Interim Charge 11: 1332 waivers and federal health care changes

House Appropriations - S/C on Article II

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Takeaways: Federal Changes Weaken Texas Individual Market

• Individual market is a critical source of coverage for people who don’t have job-based coverage, Medicaid or Medicare: self-employed individuals, small business owners/employees, part-time workers, low-wage workers, early retirees and their families.

• Individual market in Texas roughly doubled post-ACA. 1.7 Million people; 6% of Texans.

• Recent federal actions have introduced significant new uncertainty for 2019. The Urban Institute estimates an additional 20% rate increase for Texas for 2019. Middle and upper income enrollees will be hardest hit.

• Texas should commit to working to maintain market stability in a manner that protects consumer’s access to comprehensive and affordable coverage.
  • State-level policies can mitigate instability
  • 1332 “State Innovation Waiver” reinsurance can lower premiums. Already in place in Alaska, Minnesota, and Oregon
The Individual Market is a Small but Critical Source of Coverage

Health insurance coverage sources in Texas, 2016 all ages

- Employer: 49%
- Medicaid/CHIP: 16%
- Medicare: 11%
- Military/VA: 2%
- Uninsured: 16%
- Individual Market: 6%

Federal Actions Adding to Market Instability

- Congress repeals individual mandate, effective in 2019.
  - American Academy of Actuaries: Eliminating mandate will increase premiums; may weaken solvency and cause insurer market withdrawals. Possible “severe market disruption and loss of coverage.”
  - Congressional Budget Office: Premiums will increase by 10%

- Proposed rule to expand short-term, limited duration plans not subject to the ACA. Can deny coverage or charge more due to pre-existing conditions
  - Urban Institute estimates TX individual market premiums will rise 20% in 2019 over what they would have been due to short-term health plans & repeal of individual mandate

- Proposed rule to expand “association health plans.” AHPs do not fully comply with ACA. Will be designed to attract healthier individuals. History of scams & insolvency
  - American Academy of Actuaries: “AHPs could result in unintended consequences such as market segmentation that could threaten non-AHP viability and make it more difficult for high-cost individuals and groups to obtain coverage.

- Recent policy changes that discourage enrollment: Marketplace ad budget cut by 90%; Navigator funding cut by 40%; open enrollment period cut in half

These policies create “adverse selection.” Plans with skimpy coverage will “cherry pick” the healthiest people from the individual market. As less healthy people become concentrated in ACA-compliant plans, premiums will rise and choices will decline.

Middle class individuals who have pre-existing conditions or need comprehensive coverage will be hardest hit.
Harm to Texans: Premiums Up, Coverage Down

- Texas individual market premiums up an additional 20% in 2019 due to expansion of short-term plans and repeal of individual mandate.
- 386,000 fewer Texans have health insurance in 2019 due to expansion of short-term plans, repeal of individual mandate, cuts to outreach and enrollment, and ending cost-sharing reduction payments.

State Policy Options to Increase Stability

• Pursue 1332 State Innovation Waiver for high-risk reinsurance pool funding to lower premiums
  • State share needed. Does not have to be GR.
  • Former TX high risk pool used no GR. Assessment on insurers generated $70 million/year on average and hospitals contributed $20 million/year on average from insurer prompt pay penalties to support low-income subsidy.

• States regulate short-term plans. States can:
  • Limit duration and renewability, so they are stop-gap coverage as intended.
  • Apply minimum benefit standards
  • Improve disclosures
  • Increase oversight of deceptive marketing

• States have broad authority today to regulate association health plans. If not pre-empted in final rule, states can align standards for AHPs with the rest of the market to limit adverse selection

• Boost marketing, outreach, and enrollment assistance

• State individual mandate or alternative policies to encourage enrollment before people get sick
Background Slides
1332 Waivers

**Purpose:** Allow states to undertake different approaches to achieving ACA core goals

### Statutory Guardrails

Waiver must:
- Cover comparable number of people
- Maintain affordability of health coverage (premiums and cost-sharing)
- Provide benefits as comprehensive as “essential health benefits,” and
- Not increase the federal deficit

### Other Provisions

- 5 year term. Renewable
- Public input process
- Allows federal “pass-through” funding: savings states policies create in federal subsidies can be returned to the state for reinsurance or invisible high risk pool funding
1332 Waiver: What Can Be Waived

**Waivable**

- Individual and large employer mandates
- Requirements for state exchanges
- Essential health benefits
- Metal levels
- Single risk pool requirement
- Premium and cost-sharing subsidies

**Not Waivable**

- Ban on denying coverage or charging more based on pre-exiting conditions
- Ban on annual and lifetime limits
- Preventive care coverage requirements
- Age-rating limits
- Anti-discrimination protections
- Medicaid and CHIP provisions
## Select State 1332 Waiver Activity

<table>
<thead>
<tr>
<th>State</th>
<th>Status</th>
<th>Key provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hawaii</td>
<td>Approved</td>
<td>Forego SHOP exchange, maintain existing employer premium assistance program</td>
</tr>
<tr>
<td>Alaska</td>
<td>Approved</td>
<td>Federal pass-through funding for condition-specific reinsurance. Premiums down 20% in state’s only insurer. Trump administration has encouraged other states to view as a model</td>
</tr>
<tr>
<td>Oregon</td>
<td>Approved</td>
<td>Reinsurance with pass-through funding</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Partial approval</td>
<td>Reinsurance with pass-through funding</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Initial application withdrawn; another under development</td>
<td>Reinsurance with pass-through funding. Withdrawn when it was not approved in time for 2018 coverage</td>
</tr>
<tr>
<td>Iowa</td>
<td>Withdrawn</td>
<td>Create one standardized plan; eliminate cost-sharing assistance for low-income; replace sliding-scale subsidies with flat tax credit; reinsurance. Waiver unlikely to have complied with guardrails</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Denied</td>
<td>Create state-administered cost-sharing reductions payments. Deemed too close to 2018 open enrollment to be workable</td>
</tr>
<tr>
<td>Idaho</td>
<td>Under development</td>
<td>Make “Coverage Gap” population eligible for Marketplace subsidies.</td>
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67% of Texans are in counties where 3 or more insurers offer Marketplace plans

11% of Texans in counties with only 1 Marketplace insurer

8 insurers in 2018 Texas Marketplace

### Options

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- 11% of Texans in counties with only 1 Marketplace insurer
- 8 insurers in 2018 Texas Marketplace

### Enrollment

<table>
<thead>
<tr>
<th>Plan Selections during Open Enrollment:</th>
<th>% change</th>
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<tbody>
<tr>
<td>2017</td>
<td>2018</td>
</tr>
<tr>
<td>Texas</td>
<td>1.2 million</td>
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<tr>
<td>States Using HealthCare.gov</td>
<td>12.2 million</td>
</tr>
</tbody>
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Dip in enrollment for 2018 likely driven by:
- Enrollment period cut in half
- Ad budget cut by 90%
- Enrollment assistance funds cut by 40%
- Premium increases for middle/upper income
- Confusion about penalty/status of ACA
Repeal of Individual Mandate Causes Higher Premiums and More Uninsured

Congressional Budget Office: Individual market premiums up 10% over current law. 4 million more uninsured in 2018 and 13 million more by 2025.

American Academy of Actuaries: Eliminating mandate will increase premiums; may weaken solvency and cause insurer market withdrawals. Possible “severe market disruption and loss of coverage.” 11/21/17 letter to Senate

Health care/coverage providers: “Eliminating the individual mandate by itself likely will result in a significant increase in premiums, which would in turn substantially increase the number of uninsured Americans...There will be serious consequences if Congress simply repeals the mandate while leaving the insurance reforms in place: millions more will be uninsured or face higher premiums, challenging their ability to access the care they need.” 11/14/17 join letter to Congress

Patient Groups: “Repealing the individual mandate without other wise increasing access to adequate, affordable health insurance is a step backwards for individuals and families. We are deeply concerned that premium increases will fall disproportionately on patients with pre-exiting conditions who have little choice but to remain in a much smaller market, provided they can even afford to do so.” 11/28/17 joint letter to Senate