



Testimony of  
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Before the  
Committee on Health, Education, Labor and Pensions

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Chairman Alexander, Ranking Member Murray, Members of the Committee, thank you for inviting me to discuss the need for important and immediate refinements to our health care system. I am honored to speak before you today.

Kaiser Permanente is an integrated health system that provides care and coverage for nearly 12 million members in eight states and the District of Columbia. Each day, more than 200,000 dedicated employees and 22,000 Permanente Medical Group physicians come to work at Kaiser Permanente to care for our members and deliver on our commitment to improving the health of the 65 million people living in the communities we serve. Kaiser Permanente participated in the individual market before the current law took effect – and we continue to participate in the markets we serve. 1.5 million of our nearly 12 million members receive coverage and care from Kaiser Permanente through the Affordable Care Act (“ACA”)’s health insurance exchanges.

It’s important to remember the full context of the American health care system when considering what needs to be done to refine the ACA to stabilize the individual insurance market. Since the end of the Second World War, a foundational element of the American system of health coverage has been employer-based coverage. That approach, however, left gaps. In 1965, our country agreed to take care of the poor and the elderly through Medicaid and Medicare. Since then, our system of health coverage has continued to evolve, and the ACA presents itself as an important next step in that evolution. Today, we have about 155 million Americans covered by their employer, 40 million by Medicare and 70 million by Medicaid.<sup>1</sup> About 20 million people gained coverage through the ACA<sup>2</sup> and almost 30 million remain uninsured<sup>3</sup>. Our work is not done. We have too many Americans who are poor and considered the “working poor” locked out of the front door to the health care system. For many, the process of obtaining and maintaining coverage is still too difficult. Lack of health care impacts their ability to contribute as much as they could to their communities, and to America.

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<sup>1</sup> See *Health Insurance Coverage of the Total Population*, Kaiser Family Foundation, <http://www.kff.org/other/state-indicator/total-population/?dataView=1&currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>2</sup> Nicholas Bakalar, *Nearly 20 Million Have Gained Health Insurance since 2010*, New York Times, May 22, 2017, [https://www.nytimes.com/2017/05/22/health/obamacare-health-insurance-numbers-nchs.html?mcubz=3&\\_r=0](https://www.nytimes.com/2017/05/22/health/obamacare-health-insurance-numbers-nchs.html?mcubz=3&_r=0).

<sup>3</sup> Kaiser Family Foundation, *supra* note 1.

My message to you today is simple: We must work together to find real solutions to make high-quality, affordable health care accessible to all Americans. These solutions also must be sustainable over multiple years and not just a patchwork fix for 2018.

However, I am also here today to deliver a message to my colleagues in health plans across the country: Our cooperation and participation remain essential. While Congress can lay the groundwork, we must reset, step up to the plate and participate in places where consumers currently lack choices and access to affordable coverage. The next step is on all of us together.

The need for immediate action is clear. Chairman Alexander, the Insurance Commissioner from your home state of Tennessee stated the problem clearly in May. “It’s that instability, that uncertainty, the insurers hate the most. They are going to price for that,” she told the *Nashville Tennessean*.<sup>4</sup> Ranking Member Murray, Insurance Commissioner Kreidler from Washington State, expressed similar concerns in April when he wrote to Department of Health & Human Services Secretary Price: “My office strongly believe[s] that market stability is achieved when issuers can engage in long-range planning in a stable financial and regulatory context.”<sup>5</sup> Deadlines loom in the coming weeks. The federal marketplace requires signed agreements in place by September 27, and 2018 open enrollment begins on November 1. If we are going to provide meaningful relief to consumers for 2018, we need to do it very quickly – within a timeframe better measured in days, than weeks. We also need to be very focused on making refinements that can realistically help in the short time we have left before the 2018 plan year begins. As Chairman Alexander noted at the outset of these hearings last week, if we try to bite off too much, and add complexity, we will end up adding to the disruption.

The effect, physically and mentally, on ordinary Americans of instability in the markets is real, clear, and present. People on both sides of the aisle – whether families faced with rising premiums and out-of-pocket costs, physicians trying to provide the best possible care to patients, or insurers trying to balance risk in a tumultuous political environment -- all recognize that action needs to be taken, and that Congress, the Administration, states and the private sector have got to work together to do it.

The ACA remains the law. It also remains controversial. It is important to remember that before the ACA, many millions of Americans were unable to buy coverage or were priced out of coverage because of pre-existing medical conditions. Virtually no one wants to go back to the way it worked before; we certainly don’t. However, we’ve found ourselves in a situation where political, regulatory and financial uncertainty has driven higher premiums and fewer choices for consumers. Insurers have left markets across the country, and we need to work together to get

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<sup>4</sup> Holly Fletcher, *Tennessee’s Insurance Chief Seeks Elusive Answers in Washington*, *Nashville Tennessean*, May 12, 2017, <http://www.tennessean.com/story/money/industries/health-care/2017/05/12/tennessees-insurance-chief-seeks-elusive-answers-washington/315186001/>.

<sup>5</sup> Letter from Mike Kreidler, Washington State Insurance Commissioner, to Thomas E. Price, M.D., Secretary, U.S. Dep’t of Health & Human Services (April 8, 2017), <https://www.insurance.wa.gov/sites/default/files/documents/Kreidler-AWHP-letter-HHSSec-TomPrice.pdf>.

them to return to more markets, in more places, serving more Americans. We also have an obligation to address these challenges for not only 2018, but on a sustainable basis so that we are not back in the same place at this time next year, having the same discussion and hoping for a different result.

All of us have different ideas about how to make universal coverage a reality, but today, I'm focused on two goals, both of which put the consumer in the forefront. First, we have to reduce costs and modernize our nation's care delivery system, and, second, we have to stabilize the individual market for 2018 and beyond. Systemic affordability solutions are critical, and I am going to provide the Committee with six critical points to stabilize the individual market that will encourage insurers to return to markets across the country, and provide more – and better – options for all Americans in the individual market.

#### A. Delivery System Reform.

We share an obligation across the health care delivery system to improve quality, innovate and reduce costs for the American people. This is an obligation that extends to the entire delivery system and to our partners in federal and state government, as well.

As we move forward from here, we need to be honest about the fact that, for whatever the reasons, the government has not been an ideal business partner to date when it comes to the individual market. This extends beyond reduced consumer outreach or failing to make risk corridor payments over time. We need much more from the government to make this critical part of the market work. Many of the points I make today go directly to addressing this need.

Let us not forget that, important as these issues are, we've mostly just been talking about an individual market that is a relatively small portion of the overall health care market in the country. Health care and coverage is not affordable in America, and not just for individuals and families: Businesses large and small are struggling to pay for health care for their employees. State and federal governments are being stretched to the limits to find funding for the growing costs of Medicare, Medicaid, and other public care programs. We need to work together to lower the systemic costs of health insurance and care delivery in this country, across the entire delivery system.

The law requires insurers to spend 85 cents of every dollar on care. Let's focus not just on the 15 cents, but also begin to act on the 85.

Rising deductibles and premiums are not just about insurance coverage rules or short-term changes in the characteristics of the risk pool – they continue to rise because care delivery continues to cost more. At Kaiser Permanente, we are showing that it's possible to organize health services in a more efficient way. Systemic challenges remain, however. While drug and device pricing present problems,<sup>6</sup> we need to modernize how we approach care delivery in the

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<sup>6</sup> See, e.g., Rabah Kamal and Cynthia Cox, *What are the recent and forecasted trends in prescription drug spending?* Kaiser Family Foundation, May 22, 2017, [https://www.healthsystemtracker.org/chart-collection/recent-forecasted-trends-prescription-drug-spending/?\\_sft\\_category=spending#item-start](https://www.healthsystemtracker.org/chart-collection/recent-forecasted-trends-prescription-drug-spending/?_sft_category=spending#item-start).

United States from a broader perspective. We need many more primary care, mental health and community health practitioners. Our market incentives and medical education system need to reflect that. While the ACA tried to catalyze those market incentives, it did not do enough, and more work needs to be done at all levels—by policymakers in Congress, regulators and in the private sector. I think we can all do this together if we commit to moving from sick-care, fee-for-service models of care to a system that emphasizes well-care, with incentives for value and keeping people healthy. However, we also need to think of our delivery system as offering a continuum of coverage and care.

**B. Stabilizing the Individual Market for 2018 and beyond.**

At Kaiser Permanente, we participated in the individual market before the current law took effect – and we’re still participating today. Along the way, we’ve learned some lessons from our experiences that inform what I’m proposing today. I recommend the committee focus on building out from a six-point blueprint for stabilizing the individual exchange markets. These are areas that are critical in encouraging insurers to return to more markets across the country, therefore enhancing competition and consumer choice. If Congress and the Administration can agree on these points, insurers will return to the exchange markets. Here’s what’s needed to get there:

**1. Fund Cost-Sharing Reduction (“CSR”) Subsidies on a Permanent or Multi-Year Basis.** The ACA provides important subsidies that help low income and working people manage deductibles and out-of-pocket costs, known as CSR payments. That program has become tenuous because of legal uncertainty, policy disagreements and a bit of politics. Thus, we’ve seen insurers raise rates – or withdraw from markets entirely – to account for the uncertainty.

Funding the CSR payments on a permanent, or at least multi-year basis, is probably the single most important thing Congress can do to quickly stabilize the individual market. Washington State Insurance Commissioner Kreidler noted in his letter to Secretary Price, “Failure to secure ongoing funding of CSRs . . . results in uncertainty year after year regarding funding, compounded by the timing of appropriations decisions made long after issuers are required to file their rates for the upcoming year. Fully funding CSRs will continue to ensure affordable health coverage options for lower income enrollees and a stable marketplace for issuers.”<sup>7</sup> The Congressional Budget Office (CBO) estimates that terminating CSR funding after December 2017 would cause premiums for silver plans to be 20 percent higher in 2018 and 25 percent higher by 2020.<sup>8</sup>

Nor would addressing this problem on a single year, or year-by-year basis, bring the stability and robust participation by insurers that many of us would like to see. To be clear, if we are going to bring insurers back into the individual exchange market in a substantial way, CSR funding needs to be guaranteed by Congress on a permanent or multi-year basis. If we are back here at the

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<sup>7</sup> Kreidler, *supra* note 5, at 2.

<sup>8</sup> Congressional Budget Office, *The Effects of Terminating Payments for Cost-Sharing Reductions* (August 2017), at 2, <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53009-costsharingreductions.pdf>.

same time next year working through another year's worth of CSR funding, we will not have accomplished the larger goal of stabilizing the individual exchange markets.

**2. Provide adequate federal support for reinsurance programs that encourage broader market participation.** The federal reinsurance program, designed to ensure that costs for covering claims over a certain point are paid by a fund that all insurers pay into, expired in 2017. Congress can immediately help by establishing a federal reinsurance program, or significantly contributing to similar operations at a funding of state-level efforts. States play a major role in the process, but even under an expedited waiver authority, will not be prepared to act as readily for 2018 and 2019 as a federal mechanism. However, we can improve upon the ACA and stabilize a federal reinsurance program by making its funding source broader-based. CMS itself noted the critical role the federal program played in encouraging issuers to participate in places they otherwise may not. “Both the transitional reinsurance program and the permanent risk adjustment program are working as intended in compensating plans that enrolled higher-risk individuals, thereby protecting issuers against adverse selection within a market within a state and supporting them in offering products that serve all types of consumers,” CMS stated in its 2017 summary risk adjustment and reinsurance report.<sup>9</sup> Emphasizing reinsurance at the federal and state level would ensure those benefits continue.

**3. Protect consumers while enhancing state flexibility.** It is important to provide states with flexibility to respond to market conditions and come up with innovative solutions that can ultimately improve coverage nationwide. However, existing law contains specific protections, known as guardrails, to ensure that waivers are consistent with the best interests of consumers. These guardrails (comprehensiveness, affordability, availability and deficit neutrality) make sense, and need to be preserved in any expanded waiver authority made available to states.

At Kaiser Permanente, we have partnered with state regulators to consider state-level reinsurance programs, which can be developed within the scope of existing § 1332 waiver authorities. At the same time, it makes sense to expedite the consideration of such state waivers by the Administration; it can be done faster than 180 days, especially for waivers substantially similar to those already approved. However, divesting the HHS Secretary of responsibility to verify validity of state waiver proposals would put consumers at a disadvantage. State flexibility is important, but so is the larger national goal of continuing to expand meaningful coverage for the American people. Where flexibility is provided, federal funding needs to be adequate to the task.

**4. Repeal the health insurer tax to reduce costs in the system.** In 2018, the tax imposed by the ACA on health insurance offerings is scheduled to return. This tax increases the cost of health insurance and is a major deterrent to participation particularly by for-profit plans, and it

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<sup>9</sup> U.S. Dep’t of Health & Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, *Summary Report on Transitional Reinsurance Payments and Permanent Risk Adjustment Transfers for the 2016 Benefit Year* (June 30, 2017), at 2, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Summary-Reinsurance-Payments-Risk-2016.pdf>

raises costs for consumers. Reports have indicated that the tax, on average, will raise premiums. And seniors with Medicare Advantage plans, or those receiving coverage through Medicaid managed care, may be among the hardest hit by the return of this \$100 billion tax.<sup>10</sup> We urge Congress, as part of its refinement of the ACA, to repeal or further delay the tax.

I recognize that the fifth and sixth components of this blueprint are items largely resting under the Executive Branch's authority. While the first four speak to direct areas where Congress can act immediately, I am including these items to paint a fuller picture for the Committee:

**5. Enforce the individual mandate.** We recognize that the individual mandate is not the most beloved provision of the ACA. But there needs to be a mechanism to incentivize participation and spread out the costs of care across as many people as possible, both healthy and sick, to ensure that important provisions like guaranteed issue, guaranteed availability and prohibition against health status rating will work. Without an enforced requirement that includes healthy people, more people would wait until they get sick to buy health coverage, which drives costs to unsustainable levels -- and makes insurers skittish about market participation. Alternatives to the individual mandate have been proposed, but we do not believe that such proposals are as effective as simply enforcing the current law.

The next step is for the Administration to take steps to enforce the individual mandate. That would make a significant difference. Some estimates indicate that the full consequence of an unenforced mandate could raise premiums by over \$1,100 annually in 2018 – with additional “uncertainty penalties” that raise premiums still higher (especially when compounded by uncertainty regarding the CSR subsidies).<sup>11</sup> All consumers are better off when the mandate is enforced, even if we don't necessarily like the requirement. I'd urge Congress to find ways to work with the Administration to enforce the mandate.

**6. Fully support enrollment outreach activities.** The Administration's recent announcement that it will reduce funding for marketing activities by 90 percent<sup>12</sup> is a step in the wrong direction. Plans are spending their own money on marketing to consumers, federal and state exchanges are engaged in marketing and outreach, and numerous non-profit agencies are

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<sup>10</sup> Caitlin Owens, *How the health insurance tax will impact 2018 premiums*, Axios, Aug. 9, 2017, <https://www.axios.com/how-the-health-insurance-tax-will-impact-2018-premiums-2471090366.html>.

<sup>11</sup> Sam Berger and Emily Gee, *The Trump Uncertainty Rate Hike*, Center for American Progress, April 26, 2017, <https://www.americanprogress.org/issues/healthcare/news/2017/04/26/431162/trump-uncertainty-rate-hike/>.

<sup>12</sup> U.S. Dep't of Health & Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, *Policies Related to the Navigator Program and Enrollment Education for the Upcoming Enrollment Period* (Aug. 31, 2017), <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Policies-Related-Navigator-Program-Enrollment-Education-8-31-2017pdf.pdf>.

working to encourage enrollment as well. Additionally, plans contribute financially to federal operation of the Navigator consumer assistance programs, and should be able to benefit from that investment. Brokers also have a significant role to play in helping to encourage enrollment. But if we are to continue expanding coverage under this public-private program, there is a lot more work to be done, especially with specific populations needing specialized linguistic or other culturally appropriate assistance, or those not positioned to benefit from Internet-based interactions.

Kaiser Permanente has learned through experience that states like California that have made it easier for consumers to get coverage, through standardized benefit packages, generally have more stable markets. Another part of this equation is outreach. We know that in-person outreach is very effective at ensuring consumers get the right plans for them. The Administration can take steps to make the purchasing process more transparent to and easier on all consumers. Congress should consider what it can do to go a step further and promote engagement – meeting consumers where they are, and explaining the law and the benefits of obtaining and maintaining coverage.

#### C. A Note on Medicaid.

Before I conclude, I'd like to offer a couple observations about Medicaid. While I recognize that this program is outside of the HELP Committee's jurisdiction, it is essential that we acknowledge the critical role Medicaid coverage plays in our health care system, serving some 70 million Americans following the ACA's Medicaid expansion. That expansion should be preserved, with adequate federal resources to match. At the same time, we would argue that remaining states that have yet to take advantage of the expansion should be given leeway to innovate, within the construct of the program's substantive protection for society's most vulnerable.

We also need to recognize the significant interaction with the Medicaid program,<sup>13</sup> when we consider individual market stabilization efforts. In terms of state flexibilities, I can't say where exactly the income cutoff should be between Medicaid and the private insurance market, but what is important is to ensure that individuals and families have the essential health benefits that they need with the financial support that allows them to access care. It is also important that we don't divert funding from Medicaid to try to slightly lower premiums in the individual market, when there are so many other areas ripe for refinement, as I've identified today.

#### D. Conclusion.

Chairman Alexander, Ranking Member Murray, and Members of the Committee, thank you for

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<sup>13</sup> Estimates provided to the board of Covered California, California's state-based exchange, estimates fluctuation of the subsidy-eligible population between programs at about 340,000 people annually. See *Covered California 2016-2022 Market Analysis and Planning* (May 12, 2017), at 10, [http://board.coveredca.com/meetings/2016/5-12/Covered%20CA%20and%20PwC%20Market%20Planning%20and%20Analysis\\_Board%20Draft.pdf](http://board.coveredca.com/meetings/2016/5-12/Covered%20CA%20and%20PwC%20Market%20Planning%20and%20Analysis_Board%20Draft.pdf).

holding these important hearings and inviting me to speak. Many Americans are hoping we can deliver, and these hearings are an important step in the right direction if we are to provide even more people with affordable, accessible and quality health care. I look forward to your questions.