

Protecting Healthcare Access in the Age of Trump: A Proposal for a State-Based Individual Mandate in New York

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In December 2017, the Trump administration eliminated the tax penalties associated with the Affordable Care Act's individual mandate, repealing the requirement that Americans maintain health insurance. This short-sighted federal policy is likely to destabilize individual healthcare markets across the country through adverse selection. In the absence of a federal individual mandate, young, healthy enrollees are predicted to exit the actuarial risk pool, inflating exchange premiums across the nation. State policymakers can and must take action to prevent the demise of individual healthcare markets. By instituting state-based individual mandates, state legislatures can forestall the departure of low-risk consumers from individual healthcare markets and maintain healthcare affordability for all enrollees. This is especially important in New York's state-based marketplace since prior to the ACA individual mandate, millions of New Yorkers were uninsurable due to preexisting health conditions. Without a state-based individual mandate, millions of New Yorkers could lose access to affordable health insurance.

Background:

On December 22, 2017, President Donald Trump signed major legislation that eliminated tax penalties associated with the Affordable Care Act's individual mandate, thereby repealing the requirement that Americans maintain qualifying health insurance.¹ The individual mandate, also referred to as the "individual shared responsibility provision," required that Americans maintain health coverage or face tax penalties of \$695 per individual or 2.5 percent of household income.² Among the most philosophically contentious provisions of the Affordable Care Act,³ the mandate engendered significant debate about the appropriate role of government in the lives of individuals. Opponents of the Affordable Care Act argued that it infringed on personal liberty by requiring that Americans purchase health insurance, a commercial good.⁴ Proponents argued that the mandate was a pragmatic strategy to achieve universal health coverage and maintain healthcare affordability.⁵

In the absence of an individual mandate, the two signature protections of the ACA, guaranteed issue and community rating,⁶ threaten to inflate exchange premiums and destabilize

¹ "The Tax Bill And The Individual Mandate: What Happened, And What Does It Mean?," Health Affairs Blog, December 20, 2017. DOI: 10.1377/hblog20171220.323429

² Mangan, Dan. "Trump Touts Repeal of Individual Mandate in 'disastrous Obamacare'." CNBC. January 31, 2018. Accessed December 31, 2018. <https://www.cnbc.com/2018/01/30/trump-touts-repeal-of-obamacare-individual-mandate.html>.

³ Von Spakosky, Hans. "Individual Mandate Goes Against Basic Freedom and Liberty." U.S. News & World Report. March 25, 2012. Accessed December 31, 2018. <https://www.usnews.com/debate-club/should-the-supreme-court-overturn-obamas-healthcare-law/individual-mandate-goes-against-basic-freedom-and-liberty>.

⁴ "Individual Mandate (Updated)," Health Affairs Health Policy Brief, January 13, 2010. DOI: 10.1377/hpb20100113.974560

⁵ "Why the Individual Mandate Matters so Much." The Washington Post. March 26, 2012. Accessed January 01, 2019. https://www.washingtonpost.com/opinions/why-the-individual-mandate-matters-so-much/2012/03/23/gIQA8zCacS_story.html?utm_term=.70660a5ff29d.

⁶ Lo Sasso, Anthony. *Community Rating and Guaranteed Issue in the Individual Health Insurance Market*. Washington, D.C.: National Institute for Healthcare Management, 2011. Accessed December 31, 2018. <https://www.nihcm.org/pdf/EV-LoSassoFINAL.pdf>

individual healthcare markets.⁷ Community rating, which prohibits price discrimination on the basis of underlying health status,⁸ raises premiums for young, healthy people, thus dissuading these low-risk consumers from purchasing health insurance. Guaranteed issue, which requires that insurers provide coverage to anyone wishing to purchase it,⁹ further reduces healthy people's incentive to proactively maintain insurance by promising them coverage if and when they should fall ill. Low-risk consumers respond to these market forces by dropping coverage and entering the market only when they fall ill, resulting in an increasingly risky pool of enrollees.¹⁰ This process of adverse selection invariably drives up premiums,¹¹ resulting in a "death spiral" in which only the very sick purchase insurance at exorbitant prices.¹²

The elimination of the individual mandate penalty is predicted to trigger a mass exodus of young, healthy enrollees from the individual healthcare market. According to prevailing economic wisdom and evidence from past policy experiments, the loss of these low-risk consumers from the actuarial risk pool will wreak havoc on state-based marketplaces. The Congressional Budget Office (CBO) estimates that average premiums in the individual market

⁷ Gruber, Jonathan. Health Care Reform is a "Three-Legged Stool": *The Costs of Partially Repealing the Affordable Care Act*. Washington D.C.: Center for American Progress, 2010. Accessed January 1, 2019. https://cdn.americanprogress.org/wp-content/uploads/issues/2010/08/pdf/repealing_reform.pdf

⁸ Field, Robert, and Katherine Hempstead. "How the ACA Legal Challenge Could Hurt Insurers and the Insured." Knowledge@Wharton. June 19, 2018. Accessed December 31, 2018. <http://knowledge.wharton.upenn.edu/article/how-the-aca-legal-challenge-could-hurt-insurers-and-the-insured/>.

⁹ Ibid.

¹⁰ Lo Sasso, Anthony. *Community Rating and Guaranteed Issue in the Individual Health Insurance Market*. Washington, D.C.: National Institute for Healthcare Management, 2011. Accessed December 31, 2018. <https://www.nihcm.org/pdf/EV-LoSassoFINAL.pdf>

¹¹ Ibid.

¹² Friedman, Ari, and Nora Baker. "Understanding The Individual Mandate's SCOTUS Pivot Points." LDI Health Economist. April 2012. Accessed January 01, 2019. <http://ldihealtheconomist.com/he000023.shtml>.

will increase by about 10 percent and increase the number of uninsured individuals by 13 million by 2027.¹³

In New York, the effects of the federal individual mandate penalty repeal are already being felt. On June 1st, 2018, insurers in New York submitted their 2019 proposed health insurance premium rates to the Department of Financial Services.¹⁴ On average, insurers requested a 24 percent premium rate increase in the individual market, approximately half of which is directly attributable to the Trump Administration's repeal of the individual mandate penalty.¹⁵ These proposed rate increases, which incited indignation on the part of consumers,¹⁶ are predicted to destabilize the New York individual healthcare market and increase the number of uninsured New Yorkers.

Recommended Action:

In order to rein in premiums and maintain widespread access to affordable healthcare, New York should enact a state-based individual mandate. This would remedy the negative consequences of the federal mandate repeal by preventing the departure of young, healthy enrollees from the actuarial pool, controlling premium increases. According to an analysis

¹³ Repealing the Individual Health Insurance Mandate: *An Updated Estimate*. Washington D.C.: Congressional Budget Office, 2017. Access January 1, 2019. www.cbo.gov/publication/53300

¹⁴ New York State. Department of Financial Services. "PROPOSED 2019 HEALTH INSURANCE PREMIUM RATES FOR INDIVIDUAL AND SMALL GROUP MARKETS." News release, June 1, 2018. New York State Department of Financial Services. Accessed January 1, 2019. <https://www.dfs.ny.gov/about/press/pr1806011.htm>.

¹⁵ Ibid.

¹⁶ Wu, Diane, David Kestanbaum, and Ben Calhoun, writers. "How I Read It." Transcript. In *How I Read It*, produced by Ira Glass. WBEZ. December 7, 2018. December 7, 2018. Accessed January 1, 2019. <https://www.thisamericanlife.org/663/transcript>.

conducted by the Urban Institute, the implementation of a state-based individual mandate in New York State would reduce the number of uninsured residents by 142,000 in 2019 and lower marketplace premiums by 9.9 percent.¹⁷ A state-based individual mandate would ensure that over 3 million New Yorkers who were uninsurable before the ACA have continued access to affordable healthcare.¹⁸

There is evidence that state-level mandates are effective at curbing premium increases and maintaining health insurance affordability. On May 30th, 2018, Governor Phil Murphy signed the “New Jersey Health Insurance Market Preservation Act,” making New Jersey the first state in the nation to respond to federal attacks on the Affordable Care Act with a state-based individual mandate.¹⁹ The legislation, which largely mirrors the now-defunct ACA individual mandate in terms of tax penalties,²⁰ is estimated to have reduced issuers’ 2019 premium requests by about 7 percent relative to what they would have been without the state-based mandate.²¹ In light of New Jersey’s resounding success, many states, including Vermont,²²

¹⁷ Blumberg, Lisa, Matthew Buettgens, and John Holahan. *How Would State-Based Individual Mandates Affect Health Insurance Coverage and Premium Costs?* New York: Urban Institute, 2018. Accessed January 2, 2019. https://www.urban.org/sites/default/files/publication/98805/2001925_state_based_individual_mandates_2.pdf

¹⁸ Claxton, Gary, et al. *Pre-existing Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA*. San Francisco: Kaiser Family Foundation, 2016. Access January 2, 2019. <https://www.kff.org/health-reform/issue-brief/pre-existing-conditions-and-medical-underwriting-in-the-individual-insurance-market-prior-to-the-aca/>

¹⁹ “New Jersey Becomes Second State To Adopt Individual Mandate; Ohio Attempt To Waive Mandate Rejected, ” Health Affairs Blog, June 1, 2018.DOI: 10.1377/hblog20180601.345116

²⁰ Ibid.

²¹ State of New Jersey. Department of Banking and Insurance. NJ Department of Banking and Insurance Releases Proposed 2019 Rate Changes Submitted by Health Insurers, News release. July 27, 2018. <https://www.nj.gov/dobi/pressreleases/180727.html>

²² Mike Faher. "Scott Signs Individual Mandate Health Insurance Bill." VTDigger. June 05, 2018. Accessed January 02, 2019. <https://vtdigger.org/2018/06/04/scott-signs-mandatory-health-insurance-bill/>.

Connecticut,²³ Maryland,²⁴ Washington,²⁵ and Hawaii,²⁶ are now considering implementing their own state-based individual mandates.²⁷

In developing New York's state-level individual health insurance mandate, it is recommended that legislators employ the now-defunct ACA federal mandate as a baseline. The ACA individual mandate integrated consumer protections by clearly defining the benefits which plans must provide in order to qualify as "minimum essential coverage."²⁸ In this way, the individual mandate discouraged the sale of substandard coverage, including association health plans (AHPs) and short-term, limited-duration coverage.²⁹ In order to protect New Yorkers from exploitative insurer practices, it is recommended that New York adopts the same definition of qualifying coverage employed in the 2010 ACA individual mandate.

²³ Rigg, Mackenzie. "CT Ponders an Individual Mandate - and Two Vastly Different Penalties." The CT Mirror. March 09, 2018. Accessed January 02, 2019. <https://ctmirror.org/2018/03/08/ct-ponders-individual-mandate-two-vastly-different-penalties/>.

²⁴ Cohn, Meredith. "Lawmakers Seek to Create State Mandate to Push More Marylanders into Health Insurance." The Baltimore Sun. November 20, 2018. Accessed January 02, 2019. <https://www.baltimoresun.com/health/bs-hs-aca-individual-mandate-20181113-story.html>.

²⁵ Blethen, Ryan. "Bill by Bill, Democrats Are Trying to Create a Stable State Health-insurance System." The Seattle Times. January 26, 2018. Accessed January 02, 2019. <https://www.seattletimes.com/seattle-news/health/bill-by-bill-democrats-are-trying-to-create-a-stable-state-health-insurance-system/>.

²⁶ Boerger, Amy. "An Update on Health Policy Bills in Hawaii." State of Reform. May 07, 2018. Accessed January 02, 2019. <https://stateofreform.com/featured/2018/05/an-update-on-health-policy-bills-in-hawaii/>.

²⁷ Bluth, Rachel. "A Health Plan 'Down Payment' Is One Way States Try Retooling Individual Mandate." NPR. March 08, 2018. Accessed January 03, 2019. <https://www.npr.org/sections/health-shots/2018/03/08/591909106/a-health-plan-down-payment-is-one-way-states-try-retooling-individual-mandate>.

²⁸ "Minimum Essential Coverage (MEC) - HealthCare.gov Glossary." HealthCare.gov. Accessed January 03, 2019. <https://www.healthcare.gov/glossary/minimum-essential-coverage/>.

²⁹ Levitis, Jason. *State Individual Mandates*. Washington D.C.: USC-Brookings Schaeffer Initiative for Health Policy, 2018. Accessed December 31, 2018. <https://www.brookings.edu/research/state-individual-mandates-hows-and-whys>

To ensure that its own individual mandate penalty does not disproportionately burden already marginalized individuals and communities, New York should mimic the ACA federal mandate's equity provisions. The ACA protected economically disadvantaged individuals by imposing penalties that increased based on ability to pay while providing affordability and hardship exemptions. The federal mandate's affordability exemption allowed individuals whose healthcare costs were projected to exceed 8.05 percent of household income to claim exemption from the individual shared responsibility provision.³⁰ The hardship exemption allowed individuals facing particular financial, familial, or social exigencies, such as homelessness, foreclosure, or the death of a loved one, to claim exemption.³¹ By adopting these provisions, New York can further protect its most disadvantaged residents from unmanageable healthcare expenses.

In order to further lower premiums and expand access to coverage, it is recommended that New York use the revenue generated by its state-based individual mandate penalty to create a state-wide reinsurance program. If New York were to implement a state-level mandate with penalties modeled on the federal mandate, it would collect approximately \$315.6 million in the fiscal year 2020.³² Similar to New Jersey,³³ New York should dedicate these revenues towards

³⁰ "Health Coverage Exemptions, Forms, and How to Apply." HealthCare.gov. Accessed January 03, 2019. <https://www.healthcare.gov/health-coverage-exemptions/forms-how-to-apply/>.

³¹ "Hardship Exemptions, Forms, and How to Apply." HealthCare.gov. Accessed January 03, 2019. <https://www.healthcare.gov/health-coverage-exemptions/hardship-exemptions/>.

³² Levitis, Jason. *State Individual Mandates*. Washington D.C.: USC-Brookings Schaeffer Initiative for Health Policy, 2018. Accessed December 31, 2018. <https://www.brookings.edu/research/state-individual-mandates-hows-and-whys>

³³ "New Jersey Becomes Second State To Adopt Individual Mandate; Ohio Attempt To Waive Mandate Rejected," Health Affairs Blog, June 1, 2018. DOI: 10.1377/hblog20180601.345116

funding a reinsurance program, which would limit insurers' exposure to very high, unpredictable claims incurred by some enrollees by covering these expenses after they exceed a certain threshold.³⁴ The Affordable Care Act's reinsurance program stipulated that insurers with claims that exceeded a particular "attachment point" (\$45,000 per individual) were eligible for generous reinsurance payments.³⁵ By offsetting the expense of insuring high-cost enrollees, the ACA's reinsurance program lessened the actuarial risk incurred by insurers, resulting in lower premiums for all enrollees.³⁶ New Jersey recently received approval from the Center for Medicare and Medicaid Services (CMS) to enact a five-year reinsurance program to assist payers with claims ranging from \$60,000 to \$215,000, further stabilizing the individual market.³⁷ The reinsurance program is expected to lower individual health insurance premiums by 15 percent and increase enrollment in the individual market by 2.7 percent in 2019.³⁸ If New York State similarly used the revenue generated by an individual mandate penalty to install a statewide reinsurance program, it could effectively lower the actuarial risk incurred by insurers, lowering premiums and expanding access to coverage.

³⁴ David Blumenthal et al., "States Take the Lead on Reinsurance to Stabilize the ACA Marketplaces," *To the Point* (blog), Commonwealth Fund, May 22, 2018.

³⁵ Cox, Cynthia Follow, Ashley Semanskee, Gary Claxton, and Larry Levitt. "Explaining Health Care Reform: Risk Adjustment, Reinsurance, and Risk Corridors." The Henry J. Kaiser Family Foundation. October 05, 2016. Accessed January 21, 2019. <https://www.kff.org/health-reform/issue-brief/explaining-health-care-reform-risk-adjustment-reinsurance-and-risk-corridors/>.

³⁶ Ibid.

³⁷ Beaton, Thomas. "New Jersey Gains CMS Approval for Reinsurance Program." *HealthPayerIntelligence*. August 17, 2018. Accessed January 03, 2019. <https://healthpayerintelligence.com/news/new-jersey-gains-cms-approval-for-reinsurance-program>.

³⁸ Ibid.

Conclusion:

In light of the Trump administration's myopic repeal of the Affordable Care Act's individual mandate penalty, it is imperative that state legislatures take action to stabilize individual healthcare markets. In New York, consumers are already beginning to feel the effects of the federal individual mandate repeal, as premiums skyrocket across the state. These increases are likely to drive out young, healthy enrollees, and precipitate the dreaded "death spiral" in which exchange premiums become unaffordable for the vast majority of enrollees. New York can easily prevent this, however, by instituting a state-based individual mandate. This would stabilize New York's individual healthcare market by retaining low-risk consumers in the actuarial risk pool, thus lowering premiums and maintaining widespread access to health insurance. To uphold New Yorkers' unalienable right to healthcare, it is essential that the state swiftly takes action to preserve its state-based marketplace. If not, millions of New Yorkers will lose access to affordable health insurance.