

**WHAT WE MUST DO  
TO  
“FIX” THE ACA**

*Possible Congressional and  
Administrative actions to get our health  
care system working for more people  
now*

# First, Some Numbers and Per Cents

- Coverage population(<65)=247 million (2015, kff)
  - Employer 156 mil (63%)
  - Medicaid 62 mil (25%)
  - Other public 6 mil (4%)
  - Individual Market 22 mil (8.9%)
- Uninsured rate
  - 2010: 18.2% (47 mil)
  - 2016: 10.4% (27 mil, 20 mil fewer than 2010)

# More Numbers

27 million without coverage in 2016

- 19% (5.1 million) eligible for subsidies
- 24% (6.5 million) eligible for Medicaid
- 10% (2.7 million) eligible if Medicaid exp
- 19% not eligible due to immigration status
- 17% have employer coverage available
- 11% incomes too high for subsidies

# Background about how health insurance works

- The group of people buying a particular type of insurance is called a “risk pool”
- For the ACA, the risk pool consists of everyone in the individual health insurance market
- A risk pool includes people at lower risk of incurring a cost (“low cost” people), and those at higher risk (“high cost” people).
- Low cost people are more likely to be younger and healthier, while high cost people tend to be older and sicker
- By combining or pooling everyone’s risk, the total and average expected cost can be estimated, from which the required premiums can be calculated

# **Background about how health insurance works (cont)**

- **The way insurance works is, everyone in the risk pool must pay for the insurance before they incur a cost.**
- **This assures that the insurance company has money available for the people who are incurring costs.**
- **If people waited to buy insurance until they incur the cost, there wouldn't be enough money to pay for it.**

# Background about how health insurance works (cont)

- As long as enough people are paying who are not incurring costs, there will be enough money to cover those who are (assuming premiums have been set accurately). This is a **balanced risk pool**.
- If too few people are paying who are not incurring costs now, then there will not be enough money for those who are. This is an **unbalanced risk pool**.
- An unbalanced risk pool can be caused by too few low cost people, too many high cost people, or both.

What has been the biggest problem with the ACA that needs fixing?

# Instability of the ACA individual health insurance market



- “Instability ” means that financing for ACA health insurance is unpredictable and unreliable.
- To prevent losses, insurance companies assume worst case scenarios, and take measures to maximize revenue and minimize costs.

# What caused the ACA individual market to be unstable?

- **The risk pool is strongly unbalanced**, with fewer low cost (young, healthy) people than expected, and more high cost (older, sicker) people.
- Therefore, there was not enough money from premiums to pay for the high health care expenses of these older, sicker people.

# Consequences of an unbalanced risk pool

- Many insurance companies lost money, so they:
  - raised premiums
    - Did not affect the amount people with subsidies had to pay, because subsidies rise as premiums increase
    - But a big problem for those without subsidies (income > 400% FPL)
  - Decreased costs

# How did companies decrease Costs?

- Because of EHBs, companies couldn't do it by cutting benefits, so they:
  - Required narrow provider networks, mostly consisting of providers who accepted lower reimbursement to maintain access to ACA patients
  - reduced the number of plans to choose from
  - stopped offering coverage in high loss areas.
    - A few months ago, 45 US counties had no company planning to offer ACA individual policies in 2018 (“bare” counties)
    - 43% of ACA enrollees have only 1 or 2 companies to choose from (was 14% in 2016)
  - Some dropped out of the individual market completely (Aetna, Humana, United Health Care)

# What made the Risk Pool Unbalanced?

- Many fewer low cost (younger, healthier) people enrolled in the ACA than expected
  - Tax penalty (“Individual Mandate”) too low, and loosely enforced
  - Thought they didn’t need insurance (the “young invincibles”)
  - Resented being told they had to buy insurance
  - General ideological resentment of government

# Why is the Risk Pool Unbalanced? (cont)

- More high cost (older, sicker) people enrolled than expected
  - Underestimation of the proportion of sick people in the low income, ACA eligible population
  - Regardless of age, sick people had more incentive to enroll than healthy (greater need for insurance)

# Why is the Risk Pool Unbalanced?

## (cont)

- Overall enrollment was lower than expected
  - Since sicker people tend to sign up first, and healthier people later, the group of people who have not yet enrolled are lower risk.
  - So the higher the enrollment, the more of these low risk people will be in the insurance pool
  - The smaller the pool, the greater the chance that a just few extraordinary costs will drain the available funds
  - Thus, small pools are inherently less stable

# Why is the Risk Pool Unbalanced?

## (çont)

- Failure to expand Medicaid
  - In 2012, SCOTUS allowed states to refuse to expand Medicaid. 32 refused initially, 19 still do.
  - In Medicaid non-expansion states, ACA eligibility was reduced from 138 to 100% FPL, so people with income 100-138% FPL were now in the ACA risk pool instead of on Medicaid.
  - These people were older and sicker than others in the ACA risk pool, and helped skew the market.
  - So failure to expand Medicaid was a major reason the individual market became unbalanced.



# Other Problems with the ACA, not related to the risk pool

- Subsidies are too low: healthy people couldn't afford or were unwilling to pay the premium amount left after subsidies were applied
- Publicity and enrollment assistance have been limited by underfunding and conservative state opposition
  - In NC, 70 million federal \$ for this were refused in 2013-14, and the Insurance Department was prohibited from even mentioning ACA enrollment

# Other Problems with the ACA (cont)

- Reinsurance was available only through 2016
- Funds to compensate insurance companies for losses (“risk corridors”) were inadequate, then blocked by a Rubio amendment to a must-pass budget bill in December, 2014
- Eligibility criteria for special enrollment periods (SEPs) were not enforced, so people would claim an SEP if they got sick
- Grace periods were too long (3 months), so people would only pay for the first 9 months, then re-enroll for the next year

Another Problem that  
needs fixing:

The Threat to Cost-Sharing  
Reductions (CSRs)

# What are CSRs?

- People with income <250% FPL who buy Silver plans get extra help with costs like co-pays, co-insurance and deductibles, which are built into plans to make sure the consumer shares some of the cost.
- This extra help is called a cost-sharing reduction.
- The benefit is huge: CSRs increase the actuarial value of silver plans from 70% to 94%

# What's the problem with CSRs?

- In the midst of many hurried rewrites of the final drafts of the ACA in 2010, a sentence authorizing CSRs was unintentionally left out of the ACA bill.
- In 2013, House Republicans seized on this and sued the Obama administration, claiming that CSRs were unconstitutional because Congress had never approved them.
- One federal district court judge agreed, so the case is now at the Supreme Court.

# What's the problem with CSRs?

## (cont)

- Trump has been threatening to eliminate CSR payments ever since the election, reluctantly approving them at the last minute every month.
- Companies are obligated to pay for the expenses that CSRs cover (\$7 billion in 2017).
- If SCOTUS or Trump prevent CSR payments, companies would have to pay billions for unreimbursed CSR costs, leading to huge losses and even insolvencies.

# What's the problem with CSRs?

## (cont)

- To cover these losses, companies would have to increase premiums by an average of 19% in 2018.
- However, people with subsidized plans would not have to pay more, because subsidies go up with increases in the premium.
- The irony: the higher subsidies would cost the government \$2.3 billion more than the CSRs!
- Some insurance companies may decide to drop out of the individual market rather than deal with the uncertainty about the fate of CSRs.

How Could We Fix These  
Problems With The ACA?



# I. Make sure that CSRs will continue.

- This could be done by Congress with one sentence, effectively an amendment to the ACA, signed by Trump. This would moot the GOP lawsuit.
- Second best would be GOP withdrawing their lawsuit
- Average premium increases in 2018 would be 8-10% instead of 19%.
- Continuing CSRs would not increase the deficit, since the funding is already included in budget projections
- Companies could participate with more confidence, knowing that a big loss risk had been prevented
- More broadly, permanent Congressional approval of CSRs would reflect a new government commitment to continuing the ACA

## II. Increase subsidies

- **Increase subsidies** enough to make insurance truly affordable
  - Financially stressed people would be more likely to purchase policies.
  - Make subsidies for “young invincibles” big enough that insurance would be a deal they couldn’t turn down. That is, motivate them with a positive incentive rather than a penalty.
  - Make payments for ACA policies tax deductible, as they are already for self-employed people.
  - Increase upper limit for ACA eligibility, i.e., > 400% FPL

# III. Enforce the individual mandate

- Increase the size of the tax penalty, and enforce it vigorously.
- This is a fall-back position if not politically possible to increase subsidies for young people.
- Include an extensive PR campaign to explain why the mandate is necessary, as well as the advantages of being insured.
- But it will still inflame anti-government folks

## IV. Expand Medicaid

- ACA eligibility in previously non-expanded states, like NC, would increase to 138% FPL, as in expansion states.
- The sicker group of people in in the 100-138% FPL income bracket would then leave the ACA risk pool and get coverage through Medicaid.
- Then they would no longer be unbalancing the ACA risk pool.

# V. Reduce Adverse Selection

- Enforce and streamline verification of eligibility for Special Enrollment Periods (SEPs)
- Reduce the grace period from 90 to 30 days
- These must be done in a way that minimizes any negative impact on overall enrollment

# VI. “Bailouts”

- Reinsurance
  - Funds to reimburse companies for unexpectedly high costs
  - Most effective (e.g., recent Minnesota experience)
- Risk Corridors
  - Companies with high profits reimburse those with high losses
- High-Risk pools
  - High cost people are placed in separate risk pool
  - High premiums, long wait lists, exclusions
- Opposed by some politicians as “insurance company bailouts”

# What will Congress actually do this fall to fix the ACA?

- Probably nothing
  - Partisanship remains deep and bitter
  - Many other vital and divisive things on the agenda, including CHIP renewal
  - The reconciliation rule (approval by simple majority) ends on September 30
  - Only 12 legislative days scheduled in September

# Summary

- Probably the most we can realistically expect is legislation to temporarily extend CSRs
  - 6-12 months would do little to calm the anxieties of the insurance companies
  - 2-3 years might be enough to encourage companies to stabilize premiums and expand market participation
  - Market instability likely would recur toward the end of the extension



# Summary

- Bitter concessions would be required
  - Democrats would have to give up permanent CSR approval and other measures to improve the ACA, and accept that universal health coverage would be even further off.
  - Republicans would have to give up on repealing the ACA, and accept greater federal government involvement in health care
    - Though they would try to take the high ground by railing against “insurance company bailouts.”
    - They might insist on ending the employer mandate and/or the medical device tax

# Summary

- So there is probably no end in sight for our political battles over health care.
- Nightmare scenario: Republicans are so desperate to repeal the ACA that they might suddenly resurrect a Trumpcare bill yet again
  - ? Especially if Senator McCain becomes unable to participate: a 49-48 vote might provide the simple majority required to pass it by reconciliation