

REINSURE THE PREEXISTING CONDITION UNFUNDED MANDATE

A small portion of the population accounts for a disproportionately high percentage of health care spending. When included in group insurance coverage, these individuals drive up costs for all enrollees. The Federal Government should support reinsurance for the costliest utilizers of health care to reduce premiums for the remaining population.

BACKGROUND

The Affordable Care Act (ACA) requires private health insurers to provide coverage to individuals regardless of health status, medical history, and preexisting conditions.¹ Under the ACA, insurers can adjust premiums based solely on certain ACA-specified factors (i.e., individual or family enrollment, geographic rating area, tobacco use, and age).

Democrats and Republicans have supported such policies despite polarizing disagreements over the ACA. Regardless of the future status of the ACA law, the Federal Government will likely continue to mandate coverage for preexisting conditions in a manner that fails to account for their comparably high health care spending.

According to the Peterson-Kaiser Health System Tracker, “5% of the population accounted for half of all health spending [in 2016].”² The dollar figures attached to the highest health care spenders are significant. “The 5% of people who spend the most on health care spend an average of around \$50,000 annually; people in the top 1% have average spending of over \$109,750.”³

Under the terms of the ACA, the Federal Government imposes a mandate on private companies to provide benefits to a population which might otherwise be denied coverage or exhaust lifetime policy limits. Because health insurers may not charge increased premiums for various health conditions under the law,⁴ those additional costs are spread across their respective enrollees in the form of higher premiums. In short, the preexisting condition coverage requirement and ban on lifetime policy limits are essentially unfunded government mandates.

CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution empowers Congress to “make all laws which shall be necessary and proper” to carry out its mandate to provide for the general welfare.⁵

Government’s role in health care should be to support coverage for the sickest, poorest, and most vulnerable Americans while simultaneously pursuing policies which support a competitive private health care marketplace. Federal mandates should be adequately funded or eliminated altogether.

Quick Take

In 2016, five percent of the population accounted for half of all health spending.

The ACA’s preexisting condition coverage requirement and ban on lifetime policy limits are unfunded government mandates. Congress should offer some form of reinsurance for the costliest health care users or repeal the mandates.

POLICY SOLUTIONS

One option to end the ACA’s unfunded coverage mandates is to simply repeal the mandates outright. Alternatively, Congress should reinsure against risk of loss from the costliest enrollees to reduce insurance premiums for most Americans. If the Federal Government insists on mandating coverage, it should share a corresponding portion of increased premium costs due to preexisting conditions.

The Fair Care Act of 2019 contained a program known as the Invisible High Risk Pool Reinsurance (IHRPR) Program.⁶ An actuarial study of the IHRPR program found that a reinsurance program covering risk beyond \$10,000 of benefits per year would reduce “average premiums in the new risk pool in the individual marketplace” between 12 to 31 percent.⁷

The Foundation for Research on Equal Opportunity suggests the funds could be administered through: federal reinsurance program, block grants to states, or a combination of each “under which states could have the option to take the funds in a block grant form, or leave the reinsurance program to the federal government.”⁸ Congress should consider basing the reinsurance premium amount and risk retention for insurers on the relative year-over-year health care spending by the covered high-risk individual. Doing so would ensure that health insurers retain an incentive to create downward pressure on health care spending.

To ensure the reinsurance program doesn’t exceed Medicare payment rates, Congress must ensure that the negotiated reinsurance policy payment rate for items and services is equivalent to the Medicare reimbursement rate under Title XVIII of the Social Security Act. If the underlying health care policy covers items and services not covered by the Medicare program, the Secretary of the Department of Health and Human Services should determine a payment schedule.

Please contact Cameron Smith or Kelsey Wall with the Republican Policy Committee at (202) 225-4921 with any questions.

¹Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

²Bradley Sawyer and Gary Claxton, *How Do Health Expenditures Vary Across the Population?* (2019), Kaiser Family Foundation, https://www.healthsystemtracker.org/chart-collection/health-expenditures-vary-across-population/#item-discussion-of-health-spending-often-focus-on-averages-but-a-small-share-of-the-population-incurs-most-of-the-cost_2016.

³*Id.*

⁴ 45 C.F.R. § 144, 146, and 147 (2010).

⁵ U.S. Const. art. 1, § 8. These powers have provided the constitutional authority for programs such as Medicare and Medicaid.

⁶ H.R. 1332, 116th Cong. (2019).

⁷ *The Federal Invisible High Risk Pool*, Milliman, Inc. (2017), <https://thefga.org/wp-content/uploads/2017/04/The-Federal-Invisible-High-Risk-Pool.pdf>.

⁸ Avik Roy, *Bringing Private Health Insurance Into the 21st Century*, <https://freopp.org/bringing-private-health-insurance-into-the-21st-century-d1df138f1f0c> (last accessed February 10, 2019).