State Efforts to Pass Individual Mandate Requirements Aim to Stabilize Markets and Protect Consumers

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➢ In light of Congress’s recent elimination of the federal mandate’s financial penalty, several states are moving forward with state-level individual health insurance mandate plans

➢ Using the ACA as a blueprint, states like Massachusetts and New Jersey are looking at ways to encourage greater health plan enrollment through a state mandate

A handful of states are moving forward with plans to implement state-level individual health insurance mandates in light of Congress’s recent elimination of the federal mandate’s financial penalty, effective in 2019. The Affordable Care Act’s (ACA) individual mandate helped stabilize the insurance market when the ACA’s coverage expansions launched by encouraging healthier people to buy plans. The penalty repeal, in combination with other federal actions, is projected to reduce coverage by about 8.6 million people and increase premiums.

Against this backdrop, several states are adopting their own coverage requirements. Previously, only Massachusetts had such a requirement in place. Recently, New Jersey passed a state-level mandate that takes effect in 2019, and Vermont passed one that will take effect in 2020, after the issue is studied further. The District of Columbia also has a bill pending that will establish a coverage requirement and penalty. The short timeframe between the repeal of the federal penalty and the end of state legislative sessions created a hurdle for states, particularly those looking at novel mandate structures. As a result, legislation was considered, but did not pass, in other states — such as Maryland, Hawaii, and Connecticut. But similar legislation may be introduced next session in these states or serve as a model for states looking for innovative policy options.

Using the ACA as a Blueprint, States Are Considering Their Own Mandates to Achieve State Policy Objectives

Early efforts to design state-level individual mandates have looked to the ACA as a starting template. Mirroring the federal program can simplify implementation and allow the mandate to be in place by 2019. But states can also customize their programs. For example, D.C.’s bill allows broader exemptions for lower-income individuals and ensures that a D.C. program covering immigrant children counts as qualifying coverage. States are also looking at proposals to encourage greater enrollment in comprehensive coverage than the ACA mandate elicited and to further defray the cost of accessing health services.
Expanding Enrollment

Some state proposals aim to not only maintain, but to increase insurance enrollment. New Jersey’s mandate and D.C.’s proposed legislation direct state officials to send notices about enrollment options to uninsured taxpayers. Maryland’s proposal sought to increase enrollment by using the penalty payment as a "down payment" on coverage. Taxpayers opting in would be automatically enrolled in Medicaid or a marketplace plan if the penalty covered the full premium, or the penalty payment could be used to enroll in coverage during the next open-enrollment period. A D.C. health insurance exchange workgroup studied a similar proposal, but recommended a simpler approach to ensure implementation by 2019. However, the down-payment proposal does appear to be gaining political traction for future passage. One approach Connecticut considered would have increased the penalty paid by some uninsured residents in an effort to have a larger financial incentive to purchase coverage, although a different bill proposed by the governor included a lower penalty across the board. Neither bill moved out of committee, but state lawmakers have indicated that they will likely revisit the issue.

Reducing Premiums and Health Care Costs

While the primary goal of a mandate is to encourage people to maintain coverage, revenue from penalties can fund market stabilization and affordability initiatives. In New Jersey, policymakers chose to use penalty payments to create a state reinsurance fund that should reduce premiums for middle-income consumers. Maryland’s mandate proposal, which was expected to yield at least $44.5 million in new revenue, would have been used both for coverage down payments and to finance affordability initiatives such as state-funded premium assistance or cost-sharing subsidies. One bill introduced in Connecticut would have allowed uninsured consumers to invest their payment in a savings account to pay for out-of-pocket health care expenses. This proposal was intended to ensure some access to care for residents unable to afford insurance.

Protecting Consumers from Skimpy Products

In recent months, the Trump administration has proposed rules to encourage enrollment in coverage that is not required to comply with the ACA’s consumer protections. Some states designed mandates that shore up markets against these skimpy products, which may siphon away healthy consumers and drive up premiums for ACA-compliant plans. New Jersey and D.C. exclude from their definition of qualifying coverage association health plans that do not meet existing rules and consumer protections, in expectation that substandard plans may enter the market under new federal rules. Like the ACA mandate, all recent state mandate proposals ensure that short-term insurance — if the state does not already prohibit the sale of such products — doesn’t count as qualifying coverage.

Looking Forward

States have already seen proposals for hefty premium increases resulting from the repeal of the federal mandate penalty. It is also expected that there will be fewer plan choices for consumers seeking individual market coverage. Meanwhile, the Trump Administration’s refusal to defend key ACA provisions — in a lawsuit brought by Texas and 19 other states challenging the constitutionality of the ACA now that the mandate penalty is repealed — creates further uncertainty. While most states missed the opportunity to implement a mandate for 2019, there is time to consider various approaches — from a simple reproduction of the federal mandate to more complex proposals — for 2020 and beyond. There will be much to learn from the early experiences of states that implement an individual mandate.

Other Resources

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