STATE OF CALIFORNIA Dave Jones, *Insurance Commissioner*

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April 19, 2017

The Honorable Paul Ryan
Speaker of the House
United States House of Representatives
Washington, CD 20515

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

Re: Assuring Stability in the Individual Insurance Market By Maintaining Funding of Cost-Sharing Reduction Assistance

Dear Speaker Ryan and Majority Leader McCarthy:

As California's Insurance Commissioner, I am writing regarding a matter of vital importance to the stability of the individual health insurance market: maintenance of adequate, reliable funding for the Cost-Sharing Reduction assistance included in the Affordable Care Act.[i] Approximately half of the 1.3 million Californians who receive Advance Premium Tax Credits through Covered California also rely upon Cost-Sharing Reduction to afford the health care covered by their health insurance policies. Upon your return from the current recess, I urge you to take immediate action to include explicit funding for Cost-sharing Reductions in the continuing resolution for the current budget year, and to include stable funding for these necessary subsidies in the budget for subsequent fiscal years.

The Cost-Sharing Reduction assistance makes it possible for Americans close to the poverty level to afford health care services by lowering deductibles, lowering co-pays and lowering limits on maximum out-of-pocket expenses in silver plans obtained through the federal Marketplace or state exchanges, such as Covered California.

The House leadership brought a lawsuit, *House v. Price*, to challenge the expenditures for Cost-Sharing Reduction.[ii] While the lawsuit is pending, it casts a long shadow of uncertainty across the health insurance market. Should the House leadership prevail in the pending lawsuit, insurance companies will be immediately liable for the Cost-Sharing Reduction amounts, a significant, unanticipated expense that will immediately destabilize the health insurance market. Further, this litigation creates immediate uncertainty regarding the affordability and availability of health insurance in 2018. Health insurers must file their preliminary premium rates and policy forms for 2018 with my Department next month. Insurers are making decisions regarding 2018 premiums right now. Without assurance that Cost-Sharing Reduction will continue to be federally funded, health insurers will either significantly increase premiums to reflect the risk that they may be responsible for these payments or withdraw from the individual health insurance market.

This uncertainty is of great concern to state insurance regulators. At the National Association of Insurance Commissioners (NAIC) meeting earlier this month, state insurance regulators from across the country reported that the uncertainty regarding continuation of Cost-Sharing Reduction funding, as a result of the litigation or the Trump Administration's threat to cease making Cost-Sharing Reduction payments this year, and the uncertainty associated with the Trump Administration's enforcement of the individual mandate, may result in insurance companies increasing premiums by up to 30 percent for 2018.[iii]

These concerns are corroborated by recent studies. For example, one study found that loss of Cost-Sharing Reductions would cause premiums to rise by an average of 19 percent in states that used the federal Healthcare.gov platform.[iv] Similarly, in 2015, the Department of Health and Human Services projected that loss of federal Cost-Sharing Reduction payments would result in increased health insurance premiums to cover these costs, resulting in a substantial increase in total federal costs for Advance Premium Tax Credits.[v] Further, just this past Friday, Covered California issued a report projecting a significant negative federal budget impact if federal Cost-Sharing Reduction payments are not continued: Covered California projects that discontinuing Cost-Sharing Reduction payments would result in an increase in federal spending on Advance Premium Tax Credits by approximately 30 percent, due to the increase in the premiums for the second-lowest Silver plan that will result from discontinuation of Cost-Sharing Reduction payments. This would translate into an increase in federal spending of between $47 billion and $80 billion over the next 10 years, due solely to the loss of Cost-Sharing Reduction payments.[vi]

These anticipated premium increases and/or health insurer withdrawals from the market, caused by uncertainty associated with the House lawsuit challenging Cost-Sharing Reduction payments and the Trump Administration's threat to stop making payments for Cost-Sharing Reduction assistance, will harm tens of millions of Americans and eliminate their access to affordable health insurance. This potentially catastrophic outcome can be avoided if Congress includes funding for Cost-Sharing Reductions in the continuing budget resolution that Congress must consider and pass, upon returning from its current recess. Particularly in light of President Trump's recent comments regarding using the uncertainty resulting from the pending *House v. Price* litigation as negotiating leverage by immediately removing cost sharing support, I urge you to prevent the introduction of needless chaos into the nation's health insurance market by taking immediate action to explicitly include permanent mandatory spending for 2017 Cost-Sharing Reduction assistance in the continuing resolution for the remainder of the 2017 fiscal year, and for 2018 in the budget for the subsequent fiscal year.

Sincerely,

Dave Jones

DAVE JONES
Insurance Commissioner

cc: members of the California Congressional delegation

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[i] 42 U.S. Code § 18071

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[ii] *United States House of Representatives v. Thomas E. Price, M.D., et al.* (now *House. v. Burwell*) USDC, DC Circuit case no. 1:14-cv-01967, US Court of Appeals, DC Circuit no. 16-5202.
[iii] 26 U.S. Code § 500A
[iv] *Estimates: Average ACA Marketplace Premiums for Silver Plans Would Need to Increase by 19% to Compensate for Lack of Funding for Cost-Sharing Subsidies.* April 6, 2017. Kaiser Family Foundation. http://kff.org/health-reform/press-release/estimates-average-aca-marketplace-premiums-for-silver-plans-would-need-to-increase-by-19-to-compensate-for-lack-of-funding-for-cost-sharing-subsidies
[v] *ASPE Issue Brief: Potential Fiscal Consequences of Not Providing CSR Reimbursements. December, 2015. U.S. Department of Health & Human Services*, Office of the Assistant Secretary for Planning and Evaluation. https://aspe.hhs.gov/system/files/pdf/156571/ASPE_IB_CSRs.pdf
[vi] *Potential Impact to the Federal Budget of Not Directly Funding Cost Sharing Reduction Subsidies*. April 14, 2017. Covered California. http://hbex.coveredca.com/data-research/library/Federal%20Budget%20Impact%20of%20Not%20Funding%20CSRs-04-14-17%20Final_.pdf
See also Letter to C.B.O. at http://hbex.coveredca.com/data-research/library/Covered%20California%20to%20CBO%20-%20National%20CSR%20Funding%20and%20Reinsurance%20-%2004-14-2017%20Final.pdf
And Press Release at http://news.coveredca.com/2017/04/options-to-stabilize-individual-market.html?m=1