuals who purchase coverage on their own. The challenges facing the individual exchange marketplace – which have been well-documented – include significant increases in average premiums in 2017, fewer health plan choices, and lower-than-expected exchange enrollment and risk pool stability challenges in some states. And absent significant and specific improvements to the exchanges this year, 2018 was already likely to be another challenging year.

While these challenges are real and remain, it is also true that the health reform law has expanded coverage to 20 million Americans. These gains have been achieved through Medicaid expansion as well as through the ACA exchange marketplaces (which has been accomplished through financial assistance via premium subsidies and through the individual mandate).

We also recognize that Congress is preparing to consider legislation to substantially change the ACA and that the individual mandate is likely to be repealed as part of this effort. That's why we are so focused on finding the right solutions that can deliver the strong, stable market – and affordable coverage – that we all want to achieve. We believe it is important for Congress to approve continuous coverage incentives – along with additional stabilization solutions – to minimize the impact of eliminating the individual mandate.

Our statement focuses on two topics:

- The rationale for having full consumer participation, in combination with market reforms and financial assistance, as part of a strategy for achieving a balanced risk pool in the individual health insurance market.

- The need for effective policies to encourage continuous coverage and broad consumer participation in the individual health insurance market if Congress passes legislation to repeal the ACA individual mandate and retains all other market reforms.

The Rationale for Full Consumer Participation

Since January 2014, the ACA has required health plans to offer coverage to everyone, including individuals with pre-existing conditions, and has prohibited any variation in premiums based on a person's health status or medical history. The health reform law also requires everyone to purchase and maintain coverage (or else pay a penalty) in recognition of the fact that, without such a requirement, there otherwise would be a strong incentive for people to wait and purchase insurance only after they get sick or injured.

In 2012, while the U.S. Supreme Court was weighing its decision about the constitutionality of the individual mandate and other ACA provisions, we commissioned studies examining the experience of two states – Washington and Kentucky – that enacted market reforms without an individual mandate or any other mechanism to achieve universal access to coverage. These studies yielded important lessons about the unintended consequences of health reforms that create incentives for healthy people to forego the purchase of coverage:

- One study[1] examined Washington state's experiment with guarantee issue in the absence of an individual mandate. According to the study, the reforms Washington state enacted in 1993 resulted in substantial increases in the premiums charged for individually purchased policies, a dramatic reduction in the number of carriers writing policies for individuals in the state, and a 30 percent increase in the number of uninsured.

- Another study[2] explained that the enactment of guarantee issue and community rating reforms in Kentucky, in the absence of an individual mandate, provided a powerful incentive for people to delay purchasing coverage until after they needed medical care. As a result of these reforms, individuals' insurance premiums skyrocketed, in some cases over 100 percent, and the resulting disruption in the state's insurance marketplace forced most of the state's health insurers to leave the market.

In addition to experience in the states, several non-partisan studies have concluded that eliminating the individual mandate would significantly increase premiums and cause serious market disruptions, absent the implementation of additional or alternative policies to promote market stability.

- The Congressional Budget Office (CBO) concluded that "premiums in the non-group market would be roughly 20 percent to 25 percent higher than under current law" as a result of "repealing the penalties associated with the individual mandate."[3] However, CBO's analysis did not evaluate the impact of any alternatives to the individual mandate that policymakers may consider.

- The American Academy of Actuaries has cautioned that "eliminating the ACA's individual mandate, premium subsidies or cost-sharing reductions would increase the likelihood for adverse selection, in which people who are most at risk of high health care costs would be the most likely to enroll, while many healthier individuals decide not to purchase coverage. Premiums for the remaining pool would increase as a result, further

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[1] Lessons Learned: Washington State's 1993 Experiment with Health Insurance Reforms, May 2012
[2] Unintended Consequences: Kentucky's Experiment with Health Care Offers Lessons For Nation, May 2012
[3] Congressional Budget Office. "How Repealing Certain Portions of the ACA Would Affect Health Insurance Coverage and Premiums." January 2017. https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/reports/52371-coverageandpremiums.pdf

exacerbating adverse selection problems. A premium spiral could result, with fewer and fewer insureds and higher and higher premiums."[4]

- The Brookings Institution cautioned that eliminating the individual mandate penalties "would likely de-stabilize the market and very possibly cause it to collapse in some regions of the country during the interim period before any replacement is designed." Moreover, the Brookings authors found that eliminating the mandate penalties would "cause a substantial number of those currently with insurance, especially younger, heathier ones, to drop their insurance, leaving an even sicker pool in place and increasing premiums even further."[5]

These research findings are well worth considering in the congressional debate on ACA replacement reforms. The clear lesson for policymakers is that any reforms that give healthy people incentives to delay purchasing coverage will lead to unintended consequences—higher costs and fewer choices—for the broader population. It will diminish access to high quality, affordable health insurance. To avoid this outcome, Congress should take steps to encourage continuous coverage and broad participation in the individual health insurance market.

Alternative Approaches to Encouraging Continuous Coverage and Broad Participation in the Individual Health Insurance Market

We recognize there is significant support in Congress for repealing the individual mandate penalties, as part of a broader ACA repeal bill. However, absent the enactment of alternative incentives to promote continuous coverage, this could create market instability and result in the loss of health insurance coverage for millions of Americans.

To promote a stable individual market during a transition period, incentives are needed to encourage consumers to maintain continuous coverage and minimize movement in and out of the marketplace. We have developed a potential framework of public policies to implement effective continuous coverage requirements, leveraging existing statutes and current health plan practices.

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[4] American Academy of Actuaries. "Consequences of Repealing ACA Provisions or Ending Cost-Sharing Reduction Reimbursements." December 7, 2016. http://actuary.org/files/publications/HPC_letter_ACA_CSR_120716.pdf

[5] Brookings Institution. "Why Repealing the ACA Before Replacing it Won't Work and What Might." December 13, 2016. https://www.brookings.edu/research/why-repealing-the-aca-before-replacing-it-wont-work-and-what-might/

A framework for continuous coverage must begin with a clear definition of requirements, which must be clearly communicated to consumers. We recommend using the existing HIPAA framework as the starting point to define continuous coverage. While HIPAA requires 18 months of creditable medical coverage, we recommend the requirement be set at 12 months as this better reflects coverage trends in the individual market. Creditable coverage should leverage the existing definition of minimum essential coverage (MEC)—a well-defined, existing standard.

Once new rules of the road are in place, all consumers should have the opportunity to enroll in coverage during 2018 open enrollment, regardless of their current coverage status, before any new requirements are put in place. Education and awareness are critical to ensure consumers understand the consequences of waiting to enroll, and these new requirements should be clearly communicated to enrollees during 2017 to encourage enrollment during 2018 open enrollment.

Individuals who apply for coverage after January 31, 2018 (after the close of the 2018 open enrollment period) must meet continuous coverage requirements, defined as 12 months of creditable coverage. Those who do not meet this requirement would face penalties such as a premium surcharge or having to wait six months to enroll—similar to the existing practice for Medicare Parts B and D.

Other policy requirements need to be implemented in tandem to promote continuous coverage and reduce movement in and out of the individual market risk pool. Individual market special enrollment period (SEP) rules should be modified, as appropriate, to reflect continuous coverage policies. SEP rules should be tightened so that a life event is not an opportunity to enroll in coverage for the first time, but to make a needed change to an existing policy (e.g., to add a newborn). SEP rules must be enforced and eligibility should be verified prior to enrollment.

Implementing effective and well-designed continuous coverage incentives is critical to promoting affordable coverage and market stability—especially if the individual mandate is eliminated immediately under partial repeal of the ACA through a budget reconciliation bill. In addition to continuous coverage incentives, additional policies—such as risk pool funding, reforms to the premium subsidies (APTC) and related policies—are necessary to mitigate coverage disruptions and can help promote a more stable transition to alternative insurance coverage reforms.

Conclusion

Policymakers in Washington and in state capitols across the country have tried to improve the individual insurance market for many years. This is another opportunity to get it right. And by working together to find the most effective solutions, we can deliver the long-term improvements that the American people deserve.