

August 30, 2017

The Honorable Paul D. Ryan  
Speaker of the House  
H-232, The Capitol  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Senate Majority Leader  
S-230, The Capitol  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
House Minority Leader  
H-204, The Capitol  
Washington, D.C. 20515

The Honorable Charles E. Schumer  
Senate Minority Leader  
S-221, The Capitol  
Washington, D.C. 20510

Dear Mr. Speaker, Leader McConnell, Leader Pelosi and Leader Schumer:

As Congress considers reforms to strengthen our nation's health insurance system, we ask you to take immediate steps to make coverage more stable and affordable. The current state of our individual market is unsustainable and we can all agree this is a problem that needs to be fixed. Governors have already made restoring stability and affordability in this market a priority, and we look forward to partnering with you in this effort.

Most Americans currently have access to a stable source of health insurance coverage through their employer, or from public programs, like Medicare and Medicaid. While rising costs are a concern throughout the system, the volatility of the individual market is the most immediate concern, threatening coverage for 22 million Americans.

Continuing uncertainty about the direction of federal policy is driving up premiums, eliminating competition, and leaving consumers with fewer choices. Proposed premiums for the most popular exchange plans are expected to increase 18 percent in 2018 and 2.5 million residents in 1,400 counties will have only one carrier available to them on the exchange. Despite these headwinds, states continue to try to stabilize the individual market and have developed innovative solutions to preserve coverage while making insurance more affordable.

Previously, we have written that changes to our health insurance system should be based on a set of guiding principles that include improving affordability and restoring stability to insurance markets. Reforms should not shift costs to states or fail to provide the necessary resources to ensure that the working poor or those suffering from mental illness, chronic illness or addiction can get the care they need.

Based on these guiding principles, we recommend (1) immediate federal action to stabilize markets, (2) responsible reforms that preserve recent coverage gains and control costs, and (3) an active federal/state partnership that is based on innovation and a shared commitment to improve overall health system performance. Just as these proposals have brought together governors from across the political spectrum, we are confident they can attract support across party lines in both chambers of Congress.

## 1. Immediate federal action to stabilize markets.

Congress should continue its work to identify reforms that strengthen insurance markets in the long term, but we need immediate action to ensure consumers have affordable options in the short term. Insurers have until the end of September to make final decisions about participating in the marketplaces. Congress and the Administration need to send a strong signal now that the individual market will remain viable this year, next year, and into the future.

Fund cost sharing reduction payments. The Trump Administration should commit to making cost sharing reduction (CSR) payments. The National Association of Insurance Commissioners (NAIC), National Governors Association, and United States Chamber of Commerce have identified this as an urgent necessity. The Congressional Budget Office (CBO) estimates not making these payments would drive up premiums 20-25 percent and increase the federal deficit \$194 billion over ten years.

Also, Congress should put to rest any uncertainty about the future of CSR payments by explicitly appropriating federal funding for these payments at least through 2019. This guarantee would protect the assistance working Americans need to afford their insurance, give carriers the confidence they need to stay in the market, increase competition, and create more options for consumers. Because the cost of this initiative is already included in the budget baseline, the appropriation would not have budget consequences.

Create a temporary stability fund. Congress should create a fund that states can use to create reinsurance programs or similar efforts that reduce premiums and limit losses for providing coverage. The House and Senate each recently proposed \$15 billion annually for states to address coverage and access disruption in the marketplace with a goal of lowering premiums and saving money on premium subsidies. We recommend funding the program for at least two years and fully offsetting the cost so it does not add to the deficit.

Offer choices in underserved counties. Congress should foster competition and choice in counties where consumers lack options because there is only one carrier on the exchange. We ask Congress to encourage insurance companies to enter underserved counties by exempting these insurers from the federal health insurance tax on their exchange plans in those counties. We also ask Congress to allow residents in underserved counties to buy into the Federal Employee Benefit Program, giving residents in rural counties access to the same health care as federal workers. While these proposals may be temporary solutions, they will help provide Americans with additional choices until other policies have improved the market dynamics.

Keep the individual mandate for now. Finally, to prevent a rapid exit of additional carriers from the marketplace, Congress should leave the individual mandate in place until it can devise a credible replacement. The current mandate is unpopular, but for the time being it is perhaps the most important incentive for healthy people to enroll in coverage. Until Congress comes up with a better solution – or states request waivers to implement a workable alternative – the individual mandate is necessary to keep markets stable in the short term.

## **2. Responsible reforms that preserve coverage gains and control costs.**

Federal action to stabilize markets is only the first step. Governors have been eager to pursue reforms that strengthen health insurance markets in our states, but uncertainty about the ACA and the status of federal subsidies to support the individual market have made it difficult to proceed. Working alongside states, the federal government must make reforms that will preserve and expand gains in coverage, while controlling costs for consumers.

In efforts to augment the potential federal actions we recommend in this letter, we attach a menu of options that individual states may consider or pursue. The options can be considered alone or assembled into a comprehensive strategy to achieve the interrelated goals of maximizing market participation, promoting appropriate enrollment, stabilizing risk pools, and reducing cost through coverage redesign. Different states will take different approaches. We all agree on and support the proposals contained in this letter, but each state will choose the state-based approaches that best fits their individual situation.

Maximize market participation. Approximately 22 million people now purchase coverage through the individual market, but another 27 million remain uninsured. Increasing coverage uptake among the uninsured would improve the risk pool and set in place a virtuous cycle of lower premiums leading to higher enrollment.

First and foremost, encouraging younger, healthier people to enroll in insurance and educating Americans about the importance of coverage can help improve the risk pool. The federal government should continue to fund outreach and enrollment efforts that encourage Americans to sign up for insurance. Many states invest in similar efforts, and all states need the federal government's support to maximize participation from younger, healthier people.

Also, making insurance more affordable is a key part of increasing participation in the marketplace. For example, current law includes a glitch that makes some families who can't afford insurance through their employer ineligible for tax credits on the exchange. Congress should fix the "family glitch" and give more working families access to affordable coverage.

Promote appropriate enrollment. Some consumers choose to enroll in a plan only when they need health care, stop paying premiums at the end of the year, or purchase exchange plans even though they are eligible for Medicare and Medicaid – all of which drives up costs in the individual market. Congress and individual states can reverse this effect, for example by shortening grace periods for non-payment of premiums, verifying special enrollment period qualifications, and limiting exchange enrollment for those who are eligible for other programs.

Stabilize risk pools. The ACA created several risk sharing programs to help effectively manage the risk of the individual insurance market. However, the federal government has gone back on its commitment to these programs, in some cases refusing to fully fund risk sharing programs. Congress should modify and strengthen federal risk sharing mechanisms, including risk adjustments and reinsurance. This commitment to federal risk sharing will augment the state efforts that are supported by the stability fund.

Reduce cost through coverage redesign. States have an important but limited role in selecting essential health benefits (EHB). The Secretary of Health and Human Services (HHS) should allow states more flexibility in choosing reference plans for the ten EHB categories than are currently allowed by regulation. HHS should give states that develop alternatives to EHBs that meet the requirements of Section 1332 of the ACA the opportunity to pursue and implement innovative approaches.

### **3. An active federal/state partnership**

States can pursue many reforms without federal assistance. However, in some cases states are constrained by federal law and regulation from being truly innovative. We urge Congress and federal agencies to work with states to overcome these constraints, focusing first on improving the regulatory environment, supporting state innovation waivers, and controlling costs through payment innovation.

Improve the regulatory environment. The ACA created a greater role for the federal government in state health insurance markets, but retained states as the principle regulators of those markets. Recognizing the need for some common federal standards, the federal government should not duplicate efforts or preempt state authority to regulate consumer services, insurance products, market conduct, financial requirements for carriers, and carrier and broker licensing in states that already effectively perform these functions. Also, federal agencies should review the list of regulatory reforms identified by NAIC to stabilize markets.

Support state innovation waivers. Section 1332 of the ACA permits a state to request permission to waive specific provisions of the ACA, including the individual and employer mandates, as well as requirements for qualified health plans, essential health benefits, tax credits and subsidies, and exchanges. A state may not waive community rating requirements, prohibitions on preexisting condition exclusions, lifetime maximum coverage limits, preventive care mandates, or coverage for adults as dependents through age 26. To obtain a waiver, a state must demonstrate its plan would not increase the federal deficit, would not reduce the number of people with health coverage, and would not reduce the affordability or comprehensiveness of coverage.

Many states view Section 1332 as an opportunity to strengthen health insurance markets while retaining the basic protections of the ACA. We recommend HHS streamline and coordinate the waiver submission and approval process, including an option for states to easily build on approved waivers in other states, and an option to fast-track waiver extensions. We also recommend HHS rescind its 2015 guidance on Section 1332 and clarify that states may combine waivers into a comprehensive plan and measure deficit neutrality across the life of the waiver and across federal programs.

Control cost through payment innovation. Coverage is important, and coverage reforms can help contain costs, but eventually our nation needs to confront the underlying market dynamics that are driving unsustainable increases in the cost of care. With the support of the federal government, states are resetting the basic rules of health care competition to pay

providers based on the quality, not the quantity of care they give patients. This is true in our states, where we are increasing access to comprehensive primary care and reducing the incentive to overuse unnecessary services within high cost episodes of care.

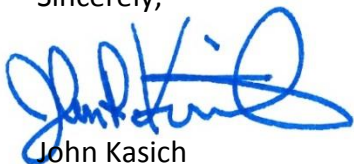
Congress and the Administration should make a clear commitment to value-based health care purchasing. For example, Medicare and other federal programs should be allowed to participate in multi-payer State Innovation Models. The Administration should align priorities for value-based purchasing across all federal agencies, including HHS, CMS, SAMHSA, CDC, VA, AHRQ, HUD, DOL, OMB and others. Payment innovation projects should be funded through the Centers for Medicare and Medicaid Innovation and expanded to more states.

Empowering consumers with information about the cost and quality of care can help to drive competition that will lower costs. New tools should be developed to provide consumers with better information about how much health services cost or which providers offer the best quality of care. For example, the federal government should work with states to promote consumer-facing websites and apps that let consumers shop for health care based on quality and cost. Many states have developed all payer claims databases to provide greater transparency for consumers, and should be allowed to include claims information from federally regulated ERISA plans in these databases.

We strongly encourage that Congress and the Administration take immediate action to stabilize the individual health insurance marketplace. If there is a clear signal to consumers and carriers that the individual market is viable, then additional state-based reforms will be more manageable and we can succeed in preserving recent coverage gains and controlling costs. As we move beyond the immediate crisis, the real challenge over time will be to confront the underlying cost drivers of health care spending, and reset incentives to reward better care for individuals, better health for populations, and lower cost.

Lasting solutions will need support from both sides of the aisle, and we applaud the bipartisan efforts that have now commenced in both the House and Senate. We ask that you support these efforts to return to regular order, allowing committees to work in an open, transparent and bipartisan manner. Governors have extensive expertise implementing changes to our health insurance system, and we stand ready to work with you and your colleagues to develop solutions that are fiscally sound and provide quality, affordable coverage for our most vulnerable citizens.

Sincerely,



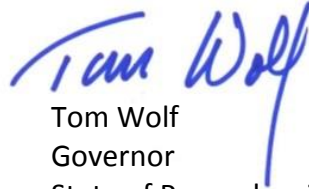
John Kasich  
Governor  
State of Ohio



John Hickenlooper  
Governor  
State of Colorado



Brian Sandoval  
Governor  
State of Nevada



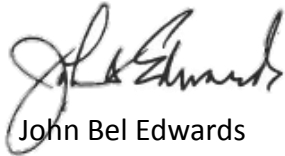
Tom Wolf  
Governor  
State of Pennsylvania



Bill Walker  
Governor  
State of Alaska



Terence R. McAuliffe  
Governor  
State of Virginia



John Bel Edwards  
Governor  
State of Louisiana



Steve Bullock  
Governor  
State of Montana

**A Bipartisan Approach to  
Strengthen Our Nation's Individual Health Insurance Markets  
MENU OF STATE REFORM OPTIONS TO SUPPLEMENT FEDERAL REFORMS**

Maximize carrier participation

- Waive exchange fees for carriers who are the last remaining carrier in a county
- Encourage participation across lines of business (Medicaid MCO, state employee, etc.)
- Streamline payor compliance (quality reporting, coverage transparency, etc.)

Maximize consumer participation

- Increase outreach to attract healthier individuals
- Provide adequate and effective subsidies and/or premium tax credits
- Encourage younger people to get coverage
- Encourage continuous coverage (e.g., reward those who renew coverage every year, penalize those who stop paying premiums, require SEP enrollees to maintain coverage, and/or late enrollment penalties or waiting periods for non-continuous coverage)

Promote appropriate enrollment

- Verify special enrollment period (SEP) enrollment qualifications (NAIC)
- Limit individual market enrollment for those eligible for other public programs (NAIC)
- Prevent third-party payers from diverting consumers from Medicare coverage (NAIC)
- Shorten the 90-day grace period for non-payment of premiums (NAIC)

Stabilize risk pools

- Administer a reinsurance or similar program
- Pursue strategies to create larger, more stable pools (e.g., consider combining individual and small group markets, or consider combining Medicaid and marketplace populations)

Reduce cost through coverage redesign and payment innovation

- Apply for a State Innovation Waiver to pursue innovative strategies to strengthen health insurance markets while retaining the basic protections of the ACA. Section 1332 of the ACA allows a state to request permission to waive provisions related to individual and employer mandates, qualified health plans, consumer choices and insurance competition through marketplaces, and premium tax credits and cost-sharing reductions in the marketplace provided that state covers as many people with coverage that is as affordable and as comprehensive without adding to the federal deficit.
- Encourage the adoption of population-based payment models that reward the effective management of total cost of care
- Encourage the adoption of episode-based payment models that reward the effective management of specialty care
- Enable the use of value-based insurance design and wellness incentives to tie the level of coverage for chronic care to personal responsibility for health outcomes achieved
- Increase transparency in cost and quality (e.g., promote the use of consumer facing websites, include ERISA plan data in all payer claims databases)