

Utah Governor Gary R. Herbert's Testimony before the United States Senate Committee on Health, Education, Labor and Pensions, September 7, 2017

Stabilizing the Individual Health Insurance Market

Introduction

Thank you Chairman Alexander, Ranking Member Murray and members of the committee for the opportunity to share my perspective on how to stabilize our individual health insurance markets.

As you know, the primary regulation of both insurance and medicine have traditionally been at the state level. It is not immediately evident that federal intervention has helped to improve upon the states' role.

Careful observers agree that the status quo of our individual health insurance markets is unsustainable.

And most agree that allowing these markets to collapse without providing a viable path forward would be irresponsible.

And yet, because of Washington DC's political logjam, it appears that lawmakers might indeed allow this important insurance market that protects, among others, the families of Utah's entrepreneurial sole proprietors, to collapse.

This morning I want to share my thoughts about how Congress can overcome its healthcare impasse, how we can create a smooth glide path toward a broad and stable individual health insurance market with fewer market distorting taxes and subsidies, and why we should shift the national dialogue about healthcare from debates about our healthcare payment system to how we can promote cost-reducing innovations medical care.

Congress can overcome its impasse by returning greater control to the states

I believe the nation's healthcare impasse stems from two deeply rooted differences of thought. The first is that lawmakers have principled differences about the proper role of government with regard to health insurance and the second is that lawmakers also have different viewpoints about which level of government -- federal or state -- should be the primary regulator.

As the past chair of both the National Governor's Association and the Western Governor's Association, as the next president of the Council of State Governments, and as one who has governed in a state where productive collaboration toward shared aims is more important than ideological purity, I would urge Congress to get past your impasse on these issues by delegating the issue of government's proper role to the fifty states.

Please allow each of the states, in their various hues of blue, red and purple, to take on the primary role of regulating their health insurance markets. Instead of foisting huge social and economic experiments on the entire country -- too often along narrow party-line votes -- Congress has an opportunity to diversify the social, economic and political risk associated with major policy change by letting the portfolio of states experiment with what works and what doesn't.

Utah enjoys among the lowest health care costs in the nation. Our costs may be lower because we have the youngest population in the nation. But they are also lower because of the healthy lifestyle choices of our people, many of whom regularly enjoy the unparalleled opportunities for sport and outdoor recreation in our state and many of whom religiously abstain from alcohol and tobacco.

But it is not just our demographics. Utah has been able to keep our healthcare costs low because of deliberate efforts within our private healthcare system to use evidence-based measures of effectiveness, eliminate duplication of services and empower doctors and patients alike to make more informed choices. We have

worked to reduce Medicaid costs low because of innovative use of managed care organizations.

If you will empower Utah to determine more fully its own healthcare destiny, I promise you that we will provide the other 49 states with proven and scalable solutions for their most complex healthcare issues. And Utah will learn from and emulate the success of others.

Under the Patient Protection and Affordable Care Act, empowering Utah would mean giving us greater flexibility in defining Essential Health Benefits. It would mean dramatically simplifying the State Innovation Waiver process under Section 1332. And it would mean expanding what could be waived under Section 1332.

But please appreciate that our vision for greater state self-determination goes well beyond coming to the U.S. Department of Health and Human Services to ask permission for how we would organize our insurance markets.

Creating a glide path to improved individual insurance markets

In order for the nation to glide into that vision of a vibrant and innovative state-based approach, Congress needs to act today to provide immediate certainty and stability to the individual insurance market.

To that end, I recommend establishing a clearly defined transition period that allows markets to incentivize the broadest, continuous participation in the individual insurance market possible while anticipating the adjustments needed to a market with less subsidization, less taxation, and less socialization.

Continue cost sharing reduction payments in the near term.

I do not believe that cost sharing reduction (CSR) payments are the most transparent and effective way to assist low income individuals. Nevertheless, in the near term, our individual insurance markets need predictability in order to price their products adequately. The sudden demise of CSR support would destabilize

Utah's individual insurance market. In 2016, 110,000 Utahns benefitted from the CSR program, accounting for 63 percent of those receiving health care coverage through healthcare.gov. As a part of a transition, I recommend funding for CSRs through 2019.

Incentivize the broadest, continuous participation.

As Congress considers the fate of the individual mandate, we should look to market-oriented incentives to maintain and increase continuous participation in individual health insurance markets. Congress can immediately reduce the cost of premiums by eliminating the Health Insurance Tax. The supply of insurance products can be better tailored to demand by allowing insurers to underwrite a wider array of cost-effective products.

For example, we would support broadening the kind of wellness incentives that can attract younger populations, the expanding high deductible health plans and health savings accounts, and providing greater flexibility within health savings accounts -- such as the ability to pay for insurance premiums from an HSA. Individuals also need to be educated about and financially rewarded for taking advantage of continuous coverage. Publicly funded outreach programs may be useful, but should be evaluated for their effectiveness.

Stabilize through reinsurance

The federal government can further stabilize the market by funding a temporary reinsurance program for high risk pools with an option for states to operate their own risk stabilization programs.

Allow insurance to insure.

Insurance pools risk in order to contractually cover the costs associated with defined contingent losses. Although straightforward in concept, pooling risk in a way that is affordable to the insured and profitable to the insurer has never been easy.

But if losses and costs are not contingent, in other words, if they are certain and known, then insurance premiums no longer pool probabilistic risk, but instead they socialize known costs. By forcing the coverage of pre-existing conditions, by narrowing the bands of risk, by dictating coverages and uniforming prices, government has largely robbed insurance of its risk-pooling function. And the federal government has further complicated matters by providing an opaque substitute for income support by instead creating public subsidies for insurance contracts.

Congress can help stabilize the individual health insurance market by allowing it to do the job of insuring against unforeseen health costs instead of using it as a vehicle for other social policies. But to get there, Congress should peel back the layers of regulatory restrictions that have been placed on the basic insurance contract in a predictable, transparent way.

Focus on innovation

The national debate about health care has been primarily about our healthcare payment system. I believe that if states were to play a larger role in facilitating their insurance and healthcare markets that the conversation would turn to how to dramatically reduce the cost of health care. I don't believe states, for example, would choose to stunt innovation in medical technology by putting an excise tax on medical devices the way Congress has.

If we can help support robust competitive markets to operate in health care, we can turn from asking about who should be paying for medical care to questions like: How can we spur disruptive innovation in telemedicine, artificial intelligence, medical robotics and genomics? How can we continue to develop new breakthrough drugs without bankrupting those who pay for the drugs? How can we creatively increase the use of non-physician medical labor? How can we deliver more cost-effective education for nursing, health sciences, and medicine? How can we empower patients to manage better their own health with well-informed choices?

Conclusion

Thank you for letting me visit with you today about some aspects of our nation's healthcare challenges.

My strong sense is that when it comes to their healthcare, the people of Utah -- like most Americans -- care about results rather than slogans. Whether or not a law is repealed and replaced, or modified and improved, what they need to know is that if they are prudent in their planning and budgeting, that they will be able to purchase reliable health insurance that will protect them from life's vicissitudes. And they need to know is that if they should (heaven forbid) experience a medical catastrophe, that there is a safety net that will keep it from spiraling into a financial catastrophe.

My constituents don't particularly care about the details of "cost sharing this" or "mandated that." What they would appreciate, however, is a realistic vision for an affordable, reliable, responsive, professional, and patient-focused healthcare system.

I believe that the states can do this better for their unique populations than can the federal government. That is why I would urge you to consider a healthcare future that gives back to the states the lion's share of responsibility. Given the impasse at the federal level, federalism is both prudent policy and prudent politics.

As you point toward that future -- which in our state would mean fewer market distorting taxes and subsidies -- please provide a measured and transparent transition rather than shock therapy. And as you step back from debates about who should pay for what, please consider how to foster an environment where financial, organizational and technological innovations for improved, less-expensive medical care can thrive.