Testimony of

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Stabilizing Premiums and Helping Individuals in the Individual Insurance Market for 2018: State Insurance Commissioners

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Introduction

Chairman Alexander, Ranking Member Murray, and members of the Committee, thank you for the invitation to testify today. My name is John Doak, and I am the elected Insurance Commissioner for the State of Oklahoma. On behalf of my state, I appreciate the opportunity to provide you with information regarding Oklahoma's experience with the Affordable Care Act (ACA) as well as my recommendations for the future of individual insurance markets.

Insurance commissioners across the country have been dealing with the consequences of the ACA on state markets since its inception: rising rates, narrowing networks, rising deductibles, fewer consumer choices, and market instability. Since my election in 2010, I have opposed the type of top-down federal intrusion into our health insurance markets we have experienced with the ACA because this system removes the traditional understanding of health insurance as a transfer of risk. What we have now in our individual market is the consequence of encumbering a functional market with the burdens of becoming a federal tax distribution system.

Oklahoma's Experience

The consequences of the ACA on Oklahoma's individual market have been severe. During the first four years of federally-facilitated marketplace (FFM) activity, Oklahomans have seen a drastic decrease in competition, leaving them fewer choices each year. In 2014, Oklahoma consumers seeking coverage on the FFM could choose plans from five carriers. This number dropped to four in 2015, two in 2016, including a new entrant to the market, then finally to one in 2017. While the one carrier remaining has indicated its continued commitment to the market in 2018, the lack of competition limits plan options for consumers.

Oklahoma's FFM enrollees have also faced numerous significant rate increases for their dwindling plan options. The last carrier left standing endured over $300 million in losses for its first three years of FFM business leading to a 76 percent average rate increase for 2017 qualified health plan (QHP) enrollees. Over the past four years, rates have increased for Oklahomans on the FFM by 130 percent and approximately 30,000 Oklahomans exited the non-group market because of unaffordability. These increases are especially harmful for individuals with QHPs who make too much money to qualify for Advanced Premium Tax Credits (APTCs) or Cost Sharing Reductions (CSRs), or who purchase an individual policy off the FFM. These people—often small business owners or self-employed individuals—are bearing the brunt of these increases.

These rising premiums impact consumer decisions about other policy provisions, like deductibles. As premiums have risen, enrollees have been pushed to accept higher deductible levels in order to offset the cost of coverage. These higher deductibles have frustrated the intention of health insurance for many customers who cannot afford to pay the out-of-pocket costs for their health care.

Further, as carriers have suffered losses on FFM business they have responded by narrowing their provider networks, which can result in a disruption in the primary care relationship for many consumers. In some instances, all of the specialists involved in a procedure may not be in the same network, resulting in surprise bills for the consumer. This uncertainty only adds to the affordability and accessibility problem the consumer already faces.

The question is frequently asked whether Congress should expressly fund cost sharing reduction (CSR) payments to insurers. It should be noted that the instability in Oklahoma's market, the spike in premiums, the rise in deductible levels, and the constriction of networks have all occurred while CSR payments were being made to insurers. While the nonpayment of CSRs would exacerbate Oklahoma's numerous individual market problems, CSRs are not the source of those problems. Oklahoma's market instability is the result of the ACA's foundational flaw: it is a top-down federal government intervention into health insurance regulation that distorts natural, cost-controlling market forces and stifles innovation in a sector in need of new ideas.

Oklahoma's Response

The construction of the ACA intentionally left states like mine with limited ability to affect any real and lasting changes to these federal programs. However, I am encouraged by the new outlook and shift in priorities from a new presidential administration. It is clear that President Trump and Health and Human Services Secretary Price want to provide each state more flexibility and autonomy to develop solutions to fit its particular needs. In Oklahoma, we are continuing to look for solutions while we await more comprehensive change at the federal level.

In the last few years I have worked on several state initiatives in an effort to improve our health insurance markets. In 2012, the Oklahoma Legislature passed Senate Bill 1621, which allows small employers to purchase group insurance through an employer association. The bill requires associations to meet the requirements of a "bona fide" association. In 2017, the Oklahoma Legislature passed Senate Bill 478, which creates a framework in which insurers licensed in other states, such as those sharing geographic borders and communities with Oklahoma, can sell health insurance policies across state lines. Allowing for increased state control over the benefits required in health insurance plans through broader legislative changes could lead to greater competition and stability in the individual marketplace. These types of state innovations should be encouraged by Congress, not preempted.

This April, I held a Healthcare Innovation Summit during which presenters at the cutting edge of their fields discussed price transparency and medical care value, innovative insurance product design, health insurance underwriting, Project ECHO, digital delivery models, and government participation in the health insurance and health care markets, along with other current issues. These discussions are available online to watch any time and I encourage the committee to review these discussions as a part of your study on these issues.[1]

Other agencies and groups in Oklahoma are looking for solutions as well. For the last year, Oklahoma's 1332 Waiver Task Force has been working to formulate a number of recommendations for modernizing Oklahoma's health insurance market.[2] The first waiver application submitted on August 16, 2017, focuses on the establishment of the Oklahoma Individual Health Insurance Market Stabilization Program ("the Program").[3] The Program proposes to utilize federal pass-through funding and state-based assessments to create a

[1] A video recording of the Healthcare Innovation Summit is available online at https://www.youtube.com/user/okinsurance411

[2] A copy of the Task Force's concept paper can be found at https://www.ok.gov/health/documents/1332%20Waiver%20Concept%20Paper.pdf.

[3] The 1332 waiver application can be found at https://www.ok.gov/health2/documents/1332%20State%20Innovation%20Waiver%20Final.pdf.

reinsurance program for carriers operating on the FFM. The impact of the Program is unclear at this point, and several groups have expressed their interest in submitting legal challenges to stop its implementation. I remain unconvinced that this Program is a long-term solution to Oklahoma's health insurance problems.

If the initial 1332 waiver is approved, the Task Force's focus will shift to developing the next 1332 waiver to pursue its additional recommendations. While well-intentioned, the Task Force's proposals will always remain constrained by the overarching regulatory scheme constructed by the ACA. States would only be able to exercise the authority they once held through a system controlled by the federal government. As I have stated repeatedly in my time as Insurance Commissioner, this is authority that should have been left to the states all along. What we really need is an innovative, long-term solution that returns power back to the states to implement ideas tailored to fit each state's specific needs. I have been greatly encouraged by the recent proposals I have seen from Senators Graham and Cassidy, which would allocate block grant funding to states to be used as each state sees fit.

Recommendations for Congress

While I would advocate for greater state flexibility and a return of authority over health insurance regulation to the states, there are many things that Congress can do within its existing authority to help us. On January 18, 2017, I sent a letter to House Majority Leader Kevin McCarthy outlining my recommendations for reforming this sector.[4] An identical letter was sent to Chairman Alexander's office and shared with every Representative and Senator from Oklahoma. I won't reiterate every recommendation I made in the letter, but I would like to emphasize a few key points.

First, Congress should repeal all fees and taxes that increase the price of health insurance, including the Patient-Centered Outcomes Research Institute (PCORI) fees, the Health Insurance Tax (HIT), and FFM user fees. Second, Congress should repeal the individual and employer mandates and replace them with a meaningful continuous coverage premium discount or a surcharge and waiting period for interrupted coverage. Third, Congress should eliminate the use of Navigators in the distribution of health insurance because the program has disrupted the longstanding vital role of agents and brokers in the marketing and sale of health insurance. Fourth, Congress should allow states to define what qualifies as a short term medical plan not subject to the requirements of the ACA.

Finally, Congress should look beyond health insurance and adopt a series of proposals that would help reduce the cost of health care and give individuals more control over their health care dollars. We should expand the use of health savings accounts to allow people to choose more affordable high-deductible health plans, work to address the skyrocketing cost of prescription drugs in America, and support transparency in pricing for the delivery of medical services like the model instituted by the Surgery Center of Oklahoma so that market forces can work as intended.

[4] A copy of this letter can be found at https://www.ok.gov/oid/documents/McCarthy%20Letter%20Draft%20Final%20clean.pdf.

Conclusion

Oklahoma is facing the collapse of our individual health insurance market. We are down to only one carrier on our FFM and we have seen a rise in premiums of 130 percent over the last four years. While many in my state are taking steps within the existing regulatory framework to hopefully stop some of the damage the ACA has caused, we still need help in the form of regulatory rollback and clarity to establish a more solid long term footing. In addition, Congress should take steps to encourage price transparency in the delivery of medical services and to reign in the high cost of prescription drugs. It is time for serious leaders to make serious decisions to help out the people of every state as we move into 2018. I appreciate the Committee's focus on this important issue and I thank you for the opportunity to present this testimony.