

The logo for Prevention Alliance features a blue curved line above the text "Prevention Alliance" in a blue, sans-serif font.

# Prevention Alliance

## ***POLICY BRIEF: THE AFFORDABLE CARE ACT AND INDIVIDUAL INSURANCE MARKET***

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November 2016

**GOAL:** To provide understanding of potential impacts on the individual health insurance marketplace if the Patient Protection and Affordable Care Act is repealed, defunded, or amended at the federal level.

### **BACKGROUND**

The Patient Protection and Affordable Care Act (ACA) was signed into law by President Obama on March 23, 2010. It has served as the most sweeping reform of the health care system ever passed in the United States. The ACA is a complex web of both federal and state legislation, budget appropriations, regulations, and guidance. These various components knit together a system of reform that has helped millions of people across the country gain access to health insurance coverage. The ACA also made great progress in improving the quality of insurance by requiring minimum essential benefits to be covered, setting a cap on out of pocket expenses, removing annual and lifetime caps on coverage, and much more. Given the depth and complexity of the ACA, this brief will focus exclusively on the development of the private health insurance market and the potential unravelling that could occur if Congress moves forward with repealing or defunding various components of the law. *Please see the [Prevention Alliance brief on the Affordable Care Act and Medicaid Expansion \(2016\)](#) for more information on impact of potential repeal of Medicaid expansion.*

The ACA created a nationwide private insurance market that has allowed millions of individuals and families without employer sponsored insurance or other coverage to gain access to health insurance, many for the first time. States were given an option to either set up their own health benefit exchange or have the federal marketplace available in their state. These exchanges opened their doors for enrollment for the first time on October 1, 2013. Washington chose to establish their own health benefit exchange – Washington Healthplanfinder. In 2016 alone, nearly 1.7 million Washington residents enrolled in health coverage through Washington Healthplanfinder. This includes 166,098 consumers enrolled in Qualified Health Plans (private insurance) and more than 1.5 million in Washington Apple Health (Medicaid MAGI or CHIP).<sup>1</sup> In addition, there are also consumers who have enrolled in private insurance coverage by purchasing directly from an insurance carrier rather than through the exchange. The success of implementation in Washington has resulted in the uninsured rate dropping from 16% in 2012 down to 7% in 2015.<sup>2</sup>

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<sup>1</sup> Washington Healthplanfinder, Health Coverage Enrollment Report – September 2016, [http://www.wahbexchange.org/wp-content/uploads/2015/12/HBE\\_EN\\_161116\\_September\\_Enrollment\\_Report.pdf](http://www.wahbexchange.org/wp-content/uploads/2015/12/HBE_EN_161116_September_Enrollment_Report.pdf)

<sup>2</sup> Kaiser Family Foundation State, Health Insurance Coverage of the Total Population in WA, <http://kff.org/other/state-indicator/total-population/?currentTimeframe=0&selectedRows=%7B%22nested%22:%7B%22washington%22:%7B%7D%7D%7D>

Many of the people who have purchased a private insurance plan could not have done so prior to the ACA for many reasons, including unaffordable monthly premiums and exclusion due to pre-existing conditions. Starting in 2014, the ACA put in place new rules that required insurance companies to guarantee access to everyone regardless of health status (called *guarantee issue*) and limited the factors insurers could use in setting premiums.

Guarantee issue was a primary goal of the ACA – that nobody should be denied access to insurance because of their health status. However, to have guarantee issue there needed to be a stable market with a robust pool of enrollees that was comprised of both the sick and the healthy, the young and the old. Without a large pool of enrollees to spread the risk, the cost of coverage would remain extremely high and unaffordable to those who need it most. To balance this risk, the ACA included an individual mandate that requires everyone to have health insurance coverage or they will be charged a fine when they file their annual income taxes. Requiring everyone to have coverage prevents people from only purchasing insurance when they are sick or are expecting large health expenses such as those associated with a pregnancy. The individual mandate gave the health insurance companies a guarantee that there would be enough enrollees to spread the risk, which allowed them to proceed with guarantee issue where nobody is denied coverage. The balance of these two mandates – one on individuals to maintain coverage and one on carriers to guarantee coverage for all individuals – is a core tenet of the ACA.

In order to require that individuals purchase insurance also meant the premiums needed to be affordable. To help with affordability, the ACA included subsidies for those who make up to 400% of the federal poverty level (\$47,520 for an individual; \$97,200 for a family of four). These subsidies come in the form of advanced premium tax credits that lower the upfront cost of the monthly premiums. There are also cost sharing reductions to help lower out of pocket expenses, such as coinsurance, for those who make up to 250% of the federal poverty level. Without these subsidies, most of the individuals and families in that income range could not afford the high monthly premiums and therefore would be unable to comply with the individual mandate.

## **VALUES STATEMENT**

The number of people without insurance in Washington has dropped from nearly a million to under 500,000 since the implementation of the ACA. Over 166,000 people currently have an insurance plan through WA Healthplanfinder and over 150,000 are enrolled in plans purchased outside the exchange but still subject to the ACA. Of those enrolled through the exchange, 69% receive subsidies in the form of tax credits that help make the monthly premiums more affordable. The system created by the ACA has given these hundreds of thousands of Washingtonians the opportunity to gain coverage when they previously were not able to. Ensuring this access to quality, affordable health insurance is critical to keeping people healthy by providing access to prevention, early detection, and other medical services. Without coverage people are more likely to delay screenings and treatment, which results in later stage diagnosis and higher costs down the road.

It is vital that we continue to ensure all Washingtonians have access to quality, affordable health coverage. If the intricate system created under the ACA begins to unravel as a result of congressional action then stakeholders in Washington will all need to work together to find state-level solutions to keep people covered.

## **PROBLEM STATEMENT**

The private insurance market created through the ACA was carefully knit together to make the system work for as many as possible including patients, providers, and carriers. If strings start being pulled, the system will unravel, become unstable, and could succumb to an insurance death spiral. President-elect Donald Trump and Republican leadership in both chambers of Congress have stated they intend to quickly repeal the ACA, though the effective date will likely be walked out a couple of years. While they have expressed interest in keeping some of the more popular pieces of the law such as guarantee issue and allowing kids to stay on their parents' insurance until they turn 26 years old, it is not possible to keep some of these while pulling out the strings that made them feasible in the first place.

### ***Potential Repeal and Replace – Budget Reconciliation Process***

During the Obama administration, Republicans in Congress attempted to repeal the ACA more than 60 times. All attempts were blocked by various means including presidential veto and failure to pass out of the formerly Democrat-controlled Senate. The previous attempts to repeal, specifically the effort through the 2015 budget reconciliation bill, provide insight into a potential approach that will be taken with the new administration and Congress in 2017. Even though Republicans hold control in both chambers of Congress and the White House, a full repeal of the ACA in its entirety is extremely unlikely since they would need 60 votes to overcome a filibuster in the Senate. This leaves the budget reconciliation process as the most likely approach to repeal. Through this process Congress can remove or change the fiscal components of the law with a simple majority vote. While this would leave all policy components in place, it would destabilize the intricacies of the marketplace resulting in a collapse of the system. The 2015 budget reconciliation bill (H.R. 3762) would have repealed several provisions of the ACA including the following components that would have compromised the stability of the private insurance market<sup>3</sup>:

- Eliminating premium tax credits and cost-sharing reductions, which takes away the financial support low-income families rely on to be able to purchase health insurance.
- Eliminating the penalties for failing to comply with the individual mandate, without which there would be no incentive to comply with the individual mandate to buy insurance.
- Repealing several funding mechanisms of the ACA including the tax on high-premium employer-sponsored health coverage (the Cadillac tax), the medical device tax, an annual fee on certain health insurance providers, an excise tax on tanning services, and an investment tax on high-income individuals.

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<sup>3</sup> H.R.3762 - To provide for reconciliation pursuant to section 2002 of the concurrent resolution on the budget for fiscal year 2016, 114<sup>th</sup> Congress (2015-2016), <https://www.congress.gov/bill/114th-congress/house-bill/3762>

While H.R. 3762 did pass both chambers of Congress, President Obama vetoed it on January 8, 2016. The House was unable to override the veto, so none of these changes have happened.

Throughout discussions of repeal, Republicans in Congress have repeatedly pledged to replace the ACA with their own approach to health care reform. However, the questions remain concerning what that replacement will look like since no details have been released, and whether they can pass and implement it fast enough to avoid gaps in coverage. The effective date for repeal will likely be a couple of years out, but it is unknown how much time will be built in. Though a six-month gap in health insurance may not seem significant to many people, those with chronic health issues such as cancer, heart disease, and diabetes could suffer serious and potentially fatal health outcomes if they go without treatment or access to medication for any length of time. It is vital that solutions are found to prevent such gaps in coverage.

### ***Lessons Learned from Washington State in the '90s***

Washington was one of seven states that attempted state-level reform of the health care system in the mid-1990s. The effort ultimately failed, largely because the strings that held the new system together were pulled apart and the system collapsed.

The approach Washington took to health reform was a “managed competition” model that had several of the same components as the ACA: guarantee issue, prohibition on charging sick people more for coverage, and an individual mandate. Insurers were required to accept everyone who applied for coverage starting July 1, 1993 and consumers were given five years before they were required to purchase coverage in 1998. Insurers moved forward with guarantee issue and started covering everyone who applied, but the individual mandate was eliminated long before it was to be implemented. Republicans gained control of the Washington House in 1994 and the individual mandate was repealed. However, like Congress today, the legislature did not want to repeal the more popular parts of the law so guarantee issue was left in place.

Following the elimination of the individual mandate, the system fell into what is known as a death spiral. Consumers bought insurance only when they needed it – when they were sick or anticipating health expenses such as a pregnancy – and then dropped coverage when they were healthy or the health expenses had passed. This meant that those with coverage had high health care costs, but there were not enough healthy people in the system to balance out the risk. Premiums skyrocketed at first and then ultimately the cost of doing business became too great and the major carriers in Washington stopped selling individual plans. Seventeen health insurance carriers left the individual market between 1993-1998 with only Regence Blue Shield and Group Health remaining.<sup>4</sup> The individual insurance market was essentially dead and people could not find coverage. In 2000 Washington passed legislation modifying the guarantee issue law to say that while they still must cover most residents, carriers could impose a nine-month

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<sup>4</sup> The Washington Post, *Health Reform without a Mandate: Lessons from Washington State*, 2012, [https://www.washingtonpost.com/blogs/ezra-klein/post/health-reform-without-a-mandate-lessons-from-washington-state/2012/06/16/gJQAosKghV\\_blog.html](https://www.washingtonpost.com/blogs/ezra-klein/post/health-reform-without-a-mandate-lessons-from-washington-state/2012/06/16/gJQAosKghV_blog.html)

waiting period for those with pre-existing conditions and the very sickest could be denied coverage and instead referred over to the state's high-risk pool.

The Washington experience provides a glimpse into the potential ramifications if the individual mandate were to be repealed from the ACA. It is evident that without a requirement to purchase coverage, consumers will choose to enter the market only when needing major medical care.

## **PREVENTION STRATEGIES**

Specific prevention strategies are largely still to be determined. The initial strategy is to oppose congressional efforts to repeal or defund the Affordable Care Act, including opposing repeal of the individual mandate and attempts to defund subsidies.

Should efforts to prevent ACA repeal prove unsuccessful, strategies will need to focus on finding state solutions that make coverage affordable for individuals and keep the private health insurance marketplace in Washington solvent.

The timing of potential efforts around the ACA is difficult to determine. Several members of Congress have said they will act swiftly in 2017 to repeal the ACA, so opposing federal repeal attempts is an immediate need. If a repeal effort is successful, there will likely be a delay in when the changes go into effect. For example, if it had passed, H.R. 3762 included a two-year delay in defunding subsidies and ending fines associated with the individual mandate. Even if implementation is delayed, congressional action that could lead to a reduction in enrollees may result in carriers submitting for large rate increases for 2018 plans or some may even preemptively pull out of the market.

Because there is so much uncertainty in the timing, stakeholders will need to be prepared to act quickly and start exploring state level solutions in anticipation of federal action.

## **RESOURCES**

[Defending Health Care in 2017: What's at Stake \(2016\)](#) – Families USA (national level data)

[Health Coverage Enrollment Report \(2016\)](#) – Washington Healthplanfinder

[Health Reform Without a Mandate: Lessons from Washington State \(2012\)](#) – The Washington Post

[Republican ACA Repeal Bill Would Unravel the Market Even Before It Goes into Effect \(2016\)](#) – Center for American Progress

[Worrying about your Exchange Coverage? Obamacare repeal could take a while \(2016\)](#) – NPR

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### **For more information please contact:**

Julie Peterson | Senior Director of Policy | Foundation for Healthy Generations | [juliep@healthygen.org](mailto:juliep@healthygen.org)