

STATEMENT OF JULIE MIX MCPEAK  
COMMISSIONER, TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE

BEFORE THE  
U.S. SENATE COMMITTEE ON  
HEALTH, EDUCATION LABOR & PENSIONS

WEDNESDAY, FEBRUARY 1, 2017

## **INTRODUCTION**

Good morning Chairman Alexander, Ranking Member Murray, and Members of the Committee.

Thank you for inviting me to testify this morning.

I am Julie Mix McPeak. I am Commissioner of the Tennessee Department of Commerce and Insurance (TDCI). TDCI is comprised of several Divisions that regulate professions ranging from the insurance companies to hair salons, and in my capacity as Commissioner, I also serve as the State's Fire Marshal. In addition to my responsibilities at home, I also serve as President-Elect of the National Association of Insurance Commissioners (NAIC), as an Executive Committee Member of the International Association of Insurance Supervisors (IAIS), and as a Member of the Federal Advisory Committee on Insurance (FACI). I have spent most of my career in Insurance Regulation, previously serving as the Executive Director of the Kentucky Office of Insurance, and have a strong affinity for the country's state-based system of insurance oversight.

My testimony today will briefly highlight Tennessee's history with the Affordable Care Act (ACA) before discussing some practical reforms that Congress and/or the Administration can consider to help stabilize the individual insurance market in Tennessee. First, I would like to share with you the most important message that I will have for you today: Insurance markets do not respond well to uncertainty. To the extent possible as you consider ACA reforms, it will be very important to remain transparent, as today's hearing suggests, to engage stakeholders, and to minimize surprises

in our regulatory system.

### **TENNESSEE'S INDIVIDUAL MARKET**

Tennessee's individual insurance market is struggling. Today we have three insurance carriers (BlueCross BlueShield of Tennessee, Cigna, and Humana) offering policies on our Federally Facilitated Marketplace ("FFM"). However, in 73 of 95 counties, particularly the more rural areas of the State, Tennesseans only have one FFM option. Competition in the FFM only exists in three rating areas of the State. This is down from 2016 when we had two carriers offering policies in all of our counties.

Tennesseans have seen rates steadily increase since 2014. Approved rate increases ranged from seven (7) to 19 percent for 2015; increased up to 36 percent for 2016, and ranged between 44 and 62 percent for 2017. These rates have been fully justified, and according to the Department of Health and Human Services (HHS), Tennessee had the highest risk score in the nation in 2014 and the second highest in 2015. The HHS risk score essentially measures the health and health care utilization of insured populations. Tennessee's premium rates have gone from the second-lowest in the country in 2014, to the fifth-lowest in 2015, to the 15<sup>th</sup> lowest in 2016, and have increased substantially for 2017.

In addition, Tennessee had a Co-Op that provided coverage from 2014 through the end of 2015. A multitude of factors led the Department to place that company under Supervision and I'm proud to say that as a result of our efforts, while our Co-Op has failed, the company should be able to

repay the federal government a portion of the monies allocated for its startup and solvency purposes.

In short, Tennessee's ACA individual market experience since 2014 has meant fewer marketplace carriers for Tennessee consumers, less competition across the State, and higher priced premiums for available products. In addition, we have seen existing FFM carriers move towards narrower networks, further limiting consumers' access to providers of their choosing.

#### **ACA TIMELINE**

Tennessee's experience, which is likely not unique, suggests a need for policy changes from the Congress and/or Administration. The challenge you will face is in implementing reforms without disrupting an already distressed marketplace. As I mentioned previously, insurance companies facing significant uncertainty are likely to pull back their business operations to the extent possible.

For instance, and again using my home state as an example, if carriers are not aware of what the regulatory landscape may look like for 2018 before the date that they need to decide what to offer to consumers in 2018, we may see carriers pull back from the current rating areas in which they offer services. Such an industry reaction would result in Tennessee consumers potentially being left with zero FFM options in certain areas of the State for 2018.

The Congress and Administration need to be keenly aware of the filing dates that insurance carriers currently expect, absent any changes that may come out of the federal government. Insurance carriers are already beginning to make decisions on their 2018 footprints. Under

existing federal guidance, carriers must submit “policy forms,” i.e. the benefit plans that they would like to offer, for review by the State before May 3, 2017. Rates, again under existing federal guidance, are currently due between May 3 and July 17, 2017, as determined by the State. Forms and rates must be approved no later than August 21, 2017.

This is not to suggest that Congress and the Administration need to delay any repeal, replacement or other modifications to the ACA. While it would be a significant challenge to implement policy changes for the already underway 2017 plan year as consumers have selected plans, made payments, and started to receive medical services, there are changes that I will discuss next that the Congress and Administration should consider.

### **INDIVIDUAL MARKET REFORMS**

The Congress and/or Administration should return as much flexibility as possible to the States to address our respective marketplace needs as you consider revisions to the ACA. As that concept is more broadly considered, there are certain areas that Congress and the Administration could address in the short and long-term future that would help stabilize Tennessee’s individual insurance market. I would like to focus on a few key areas that I believe can provide immediate assistance to our marketplace: rating factors, essential health benefits (EHB), special enrollment periods (SEPs), and grace periods.

As you know, all ACA-compliant plans must offer the same package of benefits, called EHB. Insurance carriers largely do not compete anymore on innovative benefit packages, but rather they

compete on networks, price, and name recognition. The Congress and/or Administration should consider granting States the flexibility to redefine EHB. Should the State be provided a blank slate to define EHB, we may consider a base set of benefits that would need to be included in a few standard plans while also allowing more flexible designs in other available plans. This approach would allow consumers to select from broader benefit plans, while also potentially providing an option to select a limited benefit plan that will still cover the basics such as hospitalizations, physician visits, and mental health care, but may not provide all of the benefits that are currently required of all ACA-compliant plans.

Congress and the Administration should relax restrictive age bands that have created a situation where premiums can only differ based on age by no more than a 3:1 ratio. Providing more flexibility to insurance regulators and carriers in how individuals are rated, even while keeping prohibitions against discrimination based on preexisting conditions, may help stabilize insurance markets. Ratios closer to 5:1 or 6:1 would provide more rate flexibility in the market and when coupled with EHB flexibility may have the ultimate impact of growing the individual insurance pool in Tennessee. Today 51 percent of Tennessee's individual market is 45 years of age or older. To help stabilize insurance premiums, we need young and healthy risks to enter the insurance marketplace. Providing States the flexibility to redefine EHB to bring more innovative products to market and then allowing rates to vary more substantially based on member age could go a long way towards bringing products to market that will appeal to younger and healthier populations.

Two other issue areas that the Congress and/or Administration could address quickly to the benefit

of individual insurance markets are SEPs and grace periods. We all agree that special enrollment periods are an absolute necessity for individuals who experience a change in life circumstances. Situations like childbirth, marriage, and a change in employment should clearly create a SEP allowing an individual to apply for coverage outside of traditional open enrollment periods. Unfortunately, reports suggest that SEPs have been so broadly interpreted at the federal level that they are almost akin to a permanent open enrollment period. Broadly defined SEPs discourage individuals from applying for coverage during open enrollment periods and instead allow individuals to access health insurance benefits only when health care is an immediate necessity. This obviously has a negative impact on the overall health of the individual market pool if coverage is purchased only when necessary to cover procedures or treatment.

Extended grace periods have had the unintended consequence of adding administrative costs to insurance carriers. The 90-day grace period potentially allows gaming of the insurance system by allowing a policyholder to stay on a plan well past the time that premium payments have been discontinued. Congress and/or the Administration should be considering shortening that grace period to around 30 days to provide certainty to insurance markets.

## **CONCLUSION**

The ACA introduced new policies, new concepts, and at times new rigidity to our insurance marketplace. Rates have gone up, consumer choice and marketplace competition has gone down. While policies are more robust than pre-ACA policies and so-called grandfathered plans, policy options and regulation has become more of a one-size-fits-all Washington, DC, approach, rather

than an innovative and flexible State-based solution.

As this Committee continues its work to stabilize individual insurance markets, I would again stress two points. First, States should be empowered to regulate our markets. Additional flexibility from Congress and the Administration will help the States tailor insurance regulation to our unique markets and medical and insurance communities. Second, please continue to be as open and transparent in this process as possible. Markets need clarity and opportunities like this hearing today can help provide that clarity so that we do not see carriers exiting markets in bulk when they do not have an idea of what to expect in terms of regulation over the next several years.

Thank you again for the opportunity to discuss the Tennessee experience with this Committee. I look forward to your questions on my testimony today and am happy to provide additional thoughts related to the regulation of insurance markets and the ACA.