



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

January 6, 2017

The Honorable Kevin McCarthy  
Majority Leader  
United States House of Representatives  
2421 Rayburn House Office Building  
Washington, DC 20515

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

Dear Majority Leader McCarthy:

In just six years, the Affordable Care Act (ACA) has succeeded in providing lower cost, higher quality coverage to millions of individuals and businesses in New York. Since 2013, New York's uninsured rate has been cut in half—from approximately 10% to 5%, the lowest level in decades, and more than 3.4 million New Yorkers currently receive 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 2016 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, more than half of New Yorkers enrolled in private insurance coverage through NYSOH receive help offsetting premium costs. Moreover, New York's individual and group markets remain competitive and robust. The number of New Yorkers in the state's individual insurance market has grown by 270%. Today, 16 insurers offer coverage in our individual market and 21 insurers offer coverage in our small group market. That is progress. As New York's insurance commissioner, I oppose any effort to turn the clock back to lower quality, higher cost coverage.

In addition to lowering costs, the ACA has improved health care coverage in New York. These improvements include the ban on excluding coverage for pre-existing conditions and the requirement of continuing dependent coverage until age 26 that the President-elect and members of Congress have publicly supported. The ACA includes additional provisions that, while less well known, provide real protection for all Americans from being faced with the horrible choice of either seeking needed care or going broke. For example, the ACA prohibits annual and lifetime limits and imposes maximum out-of-pocket limits that restrict the amount of cost-sharing that insurers may impose. Similarly, the ACA requires coverage for out-of-network emergency services. No one can permissibly assert that an unconscious American riding in an ambulance after being in an accident should have to somehow contact her insurer and then redirect the ambulance to a different hospital in her insurer's network of participating providers. In these and many other ways, the ACA has allowed millions of Americans to access affordable comprehensive health care.

Millions of Americans and New Yorkers now depend upon the ACA for their health care. The ACA has helped over a million small businesses that struggle to provide health care for their 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. 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 any changes to current federal legislation or regulation that would negatively impact a single New Yorker. In short, elected representatives should not take any action that would lead to the reduction of benefits for even a single American.

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. Wholesale repeal without a simultaneous and comprehensive plan for the future is likely to push insurers out of health benefit exchanges and lead to insurers setting unreasonably high future premium rates. Our insurance markets depend on predictability and cannot be placed in limbo of what the law will be; the result will be market disruption and premium hikes. Likewise, 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, more than 97 percent of the 3.4 million individuals who enrolled through the New York State of Health -- 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. Moreover, unless Americans are guaranteed that any replacement plan would not leave one person uninsured or underinsured, Congress should not take any action. New York opposes any step back from the progress that has been made.

New York opposes repeal of the ACA. The proposal entitled *A Better Way* would represent a step backward for New York and the nation. Among New York’s comments are the following:

- **Individual Mandate.** The individual mandate is a critically important aspect of the ACA that provides stability to the market by decreasing adverse selection. 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 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 will result in higher premiums for everyone.

- **Sales Across State Lines.** This proposal would violate a fundamental principle of state sovereignty and over a century of state-based regulation. That is why the National Association of Insurance Commissioners (NAIC) consistently has opposed this proposal. Moreover, 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 needs of insured New Yorkers. This proposal is antithetical to state-based regulation of insurance covering a state's own residents.

New York is steadfast in its approach to comprehensive health care and consumer protections. 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. Rather than protect consumers, this proposal would weaken markets and lead to instability and premium hikes. 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 New York 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 underlying 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.

- **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 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, 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 insurance 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

cc: The Honorable Kevin Brady  
The Honorable Fred Upton  
The Honorable John Kline  
The Honorable Greg Walden  
The Honorable Virginia Foxx