December 15, 2020

Dear Chair Cleveland and Chair Cody:

In 2020, the Washington State Legislature enacted ESSB 6168 (Section 214(10)), requiring the Washington Health Benefit Exchange (WAHBE or Exchange) to contract with an independent actuarial consultant to conduct an assessment of the impact of a state requirement that individuals maintain minimum essential coverage (state level individual mandate). The Exchange was directed to consider the effects of this requirement on revenue, individual market enrollment, individual market premiums, and the uninsured rate, and to report its findings to the chairs of the health committees by December 15, 2020.

Individual Mandate Background

The Patient Protection and Affordable Care Act (ACA), enacted in 2010, included a requirement that all individuals, unless they meet certain exemptions[1], must maintain minimum essential health care coverage for themselves and their dependents or pay a penalty. In 2017, Congress enacted the Tax Cuts and Jobs Act (TCJA), reducing the ACA's individual mandate taxpayer penalty to $0 starting in 2019, sparking additional challenges to the constitutionality of the mandate, including the pending Supreme Court case *California v. Texas*. Five states and the District of Columbia have enacted state-level individual mandates, most having done so in the past three years in response to the rollback of and challenges to the federal mandate. In 2018 and 2019, two state level individual mandate bills were introduced in Washington, both sponsored by Senator Cleveland (SB 6084 (2018); SB 5840 (2019)). Senate Bill 6084 did not include a penalty, while SB 5840 did, paired with more generous exemptions.[2] This previous federal and state activity informed the actuarial modelling in the report.

Actuarial Modelling

HBE requested actuarial modeling of three different mandate structures, differentiated by the force of any integrated penalties and enforcement. The models were defined as follows:

(1) Strong Mandate: A mandate with penalties and enforcement[3], modelled after the federal mandate when it included a taxpayer penalty enforced through an income tax system.

[1] People exempted from the federal mandate under the ACA who are not penalized for being uncovered include: people with certain religious affiliations, those not lawfully present in the United States, and individuals who are incarcerated. Additional categories of individuals not exempted from the mandate were exempted from having to pay the taxpayer penalty.

[2] WA SB 5840 (2019): Expanded exemptions to include the "family glitch" population and all individuals under 18 or over 64.

[3] Individual mandate penalty "enforcement" refers to the existence of tools available to a state to address non-payment of the individual mandate taxpayer penalty. Enforcement through the ACA included reducing income tax refunds, with accrual of interest. Some states mirror the federal approach, while others utilize more expansive mechanisms available in the state for enforcing collection of income taxes.

(2) Moderate Strength Mandate: A mandate with penalties and no enforcement, complimented by requirements to conduct consumer outreach and send penalty payment notices, modeled after SB 5840 (2019).

(3) Low Strength Mandate: A mandate with no penalty and no enforcement, modeled after SB 6084 (2018) and similar to the current federal mandate (penalty reduced to $0).

Wakely generated a best estimate for each of the three different mandate structures, that includes a range of potential outcomes that account for market uncertainty related to COVID and other conditions. The 2022 baseline and modelled scenarios assume a continued federal mandate with a $0 penalty.

There are several uncertainties in isolating the specific impacts of an individual mandate. The federal mandate was enacted in combination with many other market stability programs, including premium subsidies, cost-sharing reductions, limited enrollment periods, and guaranteed issue (protections for people with pre-existing conditions), and state level mandates have been paired with other affordability programs.

Table: Topline Results for Best Estimate

2022 Baseline	Strong Mandate		Moderate Strength Mandate		Low Strength Mandate	
	High Take-Up	Low Take-Up	High Take-Up	Low Take-Up	High Take-Up	Low Take-Up
Total Take-Up of Coverage	33,900	10,500	1,300	0	600	0
Take-Up: Individual Market	24,300	7,500	900	0	500	0
Change in Number of Uninsured	-7%	-2%	0%	0%	0%	0%
Change in Individual Market Premiums due to individual mandate	-3%	-1%	0%	0%	0%	0%
Total Penalty Revenue (Millions	$84.5	$77.1	$2.8	$0	$0	$0

As expected, a strong mandate has the most impact on increasing enrollment, decreasing premiums, and generating revenue to fund affordability programs. The report findings indicate that a strong mandate with a penalty enforced through an income tax would result in up to 33,900 additional Washingtonians getting health coverage, and that a penalty mirrored after the initial federal mandate could generate up to $84.5 million in annual revenue. By growing the individual market by up to 10% through the addition of younger, healthier, enrollees, the strong mandate was also found to potentially reduce market-wide premiums by up to 3%.

Absent an income tax or equally effective alternative enforcement mechanism, an individual mandate has limited impact. A mandate of moderate strength (penalty with limited enforcement) would result in up to 1,300 residents gaining coverage, and up to $2.8 million in annual revenue. A mandate of low strength that is not bundled with other policy initiatives to incent enrollment would result in up to 600 people gaining coverage and would not generate any revenue. Either option would likely have a negligible impact on market risk due to lower prospective take-up.

Other State Level Individual Mandates

Massachusetts is the only state to have a longstanding state level individual mandate. Its individual mandate was enacted in 2006 and served as the blueprint for the federal mandate in the ACA, and for other states that have since enacted mandates of their own. Massachusetts' individual mandate, in combination with other market stability programs employed by the state, has helped the state maintain the lowest adult uninsured rate in the nation.[4]

Recently, four additional states (CA, NJ, RI, VT) and the District of Columbia (DC) have enacted state level individual mandates. Notably, all these states have a state income tax, which is central to the administration of the mandate. All except Vermont have enacted a strong mandate that utilizes their state income tax structure to determine who has maintained the required health coverage and who qualifies for an exemption, and to collect and enforce a taxpayer penalty. In Vermont, a penalty is not imposed for failure to secure coverage. Instead, Vermont uses their income tax system to require state residents report if they had health coverage for the previous twelve months with the intent of using the data for outreach efforts to help them enroll in affordable insurance.

Notably, In Maryland, an induvial mandate was initially pursued but not enacted. Maryland instead enacted an alternative to help uninsured residents enroll in affordable coverage, leveraging their tax filing process to capture coverage information from residents. The Exchange uses the collected information to automatically enroll qualifying residents into Medicaid and to perform targeted outreach to those eligible to enroll in a qualified health plan. In considering policy options for lowering Washington's uninsured rate, the state could also consider alternatives that leverage coverage reporting structures similar to those used in a mandate program.

[4] https://www.usnews.com/news/best-states/articles/2020-10-07/10-states-with-greatest-and-least-uninsured-rates

State	Effective	Penalty & Enforcement	Penalty Funds
California	2020	Penalty mirrors Federal Mandate structure. Administered & enforced via income tax. Nonpayment of penalty increases payment owed or reduces refund.	Used to fund a subsidy program
Massachusetts	2008	Penalty based on income and family size. Administered & enforced via income tax. Penalty levied in same manner as unpaid income taxes.	Used to fund a subsidy program
New Jersey	2019	Penalty based on income and family size, with a maximum penalty of $695 for an individual. Administered & enforced via income tax. Penalty levied in same manner as unpaid income taxes.	Used to fund reinsurance
District of Columbia	2019	Penalty mirrors Federal Mandate structure. Administered & enforced via income tax. Nonpayment of penalty increases payment owed or reduces refund.	Used for an Individual Market Affordability and Stability Fund
Rhode Island	2020	Penalty mirrors Federal Mandate structure. Administered & enforced via income tax. Nonpayment of penalty increases payment owed or reduces refund.	Used to fund reinsurance
Vermont	2020	No Penalty. Voluntary reporting of coverage. Data used for outreach to uninsured.	-

<u>Findings & Considerations</u>

The experience of other states indicates that a state level individual mandate, when paired with additional policy levers to lower consumer costs, can help reduce the uninsured rate, maintain individual market stability, and generate revenue to support state affordability programs. The attached report provides insight into how a mandate could be structured and what impacts these various structures would have on our population, which are highlighted below.

The report analyzes the impact a robust reporting and enforcement system have on the effectiveness of a mandate program. For all states with a current state level mandate, their state income tax structure provides this critical infrastructure. For a strong individual mandate, the state income tax has been universally used as the vehicle for assessing penalties and enforcing non-payment. The state income tax is also leveraged to track coverage status and provide outreach opportunities (including in Vermont, which has no penalty).

Without a state income tax, Washington would need to develop an alternative reporting and tracking structure to achieve a similarly strong mandate, with systems to track coverage status, assess a penalty, and enforce consequences for non-payment. In considering any alternatives, the level of state agency coordination required to implement it and resultant implementation costs would need to be considered. A strong individual mandate would have the most significant impact on the central policy goal of decreasing the number of uninsured. It could also generate revenue for additional targeted programs to assist this population.

Utilizing penalty revenue to help people afford the insurance they are being required to buy is a key element of every existing strong state-based mandate program. Revenues generated from penalties are used to support affordability initiatives, including subsidy and reinsurance programs. In Washington, revenue from a strong mandate could have a significant impact on funding state affordability programs for the low-income and uninsured residents, including state-based premium subsidies.

A mandate without a penalty, as is currently operating in Vermont, does not provide revenue, but can support targeted outreach to the uninsured. Using data generated by the program, the Exchange and other state participants could more effectively provide outreach and enrollment assistance to uninsured residents. Pairing a moderate or low-strength mandate with state-based subsidies could also help reduce affordability barriers for many who are currently uninsured, through direct premium assistance and overall lower premiums in the individual market resulting from younger, healthier individuals purchasing coverage.

In considering how to implement an individual mandate, the state should contemplate lessons from other states and previous efforts in Washington, including:

- **Outreach:** Outreach and marketing are critical to reaching those facing enrollment barriers. Any individual mandate program should incorporate comprehensive outreach and marketing efforts to reach out underserved residents and assist them in understanding their coverage options and enrolling in affordable coverage.

- **Exemptions:** Most states with a mandate mirror the exemptions incorporated in the ACA. Additional Washington specific exemptions could be considered, particularly those that may reduce administrative burden without significantly impacted revenue and those that protect consumers who cannot afford health insurance.

- **Affordability:** States that have implemented individual mandates have also increased their efforts to improve affordability of individual insurance so that residents can pay for the coverage they are asked to purchase, improving compliance and minimizing the need for exemptions. The federal individual mandate, and both Washington proposals to-date, exempt individuals from the mandate if they would have to pay more than 8% of their annual income on insurance premiums. This is still unaffordable for many Washingtonians and does not factor in other out-of-pocket health care costs such as deductibles and copays, so it is essential that the state pursue mechanisms to reduce the total cost of care when considering whether to require individuals to purchase coverage.

- **Penalty enforcement:** While each state with a mandate penalty uses an income tax structure to enforce penalties, approaches vary.
  - ACA & CA, RI, DC: Enforce penalties through reduction of income tax refunds but foreclose the use of other tax collection tools such as collections, liens, or garnishment.
  - MA, NJ: Enforce penalty through all collection procedures available to the state taxing agencies, which can include civil and criminal penalties.

  In considering approaches to penalty enforcement in WA, particularly in the absence of an income tax, several factors (e.g., consumer impacts, revenue impacts, operational feasibility) would need to be assessed.

<u>Conclusion</u>

The attached Wakely report provides additional information and further consideration of potential individual mandate structures. We remain available to support any of your work to improve affordability for Exchange consumers and enhance the stability of the individual market and appreciate this opportunity to analyze the impacts of a state level mandate.

Sincerely,

Pam MacEwan
Exchange CEO