Consumer and Market Implications of Affordable Care Act Repeal without a Viable Replacement

Covered California is monitoring and reviewing the implications of both policies and the timing of policies that could impact the consumers who have and are benefiting from the Affordable Care Act in California (ACA). This document reviews the issues specific to the potential consumer and market impacts should a "repeal" occur absent viable changes to transition consumers, health plans and providers to new arrangements. The hope of Covered California is that any transition to Affordable Care Act "replacement" policies would not put at risk the individual markets (both subsidized and unsubsidized) and millions of patients/consumers (and the providers who serve them) enrolled in the individual market and in expanded Medicaid programs.

Without knowing the nature and structure of proposed changes in how tax credits might be administered or Medicaid funding structured, it is impossible to frame a "glide path" that would give health plans the certainty they need to continue in the individual market. Any proposal that would only assure funding continuity for two years (e.g., through 2018) would virtually guarantee the collapse of the individual market — eliminating the individual market in many states and in others states would lead to very large rate increases for the 2018 plan year to cover the underwriting uncertainty — but even longer "transition periods" would result in huge uncertainty and market instability.

What's At Stake

There is an increasing understanding and mounting evidence that the stability of our health care sector is at great risk if changes in policies are not enacted prudently. These risks include:

- **Potential collapse of the individual market for health insurance.** Absent a transition being in place, health plans across the nation will very likely adopt one of two strategies: (1) they will exit the individual market, or (2) they will substantially raise premiums in the face of great uncertainty and a worsening risk mix.[1] With the collapse of the individual market, not only would 9.3 million Americans lose tax credit supported coverage, an additional 8.4 million who have been in the individual market with NO subsidy would lose coverage (these are small business owners, individuals who make too much for the current tax credit — but would be potentially without any insurance options).[2] In a recent analysis, the Congressional Budget Office (CBO) reported that partially repealing the ACA without a replacement would have an immediate effect on health plans and that in the first year after the repeal of marketplace subsidies took effect, about half of the nations population would be living in areas that would have *no insurer participation in the nongroup market*.[3]

Possible Risks of ACA Repeal without a Viable Replacement:

- Potential collapse of the individual market for health insurance.
- Partial repeal of the ACA would negatively affect coverage and premiums.
- Immediate and precipitous reductions in revenue for hospitals, integrated delivery systems, physicians, other providers and insurance agents.
- Substantial impact on jobs and the economy.

This paper was prepared by Covered California for its ongoing planning and to inform policy making in California and nationally.

- **Partial repeal of the ACA would negatively affect coverage and premiums.** The CBO also found that repeal without replacement would impact the uninsured rate in the individual market as well as those enrolled in Medicaid. In the first new plan year following the enactment of a partial repeal, the CBO estimates that 18 million people would become uninsured, with that number increasing to 32 million in 10 years.[4] Premiums are projected to rise by 20 to 25 percent in the first plan year following implementation and by up to 50 percent following the elimination of the individual mandate, federal subsidies and Medicaid expansion.[5] The CBO also found that in the first year after the repeal of marketplace subsidies took effect, about half of the nation's population would be living in areas that would have no insurer participation in the nongroup market.[6]

- **Immediate and precipitous reductions in revenue for hospitals, integrated delivery systems, physicians, other providers and insurance agents.** The reduction in revenue could result in dramatic workforce reduction and require other significant operating changes such as redirecting staff from patient service functions. One estimate is that there would be a $114 billion reduction in federal/state spending in 2019, which would translate into an increase of approximately $88 billion in uncompensated care.[7] The near term impact of dramatic increases in uncompensated care are threefold: (1) a likely increase in employer-based health care costs as providers shift costs to employers; (2) reductions in employment by hospitals and other providers[7]; and (3) increased medical debt and personal bankruptcies as a consequence of providing care to the newly uninsured.

- **Substantial impact on jobs and the economy.** Instability in the health care sector is not just a coverage and care issue — it is a vital economic concern at the state and local level. Repeal without viable replacement is also an economic stability issue in California, with partial repeal of the ACA predicted to lead to California losing between 209,000 and 334,000 jobs.[8]

Working Toward A Realistic Timeframe

Policy proposals advancing a replacement for the ACA should take into account the significant transition from one health care financing mechanism to another. New policies will take time to be implemented and, in many cases, may require complementary state-level legislative action. To minimize disruption to both patients/consumers and health industry sectors, there need to be clearly developed policies and a workable implementation timeline. A three, four or five year "transition period" may be required, depending on policy specifics, to limit the adverse impact on consumers/patients, the health care sector and the entire economy.

Major Risks During a Transition of ACA Policies

Key elements of the existing market-structure, law and regulatory environment should be maintained during any transition period to ensure national and regional market stability. In particular, any changes in policies that are specifically incorporated in existing plan year contracting (for the 2017 plan year) would not only reflect bad faith on the part of the government, but would lead many insurers to immediately withdraw from individual markets – both subsidized and unsubsidized. For the elements below, changes could be made by Congress or by administrative action, but disruption of any of these policies would result in very high risk to patients/consumers and the health insurance market. These include:

- **Funding Changes for Cost Sharing Reduction ("CSR") Subsidies Need Clear Timeframe and Recognition of Potentially Higher Federal Spending.** If direct federal funding of CSR's were eliminated for all or part of 2017, many health plans would likely decide to immediately withdraw from the individual market or seek mid-year rate increases that would be substantial. While with early notice, health plans could build the cost of CSR into their premium pricing for the Silver products for 2018, the impact on enrollment, tier selection and on federal spending needs analysis. While health plans could build CSR into their premium pricing, recent analysis commissioned by Covered California found that such a change would result in approximately 29 percent higher cost to the federal government. A comprehensive report commissioned by Covered California on this issue can be found at: http://coveredca.com/news/pdfs/CoveredCA_Consequences_of_Terminating_CSR.pdf

- **Defunding Reinsurance to Plans for 2016 Would Breach Contract and Commercial Expectations:** if the contracted reinsurance payments due for plan year 2016 were not funded, health plans would confront additional substantial losses for 2016 and would be far less likely to risk losses in 2017 and beyond in the face of uncertainty. Plans would likely consider withdrawing during 2017 or not continuing to offer coverage in 2018.

- **Non-enforcement of the Individual Mandate Without Putting a Parallel Tactic in Place would Have Immediate Negative Impacts on the Risk Pool**: the direct impact of eliminating the penalty while maintaining guaranteed issue — the provision the health plans may not consider pre-existing conditions during enrollment — and NOT instituting at the same time comparable policies to promote enrollment would lead to lower enrollment AND a worse risk mix. Some health plans would likely withdraw from the individual market immediately, leaving entire states or regions within states with no coverage. Any remaining health plans would implement substantial rate increases. If the penalty were eliminated/not enforced in 2017, there is the prospect that plans could seek to immediately withdraw from the individual market. For plans remaining in 2018, rating would be conservative and likely substantially higher than was experienced in 2017. Any elimination of the individual penalty would need to be implemented in concert with the implementation of alternate mechanisms to assure a balanced risk pool.

- **Assuring Viable Risk Stabilization Funding and Policies:** funding for higher risk in the individual market and policies to assure those enrolling are eligible and appropriate are critical to assuring a sustainable risk pool that maintains a functioning individual market. In the absence of a mechanism, such as continued reinsurance or a risk corridor program, some states could see additional insurers leave the individual market. States could experience significant rate increases on consumers/patients as remaining insurers readjust and adapt to the worsening risk mix. In addition to funding, there need to be clear policies that assure health plans that the new and continued enrollees reflect a balanced risk pool, this includes polices with regard to assuring robust marketing to promote enrollment in the individual market, Special Enrollment Periods, third-party payment and administration of the grace period. Risk stabilization policies will play a crucial role in some health plans' decision to participate in the individual market in 2018 and beyond, as well as their pricing if they were to participate.

About Covered California

Covered California is an independent part of the state government whose job is to make the health insurance marketplace work for California's consumers. It is overseen by a five-member board appointed by the governor and the legislature. For more information about Covered California, please visit www.CoveredCA.com.

[1] American Society of Actuaries, December 7, 2016. http://www.actuary.org/files/publications/HPC_letter_ACA_CSR_120716.pdf; and, Congressional Budget Office, January 2017. https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/reports/52371-coverageandpremiums.pdf

[2] Urban Institute, December 2016. http://www.urban.org/sites/default/files/publication/86236/2001013-the-implications-of-partial-repeal-of-the-aca-through-reconciliatio.pdf

[3] Congressional Budget Office, January 2017.

[4] Congressional Budget Office, January 2017.

[5] Congressional Budget Office, January 2017.

[6] Urban Institute, December 2016; and, Dobson/DaVanzo, 2016 http://www.aha.org/content/16/impact-repeal-aca-report.pdf

[7] Dobson/Davanzo, 2016 http://www.aha.org/content/16/impact-repeal-aca-report.pdf

[8] University of California (UCB Labor Center) "California's Projected Economic Losses Under ACA Repeal", December 20, 2016. http://laborcenter.berkeley.edu/californias-projected-economic-losses-under-aca-repeal/; and,The Commonwealth Fund "Repealing Federal Health Reform: Economic and Employment Consequences for States". January 25, 2017. http://www.commonwealthfund.org/publications/issue-briefs/2017/jan/repealing-federal-health-reform