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To Reduce Health Insurance Premiums, Congress Must Return Regulatory Authority to States

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Obamacare drove up health care costs by imposing federal mandates on health insurance. The House-passed American Health Care Act (AHCA)[1] repeals some of these mandates and proposes to waive others. As the Senate considers the legislation, it should seek to expand states' ability to take remedial action to address the problems caused by Obamacare. The Senate can pursue two paths to attain this goal: create a new waiver process (as the House did), or ease the federal conditions of an existing waiver process under Section 1332 of Obamacare.

Congress needs to provide state officials the ability to address the deteriorating condition of individual health insurance markets under Obamacare.

The Condition of Health Care Markets Under Obamacare

Obamacare's federal control over state health insurance markets has proven to be a costly and painful experiment, resulting in soaring premiums and skyrocketing deductibles for enrollees.

The Centers for Medicare and Medicaid Services (CMS) reported that in the federally supervised health insurance exchanges (39 states), between 2013 and 2017, average monthly premiums increased from $232 to $476—a 105 percent increase.[2] The CMS concluded that insurance plans' high premiums and the lack of affordability in these markets is the main reason that individuals are cancelling or terminating their coverage. Between 2014 and 2017, about a million individuals per year dropped their coverage.[3]

Soaring health insurance costs are hammering customers in non-group coverage, leaving those customers to navigate the wreckage of severely damaged individual markets. Health plan withdrawals are contributing to rapidly declining market competition and thus restricting consumer choice. In 2018, according to a recent *New York Times* report, about 45 percent of U.S. counties will have either one or no insurers offering coverage in the Obamacare exchanges.[4] Meanwhile, customers are discovering that their coverage choices are increasingly limited to plans with high deductibles and narrow networks of doctors.

The First Problem: A Costly Regulatory Regime

Obamacare's excessive regulatory regime directly contributed to this state of affairs. Three particular culprits are the 3-to-1 age-rating mandate, the actuarial value mandate, and the essential health benefits mandate.

1. The age-rating mandate artificially increases premiums for younger persons—the group most likely to be uninsured.[5] Under Obamacare, a health plan can charge a person in their 60s no more than three times the premium rate of a person in their 20s.

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2. The "actuarial value" mandate on insurance coverage specifies the level of coverage that all plans must provide in the individual and small group markets.

3. The "essential health benefits" mandate requires all individual and small group plans to offer at least 10 categories of health benefits.

These mandates aggravate the cost problem by discouraging young persons from enrolling in coverage, leaving the insurance pools with older and less healthy enrollees, and ignoring the needs and preferences of customers.

The Solution: Repeal or Waive Federal Rules and Mandates

The American Health Care Act, passed by the House, repeals a range of Obamacare mandates, including both the individual and employer mandates and the ones listed above.

The House bill repeals the 3-to-1 age-rating rule, and substitutes a 5-to-1 age rating rule.[6] This provision would not only reduce premiums, particularly for younger persons, but also provide regulatory flexibility to the states to alter those ratios. States would determine for themselves the most appropriate rating options compatible with their different demographic profiles.

The bill also repeals the actuarial value mandate, thus broadening the ability of insurers to offer leaner plans, including catastrophic coverage plans.[7] According to the Congressional Budget Office (CBO) report, "Many insurers would find that option attractive because they could offer a plan priced closer to the amount of the premium tax credit so that a younger person would have low out-of-pocket costs for premiums and would be more likely to enroll." [8]

The House bill also enables the states to secure a 10-year waiver from Obamacare's insurance rating rules and Obamacare's "essential health benefits" requirement, which specify 10 categories of health benefits that all "qualified" health plans must offer in the individual and group markets. This will allow states to be free of the more costly Obamacare regulations.

The Second Problem: Restriction of State Markets

Obamacare does have an option that provides states with alternatives to the costly regulations and mandates, but this option restricts state markets. Section 1332 of Obamacare allows states to apply to the Secretary of the Department of Health and Human Services (HHS) and get a "waiver" from 11 statutory provisions, including the individual and employer mandates, the actuarial value mandate that determines coverage levels, the federal rules governing the definition of individual and small group coverage, and the federal essential health benefit requirements.[9]

1. The American Health Care Act of 2017, 115th Cong., 1st Sess., March 20, 2017, https://www.gpo.gov/fdsys/pkg/BILLS-115hr1628rh/pdf/BILLS-115hr1628rh.pdf (accessed June 21, 2017).
2. The Centers for Medicare and Medicaid Services, "The Health Insurance Exchange Trends Report: Higher Premiums and Disruptions in Coverage Lead to Decreased Enrollment in the Health Insurance Exchanges," June 12, 2017, https://downloads.cms.gov/files/cost-disruptions-trends-report-06-12-17.pdf (accessed June 21, 2017).
3. Ibid.
4. Haeyoun Park and Audrey Carlsen, "For the First Time, 45 Counties Could Have No Insurer in the Obamacare Marketplaces," *The New York Times*, June 9, 2017, https://www.nytimes.com/interactive/2017/06/09/us/counties-with-one-or-no-obamacare-insurer.html?_r=0 (accessed June 21, 2017).
5. Edmund F. Haislmaier and Drew Gonshorowski, "Freeing States from The Obamacare Insurance Mandates," Heritage Foundation *Issue Brief* No. 4689, April 26, 2017, http://www.heritage.org/sites/default/files/2017-04/IB4689_0.pdf.
6. The American Health Care Act, § 135.
7. The American Health Care Act, § 134.
8. Congressional Budget Office, "Cost Estimate of the American Health Care Act," March 13, 2017, p. 14, https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/americanhealthcareact.pdf (accessed June 21, 2017).
9. See, for example, Stuart M. Butler, "Repeal and Replace: What Could It Mean?" *Journal of the American Medical Association*, JAMA Forum, November 30, 2016, https://newsatjama.jama.com/2016/11/30/jama-forum-repeal-and-replace-obamacare-what-could-it-mean/ (accessed June 21, 2017). See also Joel M. Zinberg, "State ACA Waivers: A Bipartisan Solution," American Enterprise Institute, July 6, 2015, http://www.aei.org/publication/state-aca-waivers-a-bipartisan-solution/ (accessed June 21, 2017).

Under current law, states can get a waiver from Obamacare provisions only if they can demonstrate to the HHS Secretary that their state insurance alternatives will provide coverage that is as "comprehensive" as the Obamacare federal requirements. They also must be able to show that they can provide cost-sharing protections that meet Obamacare's standards. Furthermore, their alternative design must enroll as many persons in coverage as Obamacare and not increase the federal deficit.[10]

This approach is problematic because the language of Section 1332 is biased toward particular policy outcomes. Under Obamacare, liberal states could more easily secure a waiver to set up a "single payer" (government monopoly) insurance program, as California is exploring,[11] than conservative states pursuing innovative market-based reforms, a robust expansion of consumer choice, or more intense market competition among more diverse and less costly health insurance options.

The Solution: Liberalize Waiver Conditions

However, Congress could ease state efforts to retake control of their health insurance markets by liberalizing the conditions for states to secure a waiver from existing rules. This could be done by eliminating the "comprehensive-coverage" and cost-sharing mandates, as well the current requirement that a state's alternative must cover as many persons as would Obamacare's existing markets. By getting rid of these obstacles, while retaining the deficit neutrality requirement, Congress could give states the opportunity to pursue more aggressive reforms of the insurance markets, allowing reforms to emerge in the "bottom-up" policy experimentation central to federalism.[12]

Conclusion

Americans, particularly individuals and small business employers and employees, need relief from high health care costs, which currently bedevil them in the individual and small-group markets. The House-passed American Health Care Act makes genuine attempts to reduce health care costs, but remains an imperfect vehicle to effectively complete the task at hand. The Senate can improve on the House bill, and thus secure more robust cost control. The Senate should look to eliminate or waive the federal government's most costly health insurance regulations.

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10. 42 U.S. Code, § 18052.
11. Patrick McGreevy, "Single-payer Healthcare Plan Advances in California Senate—Without a Way to Pay Its $400-billion Tab," *Los Angeles Times*, June 1, 2017, http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-single-payer-healthcare-plan-advances-1496361965-htmlstory.html (accessed June 21, 2017).
12. For a discussion of the possibilities, see James C. Capretta, "Health Reform From the Bottom-up," American Enterprise Institute, September 3, 2015, https://www.aei.org/publication/health-care-reform-from-the-bottom-up/ (accessed June 21, 2017).