The Trump Administration and Congress Now Own Health Care: Why the Future of the Market Is Their Responsibility

President Trump and Congressional Republicans claim that repealing the Affordable Care Act (ACA) and undermining the law are necessary because the individual market is collapsing. But evidence from non-partisan research institutions shows us that the market is on a path toward stability and profitability. Rather, policy choices of this administration and Congress are the *real* threats undermining the future of the market.

Despite strong opposition to repeal of the Affordable Care Act (ACA), President Trump and Republicans in Congress claim that their efforts to repeal or undermine the law are necessary because the market is in a "death spiral." Yet, independent evidence has consistently shown that the market is on a path toward stability and profitability—and will remain on this path if Congressional Republicans and the Trump Administration stay the course and drop their efforts to undermine the law. Make no mistake: Decisions made by President Trump and the Republicans in Congress remain the primary threat to the stability of the market and the future of the ACA.

Attempts to sabotage the ACA are not new

Conservative action to undermine the ACA far predates the Trump Administration. In its seven years, the law has survived two major Supreme Court challenges and more than 60 congressional attempts at repeal. The law remains largely intact, but didn't emerge unscathed—the Supreme Court weakened a key provision of the law by allowing states to opt out of expanding Medicaid to low-income adults. Nineteen states have declined to expand Medicaid coverage to low-income adults as a

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result, leaving federal dollars on the table. This has left millions uninsured and has had a measurable impact on these states' marketplaces (see page 6).

In December 2014, Republicans added an amendment to a spending bill that gutted federal funding for the ACA's risk corridors. The risk corridors program was a temporary program designed to protect insurers from excessive risk in the first three years of the marketplace. It was established in anticipation of the initial challenges of pricing insurance for a new market and was modeled after a program that accompanied the introduction of Medicare Part D prescription drug coverage.

Due to this congressional action, insurers received only 12.6 percent of the payments they would have otherwise received for the 2014 plan year.[1] This move precipitated some insurers pulling out of the marketplace completely, including nearly all of the remaining Consumer Oriented and Operated Plans (CO-OPs). This also contributed to premium increases seen in 2017.

December 2014: **Republican amendment to spending bill blocks federal funds for risk corridors program.**

Thus far, attempts to undermine the market have been largely unsuccessful

Despite ongoing attempts to undermine and repeal the law, independent industry analysts have consistently reaffirmed that the core of the ACA—the individual market—continues to stabilize and improve. Congressional Republicans and President Trump have stated that the market is collapsing, but industry experts and analysts have proven their statements false time and again.

Two recent examples are worth examining:

- In March, the non-partisan Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimated the coverage and budgetary impacts of the American Health Care Act (ACHA)—the House Republican's ACA repeal bill. As a part of this analysis, they assessed the impact of the bill on the stability of the market and found that, under current law, the market would remain stable in most areas.[2]

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- In early April, Standard and Poor's (S&P) Global Ratings analyzed the performance of the market and found that it showed strong signs of improvement in 2016 and is on a path toward greater stability and profitability in 2017.[3] This analysis drew upon earnings announcements from health plans and led S&P to conclude that as progress continues, many plans could expect to break even, or earn a profit, in 2018—consistent with their predicted five-year path to stability. Notably, the S&P analysis also directly refuted claims by the Trump Administration and Congressional Republicans, stating: "2016 results and the market enrollment so far in 2017 show that the ACA individual market is not in a "death spiral."[4]

While both of these examples provide strong, independent evidence that the market is on a path toward greater stability, it's important to note that the ACA's individual market has been fully operational for less than four years. Like any new market, actions taken in its first years of development are critical to ensuring long-term success. These assessments underscore that given the time and support needed to mature, people and insurers can have confidence in the market going forward.

Progress toward stability could be easily reversed

Importantly, S&P also noted that these gains could easily be reversed if the Trump Administration and Congress stray from "business as usual." In its first months in office, the Trump Administration's actions have not indicated that it is committed to building on the progress of the ACA, much less business as usual. Instead, the Trump Administration and Congress seem insistent on continuing on the path to undermine, if not outright repeal, the ACA, and they now have the tools at their disposal to do so. Their actions thus far have created an environment of uncertainty that, if unresolved, could significantly undermine the stability of the market.

The timing is critical: Insurers are deciding right now whether or not to participate in the individual market in 2018. Health insurance plans that want to participate in the federal marketplace must submit plan information, including proposed premium rates, by June 21, 2017.[5] Many states have set even earlier deadlines. Once the deadline has passed, insurers can't reverse the decision of whether to participate in the marketplace. Those that do decide to participate may propose significant premium rate increases. Without a stable regulatory environment and clear rules of the road, many insurers may decide that the financial risk is too great to justify participation. If too many insurers make the same calculation, the market could effectively collapse.

What happens in the coming months will determine the future of the ACA—not just in 2018, but beyond. A number of key decisions by the Administration and Congress could mean the difference between continuing down a path of increasing market stability or heightened market problems. These include:

Funding for cost-sharing reduction subsidies

Of immediate importance is securing funding for cost-sharing reduction subsidies, a form of financial assistance under the ACA that lowers out-of-pocket costs for people with modest incomes. A legal case, *House v. Price* (formerly *House v. Burwell*), before the Circuit Court of Appeals for the District of Columbia, challenges whether the administration has the authority to pay for these subsidies *without* Congress actively appropriating funds. Republican members of the House of Representatives originally filed this lawsuit in 2014 in another attempt to undermine the ACA.

A variety of health care stakeholders have unanimously stated that uncertainty about funding of these subsidies remains the primary barrier to a stable market in 2018. A joint letter from AHIP, Blue Cross Blue Shield Association, U.S. Chamber of Commerce, American Hospital Association, and other payer and provider groups affirms that if these subsidies are not funded, it could lead to fewer plans participating in the market and would increase premiums substantially in 2018.[6]

TRACKING REPUBLICAN THREATS TO MARKET STABILITY

2014

- **NOV** — House Republicans file lawsuit challenging funding of cost-sharing reduction subsidies
- **DEC** — Republican amendment blocks federal funds for risk corridors program

2017

- **JAN 20** — President Trump signs executive order directing HHS to waive or delay implementation of provisions of the ACA, to the maximum extent of the law
- **JAN 26** — Administration pulls enrollment advertisements and outreach

Kaiser Family Foundation estimates that silver plan premiums would have to increase an average of 19 percent if these subsidies go unfunded. This same report estimates that this move would increase net federal spending by an estimated $2.3 billion in 2018. This is because the increase in premiums would actually increase federal spending on premium tax credits much more than it would cost to fully fund the subsidies.[7]

The Trump Administration and Congress need to act immediately to fund subsidies for the 2018 plan year. Without resolution to alleviate the uncertainty of whether or not these subsidies will be funded, it is very likely that many insurers will pull out of the marketplace, premiums will increase starkly, and some communities could lose access to marketplace coverage altogether. The Trump Administration has sent mixed signals as to whether it will fund the subsidies, previously affirming that it would continue making payments, then later threatening to hold funding hostage to force negotiations on ACA repeal. Most recently, the administration indicated it would pay for subsidies but stoked great uncertainty of how long it will commit to making payments. An explicit, permanent funding stream for cost-sharing reduction subsidies is what is needed to assure continued stability for future years.

November 2014: House Republicans file lawsuit challenging funding of cost-sharing reduction subsidies.

FEB 3 HHS data show drop in enrollment in last two weeks of open enrollment, compared to 2016

FEB 14 IRS indicates it will not step up planned enforcement of individual mandate

MAR 6 Key House committees release language of the American Health Care Act (AHCH)—their legislation to repeal the ACA

MAR 14 Administration issues letter to governors supporting harmful Medicaid waivers

APR 18 HHS finalizes ACA marketplace rule making it more difficult to enroll in coverage

Enforcement of the individual mandate

In response to the Trump Administration's executive order on the ACA (see page 8), the IRS announced in February that it would not step up planned enforcement of the law's individual mandate.[8, 9] While not a change in current policy, this action has the potential to inject instability into the market, leaving insurers uncertain whether the administration remains committed to enforcement of the mandate, a central component of the Affordable Care Act. This could also suppress enrollment by leading some consumers to incorrectly believe that the individual mandate is no longer in effect. These people might decide not to enroll in coverage as a result.

Congress has also targeted the individual mandate. Republican repeal bills have repeatedly tried to eliminate the individual mandate—an act that the CBO and JCT have estimated would increase premiums by about 20 percent in 2018.[10]

February 14, 2017: The IRS releases statement indicating that it will not step up planned enforcement of individual mandate.

Eliminating or undermining Medicaid expansion

Many conservatives have long opposed the ACA's expansion of Medicaid to low-income adults. Recent congressional attempts to repeal the ACA include completely eliminating the Medicaid expansion. In March, the Trump Administration issued a letter to governors that signaled a willingness to approve state Medicaid waivers that would greatly undermine coverage under the Medicaid program. Among other things, the letter supported allowing states to impose work requirements on enrollees and expanding states' use of premiums with penalties for non-payment.[11]

Beyond jeopardizing coverage for millions of low-income adults, such efforts to eliminate or undermine access to coverage through Medicaid would have measurable consequences for states' marketplaces. Data shows that expanding Medicaid has a positive impact on states' individual insurance market. One analysis determined that, controlling for a variety of factors, marketplace premiums were 7 percent lower in expansion states compared with non-expansion states.[12] Insurance executives in non-expansion states have even said that expanding Medicaid would improve the state's marketplace.[13]

Medicaid expansion may put downward pressure on marketplace premiums, in part, because it helps create a healthier risk pool by ensuring that all state residents have continuous access to health coverage. As people's income fluctuates—and people with incomes near the poverty level tend to have a lot of income fluctuation—in expansion states, they will move between marketplace and Medicaid coverage, but they will always have coverage and access to health care. In states that haven't expanded Medicaid, as people's income fluctuates, they will move between marketplace coverage and being uninsured. People who were previously uninsured are likely to have higher upfront health care needs once they get insured compared to people who have had continuous coverage. In non-expansion states, the fact that people may move from marketplace coverage to being uninsured then back to marketplace coverage can hurt the marketplace risk pool.

Any policies that make it harder for low-income people to maintain continuous coverage through Medicaid could have downstream impacts on a state's marketplace and lead to an increase in the number of previously uninsured, with higher health needs, moving into marketplace coverage.

March 14, 2017: Administration issues letter to governors supporting approval of harmful Medicaid waivers.

Actions to deter enrollment in coverage

Robust enrollment numbers, particularly by younger and healthier individuals, are key to a balanced risk pool and long-term market stability. Yet the Trump Administration has taken a number of actions that run counter to this goal.

During the end of the most recent open enrollment period, the administration scaled back planned outreach and advertisements that encouraged people to enroll in coverage.[14] The end of open enrollment is traditionally when there is a surge in enrollment, particularly among young and healthy people who wait until the final deadline to enroll. The administration's actions undoubtedly led to fewer than half the number of people enrolling in the last 2 weeks of open enrollment in 2017, compared to 2016.[15] This track record raises serious concerns about whether the administration will invest and support enrollment efforts in 2018. Not doing so will certainly have a destabilizing effect on the market.

Additionally, the administration recently finalized marketplace polices that will make it significantly harder for people to enroll in health insurance both during the open enrollment periods and through special enrollment periods (SEPs) throughout the year.[16] This effectively ensures that fewer young and healthy people will enroll. For example, when CMS previously created additional requirements for enrolling through SEPs, young adults were the least likely to complete the enrollment process.[17] These finalized rules create additional barriers that will have an effect on the risk pool and market.

January 26, 2017: Politico reports Trump Administration pulled previously planned and paid enrollment advertisements and outreach.

February 3, 2017: HHS releases data showing enrollment in last two weeks of the 2017 open enrollment period was half that of the final two weeks of open enrollment in 2016.

Policies that make it harder for low-income people to maintain continuous coverage through Medicaid could have downstream impacts on a state's marketplace.

April 18, 2017: HHS finalizes ACA marketplace rule making it more difficult to enroll in coverage.

Uncertainty at the federal level about the future of the law

On his first day in office, President Trump signed an executive order directing HHS to waive or delay implementing provisions of the ACA to the maximum extent allowable by law.[18] This action set the stage for the intervening months of increasing uncertainty around the future of the ACA by signaling to insurers and consumers that the Trump Administration's central health care priority is undermining, if not outright repealing, the law. Frequent statements by the President about his intentions to work with Congress to repeal the law have only intensified this uncertainty.

Simultaneously, the 115th Congress has made repealing the ACA and fundamentally restructuring the Medicaid program a core goal. Despite initial defeat, the House Republican repeal bill—the AHCA—appears poised for a vote in Congress. If again the administration and Congress are unsuccessful, there is no guarantee that the ACA and Medicaid are safe. A number of different legislative pressure points could become vehicles for further repeal efforts, such as: a vote to raise the debt ceiling or a vote to extend funding for the Children's Health Insurance Program (CHIP).

Markets require clear rules for all participants in order to function efficiently and effectively. Without an understanding of the rules of the road, insurers can't be confident that it's in their interest to participate. As long as President Trump and the Congressional Republicans continue to prioritize repeal of the ACA, uncertainty about its future will undermine the stability of the market.

January 20, 2017: President Trump signs executive order directing HHS to waive or delay implementation of provisions of the ACA, to the maximum extent of the law.

March 6, 2017: Key House committees release language of the American Health Care Act (AHCA)—their legislation to repeal the ACA.

The future of the market belongs to Trump and the Republicans in Congress

At the end of the day, what happens next with the ACA belongs to President Trump and Congressional Republicans—for better or worse. They inherited a market that is on a strong path toward stability—one that has provided coverage for millions of previously uninsured individuals—and their decisions alone will chart the course for its future. Perhaps President Trump will listen to the two-thirds of Americans who say they want the administration to do what it can to make the law work.[19] And if the administration doesn't, take note: More than 60 percent of Americans say they are holding this administration and Congress responsible for what the future holds.[20]

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Endnotes

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