New Jersey insurers must decide soon whether to extend substandard health plans that will eventually not comply with the Affordable Care Act’s (ACA) comprehensive coverage and consumer protections provisions. Individuals and small businesses initially would have been unable to renew these plans in 2014 under the ACA; the president – under mounting conservative opposition and media noise on this issue – has issued federal guidance allowing states to extend that deadline for one year. The Christie administration has decided it will delegate this authority to each insurer operating in New Jersey in order to “allow the free market – not the government – to decide the fate of health insurance plans.”

This decision notwithstanding, New Jersey must take additional steps, consistent with its legal mandate, to protect consumers and regulate the insurance industry. In addition, since New Jersey will receive a windfall of federal funds from the ACA next year, it is in a position to provide additional financial assistance to consumers to purchase comprehensive insurance that is far more preferable than the substandard plans.

Under the federal guidance, if a person’s plan would otherwise terminate in June 2014 because it did not meet the ACA requirements it could be extended until June 2015. Insurers that allow this option would also be required to inform the renewing consumer about what market reforms in the ACA are not included in the current substandard policy, and of their right to purchase a new plan in the Health Insurance Marketplace with possible financial assistance.

However the “Basic and Essential” plans in New Jersey are so substandard that they cannot be extended even under the new guidance unless they eliminate the annual limits on coverage. This
would raise the cost to such a level that they would not be worthwhile, so this does not appear to be a viable option in New Jersey for substandard plans.

It is important however to put this issue in its proper perspective and consider the following mitigating factors:

1. Only 1 Percent of New Jerseyans Have Substandard Plans

Although about 800,000 individuals in the individual and small employer market will have their policies terminated next year, only 110,000 New Jerseyans – or about 1 percent of the state’s total population – purchase the substandard plans (called “Basic and Essential” plans) in question. The rest – 652,000 in the small employer market and 42,000 in the individual market – already have comprehensive plans, so there will be little impact. (In fact, under the ACA, many small employers will be able to claim significant tax credits, which should encourage many more small businesses that don’t provide insurance to begin doing so.)

Since New Jersey has historically imposed much higher standards for comprehensive health insurance benefits than other states, including requiring all plans on the small employer market to be comprehensive, the transition to the ACA standards should be less significant here than elsewhere.
2. Consumers Can Already Extend Substandard Plans for Up to a Year

Consumers can actually already extend their substandard plans for almost all of 2014. Under existing rules, a substandard plan would not be terminated until next year when it was up for renewal. For example, a person who enrolled in a plan in June 2013 could continue with it until June 2014 when it would no longer be available. But if that same person renewed their plan in the final days of 2013, they would be covered for an additional year until the final days of 2014. It is not likely that many people are aware of this option.

3. Tax Credits Help Make Comprehensive Coverage More Affordable

While every individual is different, many who are slated to lose substandard plans will be eligible for tax credits on comprehensive coverage through the Marketplace. Nationally, between half and three-fourths of everyone in the individual market will be eligible for either tax credits or Medicaid (which comes at no cost to the consumer in New Jersey). The credits are available, on a sliding scale, for anyone earning up to four times the federal poverty level: $94,200 for a household of four or $45,960 for an individual. Anyone above that income level is considered able to pay the full cost for the insurance that will be offered in the Marketplace (for the standard Silver plan, that’s estimated to be $260 a month in New Jersey for a young adult).

4. Eliminating Substandard Plans Supports New Jersey’s Longstanding Goal to Provide Comprehensive Coverage That’s Affordable to Everyone

New Jersey has a history of strong consumer health protections that emphasize comprehensive health coverage – eliminating substandard plans is a logical next step.

In 1992, the state created two programs providing comprehensive coverage in the individual and small employer market – programs that also included other key reforms like guaranteed coverage regardless of health status, modified community rating and limits on waiting periods to determine pre-existing conditions. It also established the New Jersey Health Access program to provide subsidies for those unable to afford this coverage, and placed a cap on insurers’ administrative costs and profits to keep premium costs down.

It was a good idea, but it did not work out well in practice, primarily because medical costs continued to rise at double-digit rates and the state stopped funding the Health Access program. As a last resort in 2003, the legislature required that insurers providing comprehensive plans also provide a substandard plan with much lower premiums but fewer benefits and very high co-pays. Rather than pay for subsidies to make high-quality insurance affordable, the state instead required cheap health plans be sold in the individual market.
Those plans were fine for healthy individuals but totally inadequate for catastrophic costs, one of the main reasons people buy insurance. Over time, as the cost of comprehensive coverage kept rising, more New Jerseyans turned to the substandard plans. Of the 152,000 residents currently on the individual market, only 42,000 have comprehensive plans.

![Graph showing enrollment trends in substandard and comprehensive plans](image)

**More New Jerseyans Are Enrolling in Substandard Plans Due to High Costs of Better Coverage**

Source: New Jersey DOBI’s Historical Comparison of Enrollment

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5. Further Extending Substandard Plans Could Lead to Higher Costs for Everyone Else and Potentially Create a Cost Spiral That Could Undermine the Marketplace

The basic concept of the Marketplace is to spread risk across a large pool of insured individuals in order to reduce costs. For this to work the pool must include a significant number of “inexpensive” healthy people – who currently often buy substandard plans because they feel unlikely to get sick – to balance the costs of “expensive” sick people.

Extending substandard plans means that fewer of these healthy individuals will go into the Marketplace, driving up the costs for everyone else in the Marketplace.

In the first year slightly more than 100,000 New Jerseyans are expected to obtain insurance in the Marketplace. If half of these consumers opt to stick with a substandard plan instead, the pool of individuals would shrink by half – and likely be comprised of more “expensive” sick people. This will drive up costs, which would make it less likely any new healthy individuals will buy insurance in the Marketplace, increasing prices even further. While the federal guidance notes that the ACA’s risk corridor program, which compensates insurers for situations such as this, could ameliorate this problem, there’s no indication that additional federal funding would be available for this purpose.
Allowing individuals to buy substandard insurance outside of the exchange that does not have to meet all the consumer protections required in other plans also could create even more public confusion that could further deter the uninsured from enrolling in the Marketplace.

**New Jersey’s Role Moving Forward**

Regardless of the actions that insurers take to modify health plans, the state Department of Banking and Insurance (DOBI) has a major role to play in assuring that consumers are protected and that the entire process is fair and transparent. While the governor chose to have the federal government run the Marketplace and has taken a hands-off approach on extending substandard plans, the department is still responsible under state law to regulate insurers – both in and out of the exchange. The entire purpose of DOBI is to balance the self-interest of the free market with the real needs of consumers. Consistent with that mandate, the department should oversee, monitor and evaluate the process and act to guarantee that consumers are aware of all their insurance options and rights – and do so in close cooperation with the federal government and the insurance industry.

DOBI should assure that individuals who will have their plans terminated are informed they can extend them for another year if they act by December 31. In addition, individuals who have their plans terminated next year should be informed of the new higher ACA standards and how they can obtain quality insurance in the Marketplace – where they may be eligible for subsidies to make such insurance affordable. Over a year ago DOBI was awarded $7.6 million in federal funds that could be used to educate consumers about the many options that are available to them in the Marketplace and Medicaid; so far these funds have not been spent.

The state also needs to step up to the plate and provide supplementary premium assistance to make comprehensive coverage more affordable, as some other states are doing. Most New Jerseyans would happily replace substandard plans with comprehensive insurance if increased costs were not part of the deal. While the ACA provides generous subsidies for insurance, these may not always be sufficient in New Jersey, which has one of the highest costs of living in the nation. The good news is that the state can help – it can provide additional assistance to keep comprehensive coverage affordable because of the hundreds of millions of dollars each year it will begin saving in 2014 as a result of the Medicaid expansion.