



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

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Superintendent

January 16, 2017

The Honorable Lamar Alexander  
Chairman  
Senate Committee on Health, Education,  
Labor and Pensions  
United States Senate  
428 Senate Dirksen Office Building  
Washington, DC 20510

**Re: Expanding Consumer Access to Quality, Affordable Health Insurance Coverage**

Dear Senator Alexander:

I write in response to your December 21, 2016 letter to state insurance commissioners seeking our input on health care insurance. I welcome the dialogue and especially appreciate your comment that public officials should “do no harm” which in this context means to resist the partisanship calls for drastic action to repeal the Affordable Care Act (ACA).

New York’s experience is not consistent with the statements in your letter about the ACA. Quite the contrary, in just six years, the ACA has succeeded in providing lower cost, higher quality coverage to millions of New York individuals and businesses. Since the ACA’s implementation, New York’s uninsured rate has dropped by approximately 50%, reducing the number of uninsured from approximately 10% to 5%. Under the ACA, approximately 3.4 million New Yorkers have received new coverage through our health benefit exchange, the New York State of Health (NYSOH). Not only has the number of covered New Yorkers increased dramatically because of the ACA, but commercial health insurance premiums for individuals remain over 50% less costly in 2017 than they would have been without the ACA. These results are even more impressive when considering that they do not include the benefit of federal tax credits. By including federal tax credits, over half of New Yorkers are paying even less in premiums. As New York’s insurance commissioner, I oppose any effort to repeal the ACA and turn the clock back to the lower quality, higher cost coverage that existed before the ACA.

Millions of Americans and New Yorkers now depend upon the ACA for their health care. In New York, the ACA has helped small businesses provide health care for over a million employees. And it has engendered an individual market that offers choice and affordable policies, which is critical to ensuring that all Americans – not just those who work for America’s largest corporations – have access to health care. New York’s individual and group markets remain competitive and robust. Today, 16 insurers offer coverage in our individual market and 21 insurers offer coverage in our small group market. This is meaningful progress, which should not be halted for purported political gain.

On behalf of the millions of New Yorkers who now have health insurance and have benefited from the ACA, the New York Department of Financial Services opposes repeal of the ACA or any changes to current federal legislation or regulation that would negatively impact a single New Yorker. In short, public officials should not take any action that would lead to the reduction of benefits for even a single American.

With respect to the specific questions set forth in your letter, I respond as follows.

1. *What legislative and administrative actions do you recommend be taken in order to stabilize the individual and group insurance markets for the 2017, 2018 and 2019 plan years? In what time frame would such action need to be taken in order to stabilize the markets?*

New York opposes repeal of the ACA. Some elected representatives have asserted publicly that repeal of the ACA must happen immediately, with any replacement program to be enacted years later. Any such action would be disastrous for our insurance markets and would eliminate or reduce health care coverage for millions of Americans, including 2.7 million New Yorkers who would lose coverage. Wholesale repeal without the simultaneous enactment of a clear and comprehensive program for the future would push insurers out of health benefit exchanges and lead to those insurers that remain seeking unreasonably high premiums. In addition, it is critical that existing funding and tax credits under the ACA remain intact. Any reduction in funding or tax credits would leave many New Yorkers without coverage and would destabilize the entire health insurance market and risk pools. Indeed, nearly three quarters of the 2.8 million individuals who enrolled through the New York State of Health for 2016 -- either in Qualified Health Plans, the Essential Plan (New York's Basic Health Plan) or through expanded Medicaid -- receive some form of financial assistance made possible by the ACA. And, the 2017 enrollment numbers are already 20 percent higher than last year.

In addition to lowering costs, the ACA has improved health care coverage in New York. These improvements include: barring insurers from excluding coverage for preexisting conditions; requiring insurers to offer dependent coverage to age 26; prohibiting annual and lifetime limits; imposing maximum out-of-pocket limits that restrict the amount of cost-sharing insurers may impose; establishing a basic set of Essential Health Benefits that gives states the ability to choose a minimum level of quality coverage; requiring coverage of preventive care with no cost-sharing; mandating guaranteed issue, ending insurers' practice of denying coverage to the sick; and protecting the fairness of premium rates, including setting minimum standards for charging the same rate to all regardless of medical condition, establishing a single risk pool for each of the individual and small group markets, standardizing rating regions, and creating uniform metal tiers (platinum, gold, silver and bronze) of coverage levels so that consumers can effectively comparison shop, thereby increasing market competition. Taken together, these and other ACA reforms have protected consumers from problematic practices, and should continue in effect.

Moreover, to the extent this question suggests that the ACA would be repealed without the simultaneous enactment of an equivalent or better replacement, New York believes that any gap in time would be disastrous for the insurance market and consumers. The individual and small group policies to be issued in New York in 2017 have already been finalized and are being sold during the open enrollment period that is currently underway. As noted, the current enrollment in New York is more than 20 percent higher than last year, demonstrating that New Yorkers need and want health care as currently provided under the ACA and fear losing it. New York insurers are already working on developing their 2018 policies and rates. Those filings must be finalized and submitted for review in early 2017. Simply put, pulling the rug out from the ACA by repeal without a concrete *and better*

replacement plan would wreak havoc in the insurance markets and harm consumers. Congress should not take any action that would leave one person uninsured or underinsured or lose benefits. New York opposes any step back from the progress that has been made.

2. *What steps could be taken to improve the health of risk pools and ensure that high costs incurred by some do not lead to substantial premium increases for others in the pool?*

The ACA has dramatically improved the health of New York's risk pool. In combination, the individual mandate, advance premium tax credits (APTC) and open enrollment rules have brought younger and healthier people into the individual market risk pool, resulting in lower cost, high quality coverage with more choice and competition. These ACA reforms have helped make the individual market community rated pool in New York far broader than prior to the ACA and, as noted, premiums are 50% less than they would have been without the ACA.

New York does not support the establishment of a high-risk pool. Studies have shown that high-risk pools have high premiums, are expensive to administer, typically operate at a loss, and fail to meet the needs of the chronically ill.<sup>1</sup> Many high risk pools have failed or floundered due to budget constraints that limit subsidies and lead to capped enrollment. Accordingly, New York believes that high risk pools are not a viable option to providing quality, affordable health insurance coverage.

3. *How would your state define "Essential Health Benefits" if it were given the freedom to define those requirements?*

Since 2014, the ACA has guaranteed that consumers receive necessary benefits that provide comprehensive health care to individuals and families. Changing those benefits, such as by changing the definition of Essential Health Benefits (EHB), would cause market disruption would cause consumers to scramble to ensure they are covered for necessary services. Also importantly, by requiring that all policies cover Essential Health Benefits, the ACA has provided a level playing field, preventing health plans from cherry picking by designing benefit packages to attract healthier people and creating adverse selection for those insurers that provide comprehensive care. Maintaining the EHB reduces the risk of adverse selection and helps market stability. Moreover, the ACA's focus on prevention is a critical aspect of improving health, modernizing health care and reducing future costs. After all, Americans deserve preventative care so that they can live longer and healthier lives. For these reasons, New York supports the existing Essential Health Benefits benchmark selection process and the definition of Essential Health Benefits, because it is working and benefits consumers fairly and equally.

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<sup>1</sup> See generally Karen Pollitz, *High-Risk Pools for Uninsurable Individuals*, THE HENRY J. KAISER FAMILY FOUNDATION, July 2016; see also, Lynn A. Blewett, et al., *State High-Risk Pools: An Update on the Minnesota Comprehensive Health Association*, 101 AM. J. OF PUB. HEALTH 231 (2011) (examining problems with the oldest state high risk pool in the nation and concluding that: (a) high risk pools lose money by design, (b) over 50% of the total funding of the pool fell on the state government resulting in the need for both insurer and provider assessments to cover costs, and (c) there was declining enrollment even with a premium cap set at only 125% of average premiums in the commercial market); NATIONAL ASSOCIATION OF STATE COMPREHENSIVE HEALTH INSURANCE PLANS, *State Risk Pool Status Report* (Nov. 2016), available at <http://naschip.org/2016/PoolEnrollmentSurvey2016.pdf> (noting that of thirty-five state high risk pools that have been established twenty-two have been closed completely and two additional pools are operating only in a limited capacity).

4. *Do you view the Section 1332 State Innovation Waivers as a workable option for providing state flexibility? If not, what changes in the law and regulations would you recommend? How long would it take your state to implement a Section 1332 Waiver?*

As noted, New York does not support repeal of the ACA or changing the central components of the ACA. The Section 1332 waiver program is successful within the entire carefully developed ACA framework. In New York, the success of the ACA has helped insurers to offer lower cost, high quality coverage to individuals and groups. As noted, approximately 2.8 million New Yorkers have received coverage through our Health Benefit Exchange, the New York State of Health (NYSOH). The number of uninsured in New York has been cut in half, from 10% to approximately 5%, with lower premiums. While New York supports the section 1332 Waiver program, it alone is not the answer to providing comprehensive, affordable health care for all Americans.

5. *What is your vision of a modern private health insurance market in your state? What would you do to lower health care costs, provide more individual plan choices, and innovate, and what additional authorities would the states need from Congress to do so?*

New York strongly supports the ACA, because it has made quality health coverage more available and affordable for more New Yorkers. As noted above, the ACA has helped provide a wide range of choice for individuals at less than half the cost of what it would have been without the ACA. At the same time, New York continues to seek ways to stem the tide of rising health care costs. New York has actively engaged in the State Health Innovation Plan (SHIP), a comprehensive proposal to help reduce increases to the costs of health insurance coverage. SHIP includes initiatives to promote value based purchasing, integrated care delivery, transparency in health care price and quality, health care workforce development, and population health. Maintaining the ACA, in combination with SHIP, is New York's recommended approach to promoting individual health plan choices, innovation, competition and more affordable, quality coverage.

By contrast, the following proposals do not address the needs of New Yorkers, would represent a step backward and would destabilize insurance markets.

- **Proposed Elimination of the Individual Mandate.** New York does not support elimination of the individual mandate, which is a critically important component of the ACA that provides stability to the market by reducing adverse selection while providing coverage for more Americans. Prior to the ACA, New York's individual market did not include an individual mandate and suffered adverse selection, with monthly individual premiums reaching over \$1,500 and enrollment of less than 20,000 people. Premiums today are 50% lower than they were pre-ACA and the individual market in New York has grown significantly since the implementation of the ACA. An effective individual mandate combined with guaranteed issue, guaranteed renewal and community rating are imperative to ensuring that coverage is affordable and that all consumers are treated in a fair and consistent manner.
- **Refundable Tax Credits.** The "Advanced Premium Tax Credit" (APTC) is also critical to the integrity of the individual market. Proposed legislation that would replace the APTC with an age-adjusted tax credit is flawed for two reasons. First, the APTC is tied directly to an individual's actual premium cost and income, ensuring that individuals have sufficient financial assistance to afford the coverage available in their geographic area. By contrast, the proposed age-adjusted tax credit is a flat amount not tied to an individual's actual cost of premiums or income. Second, New York does not permit insurers to vary premium amounts by age, so age-

adjusted tax credits would provide less assistance to younger New Yorkers and would have the detrimental effect of discouraging their enrollment in coverage. Having fewer young people enrolled in coverage will have a disastrous impact on New York's risk pool and would result in higher premiums for everyone.

- **Proposed Sales Across State Lines.** New York strongly opposes this proposal. Quality health care depends upon networks within a state, where residents can visit a doctor or hospital within geographic proximity to their homes. Health insurance simply is not saleable across state lines like other products. Moreover, we have serious concerns that out-of-state insurers will not have community-based provider networks in place that are adequate to meet the comprehensive health care needs of New Yorkers. Further, this proposal violates a fundamental principle of state sovereignty and over a century of state-based regulation, which is why the National Association of Insurance Commissioners (NAIC) consistently has opposed it.

Indeed, the sale of health insurance across state lines would lead to a "race to the bottom" by allowing insurers to choose a state with low standards for benefits, consumer protections and premium rates. For example, if insurers are allowed to sell policies in any state, younger and healthier individuals would likely choose cheaper, less comprehensive out-of-state insurance, leaving the older and sicker individuals to enroll in more comprehensive plans that meet their needs and comply with state law. This adverse selection could spiral to the point where the insurance becomes unaffordable for those who need it most and the risk too high for insurers to maintain a presence in the particular state market. Making insurance more affordable for some while making it more expensive for others is not controlling health care costs. New York endorses a more comprehensive approach to controlling health costs, such as health care delivery reform and value-based payments that link cost to quality, bringing much needed efficiencies and savings to the healthcare market. Further, allowing insurers to sell insurance across state lines would accelerate the corporate consolidation of insurers, thereby decreasing competition and consumer choice.

- **Proposal to Codify Permanent Protections for Life and Conscience and Enforcement of the Hyde Amendment.** New York supports a woman's right to choose and to make unencumbered decisions about her medical care. New York opposes any expansion of the restrictions found within the Hyde Amendment, a permanent enactment or expansion of the Weldon Amendment, or any other restrictions on abortion services in health insurance. The existing segregation of funds in the ACA and its implementing regulations already ensure that federal funds are not used for abortion services. New York also notes that prohibiting the use of federal funds for abortion or abortion services disproportionately impacts the poor, who rely on public assistance to meet their health care needs.

As an insurance regulator, I am certain that pulling the rug out from under us all will immediately destabilize the insurance market in New York and across the country. The ACA has been successfully implemented in New York and, while we continue to work on improvements for our residents, New York's market is robust and competitive. Millions of New Yorkers currently receive affordable, quality health care, millions more so than before the ACA was enacted. As New York's insurance commissioner, I urge you to reject any efforts to repeal or otherwise undermine the protections of the ACA. People's lives should not hang in the balance of political gamesmanship. Any new legislation would be a failure if a single New Yorker lost coverage or received a premium hike as a result of any change in the ACA or implementing regulations.

We look forward to an ongoing dialogue that ensures that New York's approximately 19 million residents are provided with the high quality, affordable health care coverage that they deserve and presently are offered. As public officials charged with securing the health and safety of our neighbors, "do no harm" is our paramount responsibility. New York will oppose any action that fails to protect our residents from harm.

Sincerely,



Maria T. Vullo  
Superintendent