



STATE OF WASHINGTON

November 26, 2019

Dear Members of the Washington State Congressional Delegation:

On behalf of Washingtonians across our state, we write to express our very serious concerns about the potential of a court decision overturning the Affordable Care Act (ACA) in the *Texas v. Azar* lawsuit, as advocated by the Trump Administration. Although we have codified many of the ACA's protections into state law and attempted to safeguard our residents from an adverse ruling, there is simply no way to inoculate our people and our economy from irreparable harm if the law is struck down. We appreciate the work many of you have done over the last decade to protect the ACA from relentless attacks, and we ask for your continued partnership to defend affordable, quality health coverage in Washington.

Our state has spent the last eight years fully implementing the ACA with bipartisan support. Because of these efforts, Washingtonians now have better and more affordable health care coverage. More than 800,000 people have accessed health coverage through the Washington Health Benefit Exchange and Medicaid expansion — cutting our uninsured rate from 14 percent to just 5.5 percent. The law also has been a boon to our economy, creating tens of thousands of jobs and cutting Washington hospitals' uncompensated care costs nearly in half.

To put these numbers in perspective, consider the very real impact on families' access to life-saving care. Thanks to the ACA, since 2014, more than 32,000 Washingtonians who became newly eligible for Medicaid have received treatment for cancer, more than 112,000 have accessed substance use disorder (SUD) treatment, and more than 325,000 have received mental health services.

Unfortunately, all of that is at risk once again. If the lower court ruling in *Texas v. Azar*, which overturned the ACA in its entirety, is upheld by the Fifth Circuit U.S. Court of Appeals and then the United States Supreme Court, there would be widespread and devastating implications for Washington State. We would lose billions of dollars in annual federal funding that directly finances affordable health coverage for working families in Washington — a cost so high it cannot realistically be assumed by the state — while depriving hundreds of thousands of our residents of health insurance, damaging our state's economy, and destabilizing our insurance markets. Despite our best efforts, the ramifications of such a decision are well beyond our state's capability to prevent.

Specifically, we estimate the following impacts to Washington if the ACA is struck down:

- **Elimination of coverage for 600,000 residents who became newly eligible for Medicaid** under the ACA, at a cost of \$2.3 billion annually in lost federal funding.
- **Elimination of financial help and likely loss of coverage for 118,000 residents** who currently receive federal subsidies to purchase qualified health plans on the Exchange, at a cost of \$519 million annually in lost premium tax credits under ACA.
- **A total loss of \$2.8 billion annually in federal funds** for residents across the state who currently receive free or low-cost coverage under the ACA.

We are proud that Washington has taken action to embed many of the ACA's consumer protections in state law — including prohibitions on annual and lifetime caps, excessive waiting periods, pre-existing conditions exclusions, and gender discrimination. We have also taken steps to preserve the structure and responsibilities of the Washington Health Benefit Exchange, which can continue to operate in the absence of the federal law. Enclosed, please find a detailed list of consumer protections in the ACA and the associated protections now embedded in our state law.

However, a decision overturning the ACA would render many of these protections useless for the hundreds of thousands of Washingtonians thrown off their health plans. The ability to obtain coverage without consideration of pre-existing conditions, and with guaranteed basic and essential health benefits, provides no protection for Washingtonians who simply cannot afford the coverage. This would have massive implications for people with pre-existing conditions and others who rely on the law's reforms, such as women and older adults. A court decision that makes coverage unaffordable for many would effectively undermine these consumer protections and erode the safety net we have fought to preserve.

All Washingtonians deserve affordable, quality health coverage. We have made amazing strides toward this goal under the ACA. But the *Texas v. Azar* lawsuit puts all our progress on the chopping block and endangers our neighbors, friends, and families. We ask that you stand with us in opposing this latest assault and fighting to protect the health and well-being of our state.

Sincerely,



Jay Inslee
Governor



Mike Kreidler
Insurance Commissioner



Pam MacEwan
CEO, Health Benefit Exchange

Enclosure

Requirement	Washington State Law
Baseline Protections against Discrimination	
No Annual or Lifetime Limits	RCW 48.43.0125 – No annual or lifetime limits for an essential health benefit
No rejection based on preexisting conditions	RCW 48.43.012 – individual and group plans prohibited from excluding coverage to those with preexisting conditions; RCW 48.43.01211 – individual and group plans may not use health status to establish or deny eligibility for coverage.
No excessive waiting periods for coverage	RCW 48.43.0127 – group health plan waiting periods for coverage may not exceed 90 days
Rescission of coverage prohibited absent fraud or intentional misrepresentation of material fact: individual and group coverage	RCW 48.43.0123 – a carrier cannot rescind individual or group coverage unless for fraud or material misrepresentation by an enrollee
Individual & Small group Policies must be guaranteed issue and guaranteed renewable	RCW 48.43. 038 – guaranteed issue/renewal individual plans RCW 48.43.035 – guaranteed issue/renewal small group plans RCW 48.43. 012 – supports guaranteed issue requirements via prohibition on pre-existing condition-based eligibility limitations
Nondiscrimination protections based on protected status	Washington State law (chapter 48.43 RCW; chapter 48.30 RCW and title 49 RCW) prohibits discrimination in eligibility, renewal, rating and administration of benefits for those in protected classes, inclusive of sex, gender identity, sexual orientation, health status, race, nationality, disability, domestic violence, claims experience, genetic information or medical condition.
Rating Requirements	
Rate variation must vary only by limited age bands, and for limited factors (tobacco use, wellness program, geographic rating area, individual or family)	Washington State law sets age band ranges at 375%, close to the federal standard, and sets age brackets at a minimum of 5 year increments. Individuals under age 20 must be treated as those age 20. (chapter 48.20, 48.21, 48.44, 48.46 RCW) Tobacco is not included as a rating factor under Washington state law.

Requirement	Washington State Law
<p>Rates must be based on all enrollees in a market risk pool; permitted for states to require merged individual & state risk pool. Grandfathered plans must be rated as a separate risk pool, distinct from the risk pool for non-grandfathered plans.</p>	<p>Individual and small group markets must be rated as separate risk pools (chapters 48.20, 48.21, 48.44, 48.46 RCW).</p>
<p>Purchasing Coverage</p>	
<p>Grace periods for premium payment</p>	<p>RCW 48.20.062 – individual exchange plans must continue coverage during 3 month grace period of nonpayment of premium</p>
<p>Exchange enrollees eligible for premium tax credits and cost sharing reductions</p>	<p>No state-funded premium or cost-sharing subsidies are in place in Washington.</p> <p>Provisions related to the Basic Health Plan, which subsidized individuals with incomes above Medicaid eligibility up to 200% FPL, are still authorized in state code (chapter 70.47 RCW), but have been not in effect since ACA implementation.</p>
<p>Open and special enrollment period limitations – individual/small group markets</p>	<p>RCW 48.43.0122</p>
<p>Individual & Small group coverage can be offered through the Exchange, with specific requirements for qualified health plans (QHP) offered on the Exchange</p>	<p>Chapter 43.71 RCW establishes a state based Exchange as a public-private partnership, authorized to certify individual and small group QHPs that meet specific standards, and establishing a Navigator program to support consumer education and purchasing on the Exchange. The Exchange’s authorizing statutes do not reference the Affordable Care Act.</p>
<p>Type and Value of Benefits</p>	
<p>Employers of 50 or more must offer minimum essential coverage with certain provisos for other available coverage or seasonal or part-time nature of employment.</p>	<p>Nothing comparable in Washington law.</p>

Requirement	Washington State Law
Carriers offering on the Exchange must offer child-only coverage options	Nothing comparable in Washington law.
Children of a subscriber are eligible as dependents until they are 26 years old	Carriers are required to offer coverage of dependents up to age 26 if a health plan offers any dependent coverage (chapter 48.20, 48.21, 48.44 and 48.46 RCW).
10 categories of essential health benefits (EHB) must be offered in individual & small group plans	<p>RCW 48.43.715 – requires individual & small group plans to cover essential health benefits as defined by commissioner in rule, based on the selected state benchmark plan.</p> <p>RCW 48.43. 005 – defines essential health benefit categories as ambulatory services, hospital-based services, emergency services, maternity & newborn care, mental health & substance abuse disorder services, prescription drug coverage, rehabilitative & habilitative services & devices, laboratory services, preventive & wellness services and chronic disease management, Pediatric services including oral and vision care.</p> <p>There are multiple statutes in chapters 48.20, 48.21. 48.43, 48.44 and 48.46 that require specific types of benefits or access to care by specific provider types. Because the benchmark plan covered these, or the statutes were enacted and explain further coverage in a specific category of EHB, those specific mandates are embraced by the state EHB requirement, and are not affected by an ACA rollback. The sole new state mandate since the adoption of the benchmark plan is coverage for eosinophilic disease feeding disorder prescribed formula. RCW 48.43.176.</p>
Cost sharing limits for maximum out of pocket costs and deductibles	RCW 48.43.0124 – sets cost sharing and out of pocket maximum thresholds for individual and small group markets.
Actuarial value of plans must fall into 4 tiers: platinum, gold, silver or bronze	<p>RCW 48.43.700 – exchange plans must meet AV of platinum, gold, silver or bronze, with requirements for offering gold & silver if offer bronze plans on Exchange.</p> <p>RCW 48.43. 705 – explains which AV level plans must be offered off –Exchange.</p> <p>RCW 43.71.095 – permits Exchange to design and require standard plans alongside non-standard plans offered by carriers on-Exchange.</p>

Requirement	Washington State Law
Individual exchange plans must ensure a sufficient choice of providers	<p>RCW 48.43.515 – individual and small plan networks must have a sufficient number and type of providers to ensure adequate access for enrollees.</p> <p>RCW 48.43.510 – network disclosures and provider directory requirements for individual and group plans.</p> <p>RCW 48.43.045 – networks must include every category of provider type whose scope of practice includes covered benefits.</p> <p>WAC 284-170-200 to 400 – networks must be adequate to permit access to needed care based on benefits offered, sets reporting and measurement standards for networks.</p>