How the States Can Save the ObamaCare Exchanges

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President Trump is threatening to undermine the health insurance exchanges that provide coverage to more than 12 million Americans. While Congress probably will not – and the federal courts probably cannot – stop the President from disrupting health insurance markets, there are concrete steps state lawmakers can take to sustain the Affordable Care Act's exchanges. Our four-part plan would protect the exchanges – and the millions who rely on them – from the immediate threats that the Trump administration poses.

Trump's Threats to ObamaCare

Even though the Trump administration has so far failed to repeal the Affordable Care Act, it can do significant damage to health insurance markets. Four threats stand out:

- **Nonenforcement of the individual mandate**. Trump adviser Kellyanne Conway told ABC News on January 22 that the administration may stop enforcing the Affordable Care Act's individual mandate. That provision requires individuals to obtain health insurance or else pay an annual fine of $695 or 2.5% of income (whichever is greater). Since January, the Internal Revenue Service has begun processing refunds for taxpayers who do not disclose on their returns whether they have complied with the mandate. If tax authorities do not enforce the mandate, then young, healthy individuals are likely to drop coverage, causing premiums for everyone else on the exchanges to rise.

- **Nonenforcement of the employer mandate**. Just as Trump's administration might stop enforcing the individual mandate, so too might it stop enforcing the health care law's employer mandate. That provision requires firms with 50 or more full-time employees to offer insurance or pay a penalty of $2,260 per worker per year. Absent those penalties, firms with employees who are costly to insure might drop coverage, dumping older, sicker workers onto exchanges.

- **Lackluster efforts to encourage enrollment.** In its first week, the Trump administration canceled millions of dollars in advertisements that would have encouraged Americans to sign up for insurance on the exchanges before the 2017 enrollment deadline. Not surprisingly, the pace of signups slowed right at the end of the open enrollment period, causing the number of individuals acquiring insurance through the exchanges to decline by 500,000 from 2016.

- **Failure to pay cost-sharing reimbursements.** Under the Affordable Care Act, insurers must reduce deductibles and copays for households below 250% of the poverty line so that out-of-pocket costs for such households of modest means do not exceed certain statutory limits. The law also requires the Department of Health and Human Services to reimburse insurers for these "cost-sharing reductions." In an April 12 interview with the Wall Street Journal, President Trump threatened to halt reimbursements so that "Democrats will start calling me and negotiating." An Urban Institute report estimated that if the reimbursements stop, enrollment through the exchanges will drop by approximately one million people.

How State Governments Can Protect Their Exchanges

In response to each of the ways the Trump administration can undermine health reform, state governments have the option to respond to make sure their exchanges continue to run smoothly:

- **Backup individual mandates at the state level.** States should pass provisions that mirror the federal individual mandate but only take effect if the Trump administration stops enforcing it. We suggest that states adopt mandates with the same terms as the Affordable Care Act – an annual fine of $695 or 2.5% of income for failing to obtain insurance – but with a 100% credit for any penalties individuals pay to the

Internal Revenue Service. Thus if an individual fails to comply with the federal mandate, she will owe the tax penalty to her state instead.

- **Backup employer mandates at the state level**. By the same token, states can bolster the federal employer mandate with a state mandate and a 100% credit for penalties paid to the Internal Revenue Service. Again, an employer that complies with the federal mandate will owe nothing to the state, but an employer with 50 or more full-time workers that does not provide insurance or pay a federal penalty will owe the state $2,260 per employee.

- **Fund state enrollment efforts.** Currently, the federal government collects several billion dollars each year in penalties under the individual and employer mandates. Under our proposal, lack of federal enforcement of the individual and employer mandates would cause money to flow to the states instead. Some or all of the funds collected through backup mandates at the state level should be reinvested in enrollment campaigns. Encouraging more individuals to sign up on the exchanges will attract more insurers to the marketplaces, expanding choices and potentially pushing premiums downward in the states with higher enrollments.

- **Guarantee cost-sharing reimbursements.** Last but not least, states should reimburse insurers for cost-sharing reductions if federal payments temporarily stop. The Affordable Care Act requires the federal government to reimburse the insurers, and if the payments stop, the insurers can sue and probably prevail in the Court of Federal Claims. But the litigation could take years, with insurers pulling out of the exchanges in the meantime. This is where states can come to the rescue – by guaranteeing the insurers that if federal reimbursements stop, states will make up the difference. The guarantee should specify that, if and when the federal government ultimately pays up, the money should be returned to the states. A guarantee like this would impose a short-term cost on states, but eventually the states would be made whole.

Our four-part plan does not increase state budget deficits in the long term. In fact, by preserving the exchanges, our plan will reduce expenses for states that would bear much of the cost of uncompensated care for rising numbers of uninsured residents. Ours is a fiscally responsible plan that could win bipartisan support and protect millions of low- and moderate-income Americans. But the states will need to move quickly, because June 21 is the deadline for insurers in most states to decide whether they will participate in the exchanges in 2018. If they act fast to reassure insurers, states can ensure that millions of their own citizens continue to receive coverage through the exchanges – notwithstanding the Trump administration's persistent attacks.

This brief is based off of Tom Baker and Daniel Hemel, "Four Ways States Can Prevent the Affordable Care Act from 'Exploding'," *Vox*, April 8, 2017.