National Conference of State Legislatures
Legislative Summit

Latest Ideas for Fixing Health Insurance Markets:
Key Options for States

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Reinsurance

• Proven mechanism for mitigating premium increases by spreading costs of high-cost enrollees
  • Federal temporary reinsurance program reduced premiums in 2014-16.

• State-operated reinsurance programs draw on mix of state and federal “pass-through” funds, accessed with a Section 1332 waiver
  • States that are setting up their own programs → premium decreases ranging from 8% - 30%
  • On average, feds are covering about 64% of program costs
Section 1332 Waivers

• Key Considerations
  • States need:
    • Statutory authority to apply for waiver
    • State source of funding (depending on proposal)
  • Waiver programs must satisfy substantive “guardrails”
  • Application process can be lengthy – planning needs to start early (time to consider 2020 waivers is now)

• Types of Waivers
  • Reinsurance
    • Three states (AK, MN, OR) have waiver programs in place
    • Four states (WI, ME, MD, NJ) likely to join in 2019
    • Others (e.g., LA, CO, WA) have considered, may pursue for 2020
  • More options for sole proprietors
    • Rhode Island: will seek to allow sole props to purchase through state’s small biz marketplace (waiver application not yet developed)

• Broader changes? Not yet.

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CENTER ON HEALTH INSURANCE REFORMS
Short-term Plans

• Designed to fill temporary gaps in coverage
  • Not considered individual health insurance under federal law. Separate risk pool from broader market.
  • Exempt from ACA standards unless state provides otherwise

• Options for Addressing
  • Adhere to federal default approach
  • Require plans to play by same rules as broader market
  • Limit duration of coverage (incl. consecutive policies) to shorter periods
  • Reduce risk of market segmentation
  • Improve transparency and oversight
Association Health Plans

• New federal framework, but states “retain broad authority”

• Options for Addressing
  • Adhere to federal default approach
  • Require plans to play by same rules as broader market
  • Limit membership to small businesses
  • Reduce risk of market segmentation
  • Assert jurisdiction over out-of-state AHPs
  • Ensure state regulators have tools and resources for oversight and enforcement
Increasing Availability of Low Premium, Limited Benefit Plans

- **Idaho**: state-based health plans
  - Original proposal would have allowed sale of plans that do not comply with many federal standards
  - HHS signaled it would step in to enforce federal law. Discussions ongoing.

- **Iowa**: Farm Bureau coverage
  - New statute excludes coverage offered by a nonprofit ag organization from the definition of insurance
  - Coverage is not subject to ACA standards
  - State regulation limited to oversight of the TPA

- **Colorado**: Broadening eligibility for catastrophic coverage?
  - New statute requires study of likely effects and authorizes submission of 1332 waiver to implement
Incentives to Maintain Health Coverage

• Credits to reduce the cost of premiums or cost-sharing
  • Additional help for those at lower incomes who receive federal subsidies (e.g., Massachusetts), and/or
  • Assistance for those who are currently unsubsidized (e.g., Minnesota in 2017)

• Requirement to maintain coverage
  • Details can be customized
    • What types of coverage satisfy the requirement?
    • Penalty amount
    • Exemptions
    • Where to allocate penalty funds?
  • New Jersey: New requirement (for 2019); penalty supports reinsurance program
Protections for People with Preexisting Conditions

- Federal law currently prohibits insurers from denying coverage, excluding benefits, or charging a higher premium, based on a person’s health status.

- If plaintiff states, or the federal government, prevail in *Texas v. United States*, these rules go away.

- Some states have similar protections in state law that would remain in force.

- Most states do not.
Other Areas of State Flexibility: Benefit Requirements

• ACA requires issuers in the individual and small group markets to cover 10 categories of “essential” benefits
  • Benefits are defined by reference to a state-selected benchmark plan (chosen among 10 options)

• New federal rule gives states more options to define their benchmark plan for 2020 and beyond
  • Illinois: revised benchmark to address opioid crisis

• Some states may select benchmark through regulatory process. Others may prefer (or be required by state law) to do so via legislation.
Other Areas of State Flexibility: Addressing Surprise Medical Bills

- Consumer faces unexpected charges from an out-of-network provider (a version of balance billing)
  - E.g., consumer obtains care at in-network ED or hospital, but is treated by an out-of-network anesthesiologist

- No federal rules limiting consumer exposure to surprise bills

- Fewer than half of states have laws that shield consumers
  - About a half dozen have a comprehensive approach
    - Prohibit balance billing
    - Incorporate payment standards to ensure fair compensation for providers
Other Areas of State Flexibility:
Provider Networks

- States are the traditional regulators of health plan provider networks

- ACA contains federal standard for marketplace health plans
  - Does not displace state regulation
  - Feds have ceded oversight of this standard to the states

- NAIC has adopted a network adequacy model act
  - Requires stronger disclosures by plans concerning network development and operation
  - Bolsters authority of state regulators to decide whether a network is adequate
  - Sets rules designed to improve accuracy of provider directories
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