September 12, 2017

The Honorable Lamar Alexander
Chairman, Senate Health, Education, Labor, & Pensions Committee
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member, Senate Health Education Labor, & Pensions Committee
428 Senate Dirksen Office Building
Washington, DC 20510

Re: Stabilizing the Individual Health Insurance Market

Dear Chairman Alexander and Ranking Member Murray,

As the Senate Health, Education, Labor, & Pensions (HELP) Committee holds hearings on stabilizing the individual insurance market, the Health Practice Council of the American Academy of Actuaries[1] would like to offer insights from an actuarial perspective on potential actions that can stabilize the market and improve its sustainability. We appreciate the opportunity to provide comments on this important issue. Our mission is to inform public policy deliberations in a nonpartisan, objective way.

In brief, actions that would help stabilize and improve the individual health insurance market include:

- Continued funding of cost-sharing reduction (CSR) payments;
- Effective enforcement of the individual mandate;
- Enrollment outreach and assistance;
- External stability funding (for instance, in the form of reinsurance); and
- Avoiding actions that would increase uncertainty or threaten stability.

Conditions for a stable and sustainable individual health insurance market

Several conditions are necessary to achieve a stable and sustainable health insurance market.[2] These include:

- Enrollment at sufficient levels to support stable and predictable claims. In addition, when protections for individuals with pre-existing conditions are provided, it's important to attract healthy individuals for 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

[2] American Academy of Actuaries, *An Evaluation of the Individual Health Insurance Market and Implications of Potential Changes*, January 2017.

- A stable regulatory environment that facilitates fair competition.
- Sufficient insurer participation and plan offerings to provide insurer competition and consumer choice.
- Slow spending growth and high quality of care, because most premium dollars go toward paying medical claims.

The Affordable Care Act (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 includes other provisions, such as premium and cost-sharing subsidies and an individual mandate, designed to increase overall participation in health insurance plans.

As a result of the ACA, nationwide enrollment in the individual market increased.[3] Yet in general, enrollment in the individual market was lower than originally projected and enrollees were 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. 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 has stabilized or even improved somewhat, but the market is still fragile.[4] In particular, uncertainty regarding CSR payments to insurers and whether the individual mandate will be enforced are leading to higher premiums and contributing to insurer decisions to withdraw from the market. Continued uncertainty could lead to more insurer withdrawals.

Insurers are currently making their final decisions on whether to participate in the market in 2018 and if so, where to set their premiums. Continued uncertainty adds to the risk that insurers will discontinue their participation.

What is needed to improve individual health insurance market stability and sustainability

Continued funding of CSRs. The ACA requires insurers to provide CSRs to eligible low-income enrollees, thereby reducing their financial barriers to care. Although the law stipulates the federal government reimburse insurers for these reductions, a U.S. district court ruling in a challenge brought by the House of Representatives found that a congressional appropriation is required to make such reimbursements.[5] The case is now on hold, giving the parties an opportunity to reach a resolution.[6] As a result, the administration has been making payment decisions on a month-to-month basis.

[3] Kaiser Family Foundation, State Health Facts, Health Insurance Coverage of Nonelderly 0-64. Accessed August 23, 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.
[5] *U.S. House of Reps. v Burwell*, (D.D.C. May 12, 2016).
[6] *U.S. House of Reps. v. Price*, (U.S. Court of Appeals, August 1, 2017).

Premium levels depend on whether those reimbursements will be paid. Decisions to not pay the reimbursements or even uncertainty about the reimbursements could result in 2018 premium increases averaging about 20 percent for silver plans, over and above premium increases due to medical inflation and other factors.[7] These estimates could understate silver plan premium increases; silver plan enrollment would likely shift toward lower-income enrollees with higher cost-sharing subsidies, thus necessitating higher premiums. Federal spending would likely increase if CSR payments are not made, as the increase in federal premium subsidies would exceed federal savings due to eliminating CSR payments to insurers.[8]

Insurer rate filings for 2018 have incorporated the uncertainty regarding CSR payments in various ways, depending in part on state regulatory guidance. Some insurers have submitted two sets of rates—one assuming CSRs will be paid and another assuming they won't. Other insurers have increased their premiums to reflect the uncertainty in CSR payments. Some insurers have also cited this uncertainty as a reason for withdrawing from the market.[9] Continued uncertainty or the prospect of higher premium increases could cause more insurers to withdraw from the market, potentially leaving more areas of the country with one participating insurer, or even none at all.

Funding of the CSR reimbursements through congressional appropriations or other means is needed as soon as possible to avoid premium increases or potential further market withdrawals.

Enforcement of the individual mandate. The individual mandate was intended to encourage healthy individuals to obtain coverage, thereby achieving a balanced risk pool. But the financial penalty is usually low as a share of premiums, many individuals are exempt, and enforcement has been weak. Nevertheless, the mandate, especially in conjunction with the premium- and cost-sharing subsidies, likely increases enrollment above what it would otherwise be. Strengthening the mandate, through higher financial penalties or stricter enforcement, could increase its effectiveness. Eliminating or weakening the mandate, through less vigorous enforcement, lowering financial penalties, or exempting particular categories of individuals from its requirements, would have adverse consequences. A deteriorating risk pool would lead to higher premiums.

A question arises as to whether there are any alternatives to the individual mandate that could result in a more balanced risk pool. Continuous coverage requirements have been suggested as a way to mitigate the adverse consequences of eliminating the mandate. However, a continuous coverage requirement with financial penalties for late enrollees would likely not be effective enough to avoid lower enrollment and a deterioration of the risk pool. 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 only people with prior gaps in coverage willing to pay the

[7] Congressional Budget Office (CBO), "The Effects of Terminating Payments for Cost-Sharing Reductions," August 2017. Kaiser Family Foundation, "Estimates: Average ACA Marketplace Premiums for Silver Plans Would Need to Increase by 10% to Compensate for Lack of Funding for Cost-Sharing Subsidies; Estimated Increases Range from 9% in North Dakota to 24% in Mississippi" April 6, 2017.
[8] CBO, August 2017.
[9] For instance, Amy Goldstein, "Aetna exiting all ACA insurance marketplaces in 2018," *Washington Post*, May 10, 2017; Anthem BlueCross BlueShield, "Anthem Statement on Individual Market Participation in Nevada," August 7, 2017.

penalty are those who have high health care needs. In either case, higher premiums would result. A continuous coverage requirement that imposes a waiting period for late enrollees could offset some of the higher premiums due to eliminating the mandate, but primarily by reducing costs to insurers for late enrollees rather than by encouraging enrollment among healthy individuals.

Auto-enrollment has been suggested as another alternative to the mandate. Such a strategy has been successful in increasing participation in retirement savings plans. It has the potential to increase health insurance participation rates, but logistical hurdles such as how to identify eligible enrollees would need to be overcome. The residual and transitional nature of the individual market could make those efforts especially difficult. 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.

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 the individual mandate and premium subsidies to increase enrollment rates, which in turn can lead to a more balanced risk pool and lower premiums. Continued, or even increased, marketing and other outreach efforts are needed to maintain or improve enrollment rates. Weakening the enforcement of the mandate would increase the importance of outreach efforts.

External stability funding. If the individual mandate is 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.[10] 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.[11] Several states are pursuing 1332 innovation waivers[12] for state-based reinsurance; Alaska's waiver was recently approved. Individual states are structuring their programs in different ways, varying how eligible enrollees are identified and the parameters defining what portion of a plan's claims are reimbursed.[13]

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[10] 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.
[11] American Academy of Actuaries, *Drivers of 2015 Health Insurance Premium Changes*, June 2014.
[12] 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.
[13] State Health Access Data Assistance Center (SHADAC), "And Then There Were Five: New Hampshire and Oklahoma Join Alaska, Iowa, and Minnesota in Proposing Reinsurance for Individual Market," August 18, 2017. Accessed August 25, 2017.

Regardless of the way it is structured, a reinsurance-type program could lower premiums, due not only to lowering plan costs directly but also by leading to a more balanced risk pool. In other words, any federal spending toward reinsurance could be offset at least in part by a reduction in federal spending for premium subsidies. A recent analysis estimated that an annual $15 billion in external federal funding would be offset by 80 percent due to a reduction in federal spending for premium subsidies.[14]

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.

Avoiding legislative or regulatory actions that could increase uncertainty or threaten stability. It is important not only that policymakers take actions to stabilize and improve the market, but also to avoid actions that would destabilize the market. Allowing the sale of insurance across state lines[15] or expanding the ability of individuals to obtain coverage through association health plans[16] 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.[17] 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 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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Actions need to be taken to reduce legislative and regulatory uncertainty and to improve market stability. Continuing uncertainty could lead to additional insurers exiting the market, leaving consumers with fewer insurance choices, or none at all. Funding the CSRs should be a priority. Doing so would reduce uncertainty and lead to a more stable market, as long as destabilizing actions are not taken. Other actions that can be taken to stabilize or even improve the market

[14] Kurt Giesa and Peter Kaczmarek, "Analysis: Impact of Market-Stabilization Proposals," Oliver Wyman Health, August 23, 2017.
[15] See American Academy of Actuaries, *Selling Insurance Across State Lines*, February 2017.
[16] See American Academy of Actuaries, *Association Health Plans*, February 2017.
[17] 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.

include enforcing or strengthening the individual mandate, increasing marketing and enrollment outreach, and directing external funding to offset premiums.

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,

Shari Westerfield, MAAA, FSA
Vice President, Health Practice Council
American Academy of Actuaries