January 25, 2018

John R. Graham
Assistant Secretary (Acting)
Office of the Assistant Secretary for Planning and Evaluation
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Promoting Healthcare Choice and Competition

Dear Assistant Secretary Graham:

On behalf of the Individual and Small Group Markets Committee of the American Academy of Actuaries,[1] I would like to offer comments in response to the Department of Health and Human Services' request for information on promoting healthcare choice and competition. We appreciate the opportunity to provide comments on these important issues. The Academy's mission is to provide independent and objective actuarial information, analysis, and education for the formation of sound public policy on behalf of the U.S. actuarial profession.

These comments focus on the individual health insurance markets that operate under Affordable Care Act (ACA) rules. Actions that would help improve healthcare choice and competition in the ACA-compliant individual market are those that would stabilize the market. Such actions could include implementing mechanisms to encourage enrollment and facilitate a balanced risk pool, as well as fostering a stable and consistent regulatory environment.

Conditions for a stable and sustainable individual health insurance market

The ACA expanded access to health insurance coverage in the individual market by requiring insurers to accept all applicants, regardless of any pre-existing conditions, and prohibiting premium variations based on health status. To reduce the adverse selection arising from such requirements, the ACA included other provisions, such as premium and cost-sharing subsidies and an individual mandate, designed to increase overall participation in health insurance plans.

Increasing healthcare choice and competition requires robust insurance markets. In turn, achieving a stable and sustainable individual health insurance market requires:

- Individual enrollment at sufficient levels and a balanced risk pool;

[1] The American Academy of Actuaries is a 19,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

- Stable state and federal regulatory environments that facilitate fair competition;
- Sufficient health insurer participation and plan offerings to provide consumer choice; and
- Slow spending growth and high quality of care.

As a result of the ACA, nationwide enrollment in the individual market increased.[2] Yet in general, enrollment in the individual market has been lower than originally projected when the ACA was enacted and enrollees have been less healthy than expected. Competing plans generally face the same rules, but the uncertain and changing legislative and regulatory environments have contributed to adverse experience among insurers.[3] This led to a decrease in insurer participation in 2016 and 2017 and additional insurer withdrawals for 2018. There have been signs that insurer experience had begun to stabilize or even improve somewhat, but the market remains fragile.[4] Recent policy decisions, including terminating cost-sharing reduction (CSR) payments to insurers, eliminating the individual mandate penalty, and proposed regulations to expand the availability of association health plans and short-term duration policies, will likely further destabilize the individual market, increase ACA premiums, and lead to insurers reconsidering participation in the ACA market.

Ways to promote healthcare choice and competition in ACA-compliant markets by improving market stability and sustainability

Various actions can be taken to improve individual health insurance market stability and sustainability, thereby increasing healthcare choice and competition. These actions include:

Provide clarity regarding CSR payments.—As a result of the uncertainty created by legal challenges as to whether CSRs would be funded, their ad hoc, month-to-month funding in 2017, and their subsequent termination, 2018 premiums in nearly all states were increased to reflect the presumption that reimbursements would not be made. How premiums were increased, however, varied by state, with insurers in some states increasing premiums for all plans, and others increasing them only for silver plans, either on exchange only or both on- and off-exchange.

More certainty is needed on whether CSR reimbursements will be funded over the long term. Otherwise, uncertainty could cause insurers to reconsider participating in the market. If CSRs are not funded, insurers will increase premiums accordingly, as they have done for the 2018 plan year. It may be advisable to require insurers to load only on-exchange silver premiums. In this way, lower-income individuals will be protected from the premium increases by receiving higher premium tax credits and individuals not eligible for premium subsidies can access coverage without the premium increase. However, loading CSRs onto premiums is riskier to insurers than having CSRs as a pass-through and increases the federal government premium subsidy costs

[2] Kaiser Family Foundation, State Health Facts, Health Insurance Coverage of Nonelderly 0-64. Accessed January 10, 2018.
[3] American Academy of Actuaries, *An Evaluation of the Individual Health Insurance Market and Implications of Potential Changes*, January 2017.
[4] Kaiser Family Foundation, "Individual Insurance Market Performance in Early 2017," July 20, 2017; S&P Global Market Intelligence, "The U.S. ACA Individual Market Showed Progress in 2016, But Still Needs Time to Mature," April 7, 2017.

more if loaded only on silver plans. Loading silver plans introduces significant risk to insurers because they are pricing for an actuarial value somewhere between 70 percent and 94 percent.[5] This is a big range; if an insurer prices too low, it may not have enough premium revenue to cover the cost-sharing subsidies. If states or the federal government require CSRs to be spread over all metal levels, competitive concerns for on- versus off-exchange insurers arise (off-exchange only insurers can avoid the premium increase).

Expand mechanisms to encourage enrollment. The elimination of the individual mandate penalty will likely lead to a deterioration in the risk pool, as individuals who are healthy are more likely to forgo coverage than those who have higher health care needs. Expanding the availability of non-ACA compliant plans, such as short-term duration policies and association health plans, could exacerbate these consequences. Although increased availability to noncompliant plans could increase consumer choice, the consequence would be more adverse selection and a further deterioration of the ACA risk pool. To offset these effects, alternative mechanisms to the mandate that would encourage ACA plan enrollment among young and healthy individuals are needed.

Depending on how they are structured, continuous coverage requirements could mitigate the impact of adverse selection. For instance, if individuals with a coverage gap were subject to a waiting period before coverage becomes effective, enrollment could increase slightly as there would be less opportunity to sign up for coverage as a health need arises. The larger impact would be to partially protect the risk pools from the high claims of individuals waiting to enroll until they have high health needs. Such a program may help to bring some additional stability to the individual pool, but may not be sufficient.

Another version of a continuous coverage requirement would be to levy a premium surcharge for individuals with a coverage gap. But if the associated penalty is too low, it won't do enough to encourage healthy individuals to enroll sooner rather than later. If the penalty is too high, then the people with prior gaps in coverage willing to pay the penalty are primarily those who have high health care needs.

Auto-enrollment, successful in increasing participation in retirement savings plans, has the potential to achieve high participation rates if logistical hurdles, such as how to identify eligible enrollees, could be overcome. The residual and transitional nature of the individual market—those with coverage in the individual market typically don't have access to other sources of coverage, such as employer coverage, and move to other coverage sources when available to them—could make those efforts especially difficult, however. In addition, if individuals are auto-enrolled into plans in which premiums equal any available premium subsidies, deductibles could be quite high for many individuals unless premium subsidies are increased.

Increase enrollment outreach and assistance. Outreach efforts help make consumers aware of their coverage options and potential eligibility for premium subsidies; enrollment assistance can help consumers choose a plan and apply for coverage. These efforts work in tandem with

[5] Plan premiums reflect in part the underlying actuarial value. Silver plans normally have an actuarial value of 70 percent. But silver plan enrollees with cost-sharing reductions are eligible for silver plans with an actuarial value of up to 94 percent, depending on their income.

premium subsidies (and previously, the individual mandate penalty) to increase enrollment rates, which in turn can lead to a more balanced risk pool and lower premiums. Given the elimination of the individual mandate penalty, continued, or even increased, marketing and other outreach efforts are needed to maintain or improve enrollment rates.

Provide external stability funding. If the individual mandate was a "stick" to encourage enrollment and achieve a balanced risk pool, then lowering premiums through subsidies or other means is a "carrot." Weaker sticks could be offset by stronger carrots. One approach is to increase premium subsidies by extending premium tax credits to all enrollees; increasing premium tax credits for currently subsidy-eligible enrollees; or increasing them for specific subgroups, such as young adults. External funding to offset insurer costs for high-cost enrollees, for instance through a reinsurance program, would be another way to lower premiums, increase enrollment, and improve the risk pool.[6] For instance, during the first year of the ACA's transitional reinsurance program, the $10 billion reinsurance fund was estimated to reduce premiums by about 10 to 14 percent.[7] Several states have pursued 1332 innovation waivers[8] for state-based reinsurance, varying how eligible enrollees are identified and the parameters defining what portion of a plan's claims are reimbursed. Alaska's approved waiver was expected to result in 2018 individual market premiums being 20 percent lower than they would have been without the reinsurance program.[9] More recent analysis suggests that states could leverage $5 billion in federal reinsurance funds into $15 billion, when the pass-through savings from reduced federal premium subsidies are included.[10]

If reinsurance funding were to be provided nationally, the most expeditious way to structure the program for states not already pursuing their own approach would be to use the same structure as the ACA 2014-2016 reinsurance program. Insurers are familiar with that approach and have the systems and processes in place that could incorporate its return.

Increase access to catastrophic coverage or add a lower tier "copper" plan. Less generous coverage could be appealing to younger adults and healthy people of all ages more generally. The ACA offers a catastrophic plan option to adults under age 30 and older adults who have a hardship exemption from the individual mandate. However, individuals are not allowed to use premium tax credits toward catastrophic plans and the actuarial value of catastrophic plans is similar to bronze plans. As a result, current participation in catastrophic plans is quite low—less than 1 percent of marketplace enrollees.[11]

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[6] See American Academy of Actuaries, *Using High-Risk Pools to Cover High-Risk Enrollees*, February 2017, for information on different approaches to high-risk pools.
[7] American Academy of Actuaries, *Drivers of 2015 Health Insurance Premium Changes*, June 2014.
[8] Section 1332 of the Affordable Care Act (ACA) permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing their residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA.
[9] Tammy Tomczyk, et al., *Alaska 1332 Waiver Application: Actuarial Analyses and Certification*, Oliver Wyman, November 22, 2016.
[10] Tammy Tomczyk and Kurt Giesa, "How States Could Leverage $5 Billion into More Than $15 Billion to Stabilize the Individual Market," Oliver Wyman, December 9, 2017.
[11] CMS, Health Insurance Marketplaces 2017 Open Enrollment Period Final Enrollment Report: November 1, 2016-January 31, 2017, March 15, 2017.

Allowing broader access to catastrophic coverage with even lower actuarial values and allowing premium tax credits to be used toward this coverage could increase enrollment, especially among healthy individuals.[12] Under current policy, however, increased enrollment in catastrophic plans won't affect premiums for the metal level plans—although catastrophic plans are part of the single risk pool, catastrophic plan premiums are allowed, via regulation, to be adjusted to reflect the expected impact of catastrophic plan eligibility. In addition, catastrophic plans are treated separately in the risk adjustment program.

Adding a copper tier plan, with an actuarial value lower than that of the bronze tier plans, could result in increased enrollment among young and healthy individuals. However, the lower premiums associated with these plans mean that it would be more difficult to spread the risk of higher-cost enrollees in more generous plans. In addition, by their nature, both catastrophic plans and copper tier plans would have higher out-of-pocket cost-sharing requirements than other plans. This may be less of an issue for high-income individuals, but these types of plans are a less viable option for low- and perhaps even moderate-income individuals. (Individuals with incomes less than 250 percent of the federal poverty level are eligible for cost-sharing subsidies, but only if they purchase silver tier plans.)

An unintended consequence could arise if eligibility for catastrophic plans is broadened. As noted above, catastrophic plans are risk adjusted separately from metal tier plans. If some insurers choose to offer only catastrophic plans, adverse selection issues could arise; catastrophic plans could get lower premium rates because they don't share any of the adverse selection costs borne by silver, gold, and platinum plans. Premiums for metal tier plans could be inadequate as a result, because premiums for those plans are not allowed to be adjusted upward to reflect an exodus of a lower-cost population to catastrophic plans. A way to avoid this concern would be to combine risk adjustment of catastrophic plans and metal tier plans. (Another option would be to allow only insurers who offer metal tier plans to offer catastrophic plans.) Combining risk adjustment would help minimize the adverse effects of broader access to catastrophic plans. On the other hand, they could reduce the relative attractiveness of catastrophic plans.

Increase benefit design flexibility. Designing benefit packages that would be more attractive to healthy enrollees could increase their participation. For instance, some insurers offer primary care visits or generic drugs with low copayments before the deductible as a way to increase the value of benefits. Although insurers already have flexibility to vary plan designs within the actuarial value constraints, health savings account (HSA) rules prohibit paying most non-preventive benefits prior to the deductible. Relaxing those rules to allow insurers to provide more incentives for cost-effective care prior to the deductible could increase the value of benefits while also potentially reducing costs.

Provide stable, consistent state and federal regulatory and legislative environments. A stable marketplace requires that rules be consistently applied to all competitors in order to prevent particular insurers from being inappropriately advantaged or disadvantaged. In addition,

[12] Maximum out-of-pocket limits likely would need to be raised in order for actuarial values lower than bronze plans to be achievable. Similarly some states have limits on other cost-sharing requirements that would need to be loosened.

regulatory certainty is needed. Otherwise, premium adequacy and stability, and ultimately insurer solvency, could be at risk. ACA regulations put into place standardized and effective regulatory processes. However, certain regulatory and legislative changes (e.g., allowing individuals to retain pre-ACA coverage, constraints on risk corridor payments, elimination of CSR payments to insurers) have seriously undermined this stability, negatively affecting the risk pool profiles, premium adequacy, and insurer financial results. In addition, delays in the release of important information, including risk adjustment data, can negatively affect stability, as can uncertainty regarding potential future legislative and regulatory action. Providing stable rules that are consistent with strengthening rather than weakening the market could increase insurer participation and lead to more consumer choice.

Continue to improve the risk adjustment program. The risk adjustment program is an integral part of providing the ACA's pre-existing condition protections, and ACA-compliant plans on and off the marketplaces participate in the program. By transferring funds between insurers based on the relative risk of their plan participants, risk adjustment aims to reduce incentives for insurers to avoid enrolling people at risk of high health spending. Risk adjustment also allows for insurers to offer a broader range of choices, as it mitigates concerns related to adverse selection among different plan designs. The Center for Consumer Information and Insurance Oversight has regularly modified the program so that it better reflects differences in the underlying risk among participating insurers and should continue to do so.

Notably, non-ACA-compliant plans are not part of the risk adjustment program. Therefore, the program cannot mitigate the differences in enrollment patterns between noncompliant plans, which are more attractive to healthy individuals, and ACA-compliant plans. Expanding the availability of noncompliant coverage, such as short-term duration plans, therefore, could threaten the ability of the risk adjustment program to support the pre-existing condition protections.

Avoid destabilizing actions. Actions to stabilize and improve the market could increase insurer competition and consumer choice. Destabilizing actions, on the other hand, could increase the possibility that insurers leave the market, thereby reducing competition and the choice of plans that provide pre-existing condition protections. For instance, allowing the sale of insurance across state lines or expanding the ability of individuals to obtain coverage through association health plans could lead to market fragmentation and a destabilization of markets, especially if states were allowed to vary market rules and coverage requirements.

Opening up noncompliant plans to new purchasers would also destabilize ACA-compliant markets. Evidence suggests that states allowing consumers to retain their noncompliant plans experienced higher premium increases and/or reduced insurer participation in the ACA marketplaces compared to states that didn't.[13] Expanding the availability of noncompliant plans, including short-term limited duration plans, would likely lead to market fragmentation, a deterioration in the risk pool, and higher premiums for ACA-compliant coverage. If noncompliant coverage were to offer lower premiums in exchange for less comprehensive

[13] Katherine Hempstead, "Marketplace Pulse: Leaky Risk Pools Sink Markets," Robert Wood Johnson Foundation, August 2017. Ashley Semanskee, Cynthia Cox, and Larry Levitt, "Data Note: Effect of Sate Decisions on State Risk Pools," Kaiser Family Foundation, October 2016.

benefits and few or no pre-existing condition protections, then lower-cost individuals would have financial incentives to move to those plans. Higher-cost individuals would have financial incentives to remain in ACA-compliant coverage. Such adverse selection would lead to higher premiums for compliant coverage, making it more difficult for higher-cost individuals to afford coverage. Moreover, the number of insurers offering compliant coverage would likely decrease, threatening even the availability of compliant coverage.

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Improving healthcare choice and competition requires achieving a stable and sustainable health insurance market. Implementing mechanisms to encourage enrollment and facilitate a balanced risk pool, fostering a stable and consistent regulatory environment, and avoiding actions that would fragment the market, are key to stabilizing the individual health insurance market.

The Academy's Individual and Small Group Markets Committee will separately provide more detailed comments in response to recently proposed regulations on association health plans and on any subsequent proposed regulations on short-term duration policies and health reimbursement arrangements.

We would welcome the opportunity to discuss these options with you in more detail. If you have questions or would like to meet with us, please contact David Linn, the Academy's senior health policy analyst, at 202-785-6931 or linn@actuary.org.

Sincerely,

Barbara Klever, MAAA, FSA
Chair, Individual and Small Group Markets Committee
American Academy of Actuaries