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Alexander-Corker Bill Would Likely Reduce, Not Expand, Consumers' Health Insurance Options

By Sarah Lueck

A bill introduced by Senators Lamar Alexander and Bob Corker seeks to address concerns that people in some areas might not have any marketplace plans available in 2018, by allowing residents of such areas (sometimes referred to as "bare" counties) to receive federal premium tax credits in 2018 and 2019 if they enroll in *any* plan their state allows to be sold in its individual market, including plans that fail to meet basic Affordable Care Act (ACA) standards. The bill would also eliminate the individual mandate for everyone living in a county with no marketplace insurers.[1]

While the bill might appear to reassure consumers in areas that have only a few insurers and those insurers are threatening to pull out of the marketplace, its likely overall effect would be harmful rather than helpful. In particular, the bill likely would worsen the very problem it seeks to address, by encouraging insurers *not* to participate in the marketplace.

Bill Would Likely Discourage Insurers from Participating in Marketplace

The Alexander-Corker bill would allow people to use premium credits for plans offered outside the marketplace that do not conform to the ACA's market reforms, coverage standards, and consumer protections. These *non*-ACA-compliant plans can charge people higher premiums based on their health status, gender, and other personal characteristics, for example, and aren't required to provide the ACA's list of essential health benefits.[2]

Allowing consumers to use tax credits to buy non-ACA-compliant plans would be attractive to insurance companies that have a substantial business selling those plans, and it could prompt insurers that haven't offered non-ACA-compliant plans to begin doing so. And, insurers might be

[1] S. 761, The Health Care Options Act of 2017, as introduced by Senator Lamar Alexander (R-TN) and Senator Bob Corker (R-TN), March 29, 2017, https://www.congress.gov/bill/115th-congress/senate-bill/761/text?q=%7B%22search%22%3A%5B%22health+care+options%22%5D%7D&r=1.

[2] Non-ACA-compliant plans include "grandmothered" or "transitional" individual-market plans, which pre-date the ACA but which federal guidance has allowed insurers in some states to continue providing to current enrollees. (They currently can't be sold to new individuals.) Non-ACA plans also include short-term plans or other types of limited coverage that *can* be sold to new customers. In addition to being exempt from most ACA benefit standards and consumer protections, non-ACA plans aren't part of the ACA's "single risk pool" or subject to its risk-adjustment program.

able to raise premiums for their non-ACA plans without losing many customers because the new access to premium credits would defray many consumers' costs even if premiums surged.

Of particular concern, the insurers that would profit if tax credits were made available for non-ACA-compliant plans are often *the very same insurers that are deciding whether to offer plans in the marketplace*. In a state where one dominant insurer offers marketplace plans in otherwise bare counties, that insurer may also have significant enrollment in *non*-ACA-compliant plans outside the marketplace. The Alexander-Corker bill would give this insurer a choice: continue to offer plans through the marketplace, or leave the marketplace in some or all parts of the state — which would make premium tax credits available in those locations for the insurer's non-ACA-compliant plans. An insurer in this position who might well have offered marketplace plans under current law might decide to withdraw from (or not enter) the marketplace as a result of this legislation. The lure of establishing or expanding non-ACA-compliant lines of business — which are more weakly regulated and likely more profitable than ACA-compliant plans — would be powerful for many insurers.[3] And the ability to offer customers access to tax-credit subsidies would make non-ACA-compliant plans that can be sold to new customers much more attractive than they are today.[4]

As a result, under the bill, people in counties that now have only one or a couple of insurers could end up with fewer adequate options for health coverage than they have today. They would also be exposed to many insurer practices that the ACA ended in the individual market — higher premiums if they have health issues, no coverage for pre-existing conditions, and lack of critical benefits such as maternity care, prescription drugs, or even hospitalizations.[5]

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[3] Non-ACA-compliant plans that can be sold to new enrollees generally are exempt from the ACA's medical-loss ratio requirement, under which individual-market plans must spend at least 80 percent of what they collect in premiums on medical claims and health care quality improvements, rather than profits and overhead. If an insurer fails to meet the threshold, it must pay back the difference to individuals. Being exempt from this ACA requirement gives these types of plans additional room to increase premiums and profits.

[4] Under current law, an important reason for consumers not to purchase certain non-ACA-compliant coverage (such as short-term plans) is that they would still have to pay the penalty for not having health insurance. But the Alexander-Corker bill would exempt everyone in a bare county from the individual mandate. This exemption, along with the availability of tax credits, would enable insurers to build a thriving, lucrative alternative to offering ACA-compliant coverage.

[5] The Alexander-Corker bill also allows tax credits to be used for "a not-for-profit membership organization organized under State law and authorized under State law to accept member contributions to fund health care benefits for members and their families." This appears to allow tax credits in a bare county to be used for a variety of plans offered by the Tennessee Farm Bureau or similar associations that may exist in other states. Enrollment in Tennessee Farm Bureau plans has rapidly increased in recent years, with as many as 73,000 people enrolled in individual health plans that do not comply with ACA standards, according to one report. Like other non-ACA-compliant plans, Farm Bureau plans likely attract healthier-than-average enrollees, because insurers can exclude people with pre-existing health conditions or charge much higher premiums to those in poorer health. With about 230,000 people enrolled in Tennessee's ACA marketplace, the diversion of those 73,000 people from the ACA risk pool already is likely driving up per-enrollee costs and premiums for marketplace plans, and appears to be one of the factors discouraging participation by insurers in the marketplace. Offering a tax credit to enroll in such plans would likely make them even more popular and further destabilize Tennessee's ACA-compliant individual market. See Kevin Lucia and Sabrina Corlette, "What's Going on in Tennessee? One Possible Reason for Affordable Care Act Challenges," Georgetown University Health Policy Institute Center on Health Insurance Reforms, April 11, 2017, http://chirblog.org/whats-going-tennessee-one-possible-reason-affordable-care-act-challenges/.

Bill Would Not Help Low-Income People in Bare Counties Afford Coverage

A second problem is that under the Alexander-Corker bill, people enrolling in coverage outside the marketplace would have no way to receive premium tax credits *in advance* to help pay their monthly premiums. Currently, the premium tax-credit subsidies are provided each month. But under Alexander-Corker, people with low or moderate incomes who buy coverage outside the marketplace would have to pay the entire premium up front and wait to receive their premium tax credits until the following year, when they filed their tax returns.

In addition, people who bought coverage outside the marketplace wouldn't receive the ACA's cost-sharing subsidies at all. These subsidies are essential to reduce low-income people's deductibles and other out-of-pocket costs.

Most people enrolled in the federal marketplace have incomes below 200 percent of the federal poverty line, less than $24,000 a year for an individual. Many of these people will likely become uninsured if they cannot get upfront assistance with premiums and help with cost-sharing charges.[6]

Exemption from Individual Mandate Would Likely Raise Premiums Outside the Marketplace

In addition to discouraging insurer participation in the marketplace in potentially bare counties, the Alexander-Corker bill would pre-emptively eliminate the mandate for every individual in any area that lacks a marketplace insurer. This would produce harmful consequences.

Some insurers offer ACA-compliant coverage but only outside the marketplace. These plans' customers are primarily middle-income people who aren't eligible for marketplace subsidies. Under the Alexander-Corker bill, an off-marketplace insurer who perceives a risk that there might not be any marketplace insurers in a given county would have to *raise* its premiums significantly if the mandate were eliminated. As the Congressional Budget Office (CBO) and many other analysts and insurers have found, eliminating the individual mandate would make the group of people with coverage sicker overall, because healthier-than-average people would be those likeliest to forgo coverage in the absence of a mandate. CBO's analysis of the House Republicans' recent health care bill estimated that eliminating the individual mandate would raise average costs per enrollee by 15 to 20 percent, triggering much higher premiums.[7]

Thus, middle-income people buying ACA plans outside the marketplace could see their premiums increase significantly under the Alexander-Corker bill even if the mandate exemption ultimately weren't triggered in their county.

To be sure, people in areas with low insurer participation in the marketplace need to know they will continue to be able to obtain subsidized coverage. But the Alexander-Corker bill is not the way

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[6] "Health Insurance Marketplaces 2017 Open Enrollment Period: January Enrollment Report," Centers for Medicare & Medicaid Services, January 10, 2017, https://downloads.cms.gov/files/final-marketplace-mid-year-2017-enrollment-report-1-10-2017.pdf.

[7] Congressional Budget Office, "American Health Care Act, Budget Reconciliation Recommendations of the House Committees on Ways and Means and Energy and Commerce, March 9, 2017," March 13, 2017, https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/americanhealthcareact.pdf.

to address this issue, as it likely would aggravate some of the very problems it seeks to solve. Over the past four years, marketplace coverage has been available everywhere in the United States. The same is likely to be true again in 2018 if the Trump Administration avoids taking steps that weaken the marketplace,[8] congressional leaders end the uncertainty they have created around how the individual market will operate in the future (as a result of their efforts to "repeal and replace" the ACA),[9] and federal and state officials work with insurers to ensure that all areas have access to marketplace plans, such as by prodding insurers that offer ACA-compliant plans outside the marketplace to offer plans through the marketplace as well.

[8] Sarah Lueck, "Commentary: How the Trump Administration Might Sabotage ACA Insurance Markets," Center on Budget and Policy Priorities, April 4, 2017, http://www.cbpp.org/health/commentary-how-the-trump-administration-might-sabotage-aca-insurance-markets.

[9] Aviva Aron-Dine, "To Help Stabilize the Individual Health Insurance Market, Take ACA Repeal Off the Table," Center on Budget and Policy Priorities, April 4, 2017, http://www.cbpp.org/research/health/to-help-stabilize-the-individual-health-insurance-market-take-aca-repeal-off-the.