



**Ending Federal Enforcement of the ACA's Individual Responsibility Requirement: How Should Maryland Respond?**  
**Maryland Health Insurance Coverage Protection Commission**  
**Stan Dorn, Families USA Senior Fellow**  
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# OVERVIEW OF PRESENTATION:

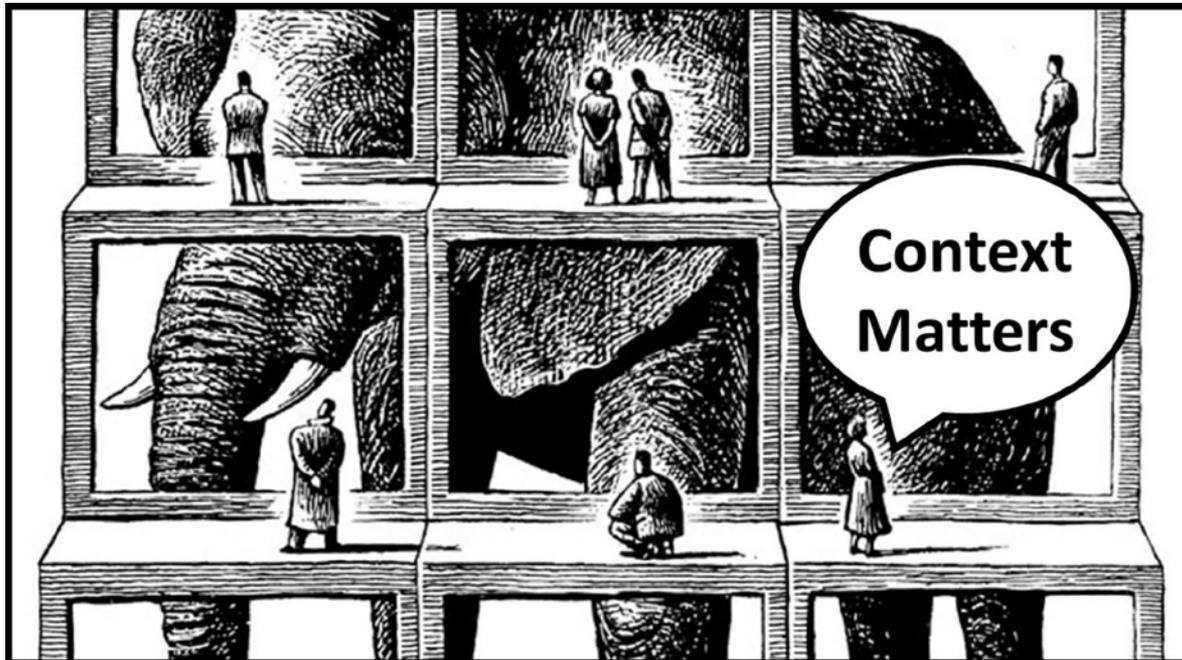
## **Context**

Options

Focus on one option: the down-payment plan

# Context

- ACA individual responsibility requirement (AKA “individual mandate”)
  - Everyone who can afford health insurance should obtain it
  - Accountability enforced through federal tax code
- Federal tax bill ended federal enforcement, effective:
  - Coverage beginning January 2019
  - Tax filing in 2020
- Should Maryland fill the gap left by the end of federal enforcement? If so, how?



# Why enforce the ACA's individual responsibility requirement?

- Original rationale: needed to complement insurance reforms that protect people with preexisting conditions
- Without enforcement
  - Some young and healthy people will leave the individual market, raising risk levels and premiums
  - Fewer eligible people will enroll in Medicaid and CHIP
  - Some people may drop out of employer-sponsored insurance, and some firms may stop offering coverage



## **Impact in Maryland, if the state does not enforce the ACA's individual responsibility requirement:**

- Premiums in MD's individual market rise by 16 percent
- 69,000 additional uninsured
  - 10,000 fewer people with employer-sponsored insurance
  - 43,000 fewer people with individual-market coverage
  - 16,000 fewer people with Medicaid and CHIP

Source: Urban Institute 2018.

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# Options for Maryland Enforcement of Individual Responsibility

Approach	Advantages	Disadvantages
A. Replace federal tax-based enforcement with state tax-based enforcement	<ol style="list-style-type: none"> <li>1. Prevents coverage losses and premium increases from federal law</li> <li>2. Replicates past policy, federal and from other states</li> <li>3. Penalty money for other uses</li> </ol>	<ol style="list-style-type: none"> <li>1. Political challenges: least popular element of the ACA</li> <li>2. Administrative costs to Comptroller</li> </ol>
B. Same as A, but increase penalty amount	<ol style="list-style-type: none"> <li>1. Prevents coverage losses and premium increases from federal law</li> <li>2. Incentivizes additional enrollment, lowering premiums</li> <li>3. More penalty money for other uses than A</li> </ol>	<ol style="list-style-type: none"> <li>1. Political challenges grow more acute</li> <li>2. Administrative costs to Comptroller</li> </ol>
C. Same as A, but use state tax return to authorize data-sharing and enrollment, with tax-based special enrollment period	<ol style="list-style-type: none"> <li>1. Prevents coverage losses and premium increases from federal law</li> <li>2. Some additional enrollment, some additional premium reduction</li> <li>3. Penalty money for other uses</li> </ol>	<ol style="list-style-type: none"> <li>1. Political challenges remain, but potentially less acute</li> <li>2. Higher administrative costs to Comptroller</li> <li>3. Administrative costs to Exchange</li> </ol>
D. Same as C, but let consumers turn penalty payments into down payments to buy insurance; when people are offered zero-premium plans, move towards auto-enrollment	<ol style="list-style-type: none"> <li>1. Prevents coverage losses and premium increases from federal law</li> <li>2. Substantial additional enrollment, significant additional premium reduction and market stability</li> <li>3. More public acceptance</li> </ol>	<ol style="list-style-type: none"> <li>1. Higher administrative costs to Comptroller and Exchange</li> <li>2. Administrative costs to carriers</li> <li>3. Moving towards auto-enrollment could leave some newly insured people unhappy with the coverage they receive</li> <li>4. Less penalty money for other uses</li> </ol>

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# Key elements of down-payment plan

Use tax filing to enroll the uninsured into coverage, whenever possible. Don't just use tax filing for punishment.

Additional exemptions from the personal-responsibility requirement, recognizing

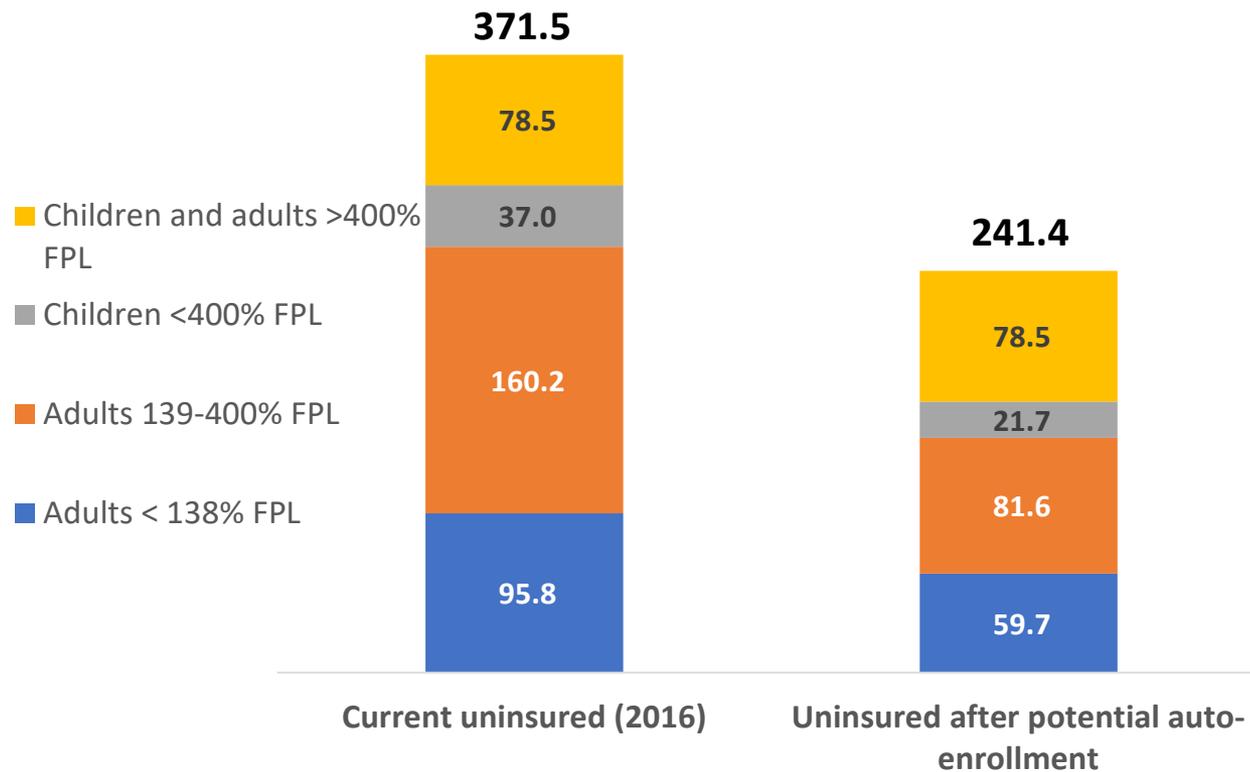
- Religious convictions that prohibit health-care use
- The tight budgets of low-wage, working families

Enrollment incentives and auto-enrollment replaces mandate penalties, whenever possible

- If tax return data shows Medicaid eligibility, enroll the uninsured into Medicaid
- Let consumers convert penalty payments into “down-payments,” to help buy insurance
- Go as far as possible towards auto-enrolling uninsured consumers into Exchange plans if federal premium tax credits (PTCs), plus their down payments, cover full premiums
  - ❖ Paradigm borrowed from private-sector 401(k) accounts: auto-enrollment has become the industry standard, raising six-month 401(k) participation levels from 33% to 90% <http://www.nber.org/reporter/fall05/laibson.html>
- If someone is auto-enrolled into a high-deductible bronze plan, give them one final chance to “buy up” to a high-actuarial value (AV) silver plan or a gold plan, both of which offer much lower deductibles
  - ❖ Paradigm borrowed from private-sector marketing, post-purchase decisions

# Impact on Maryland uninsured

Estimated number of Maryland uninsured, currently and after implementation of down-payment plan (thousands)



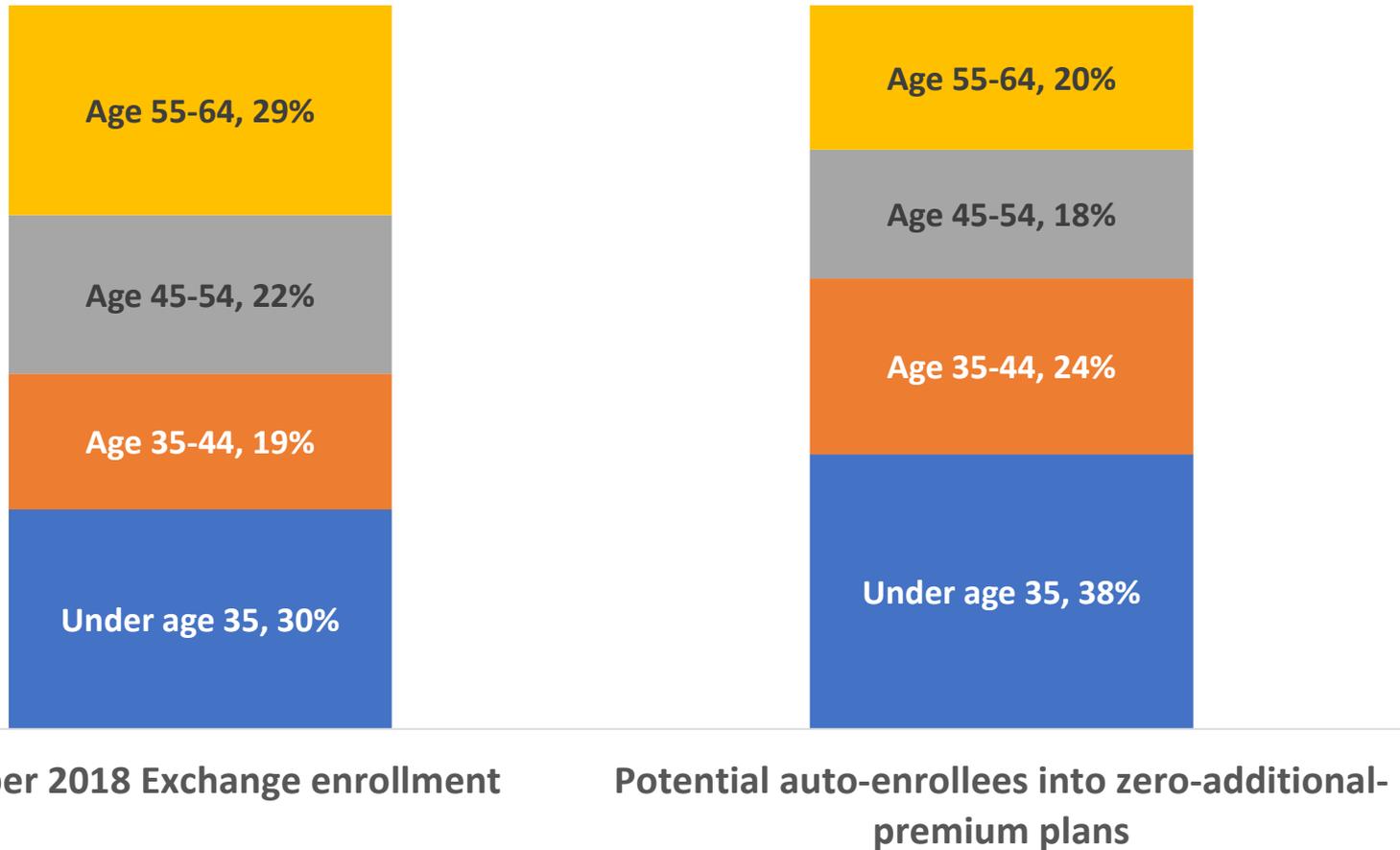
## Newly covered

- 14,300 children with Medicaid/CHIP
- 36,100 adults with Medicaid/CHIP
- 78,700 adults with exchange coverage

Source: Families USA analysis of 2016 ACS data and 2019 MHBE premiums. Notes: "FPL" = federal poverty level.



# Age distribution of adults under age 65

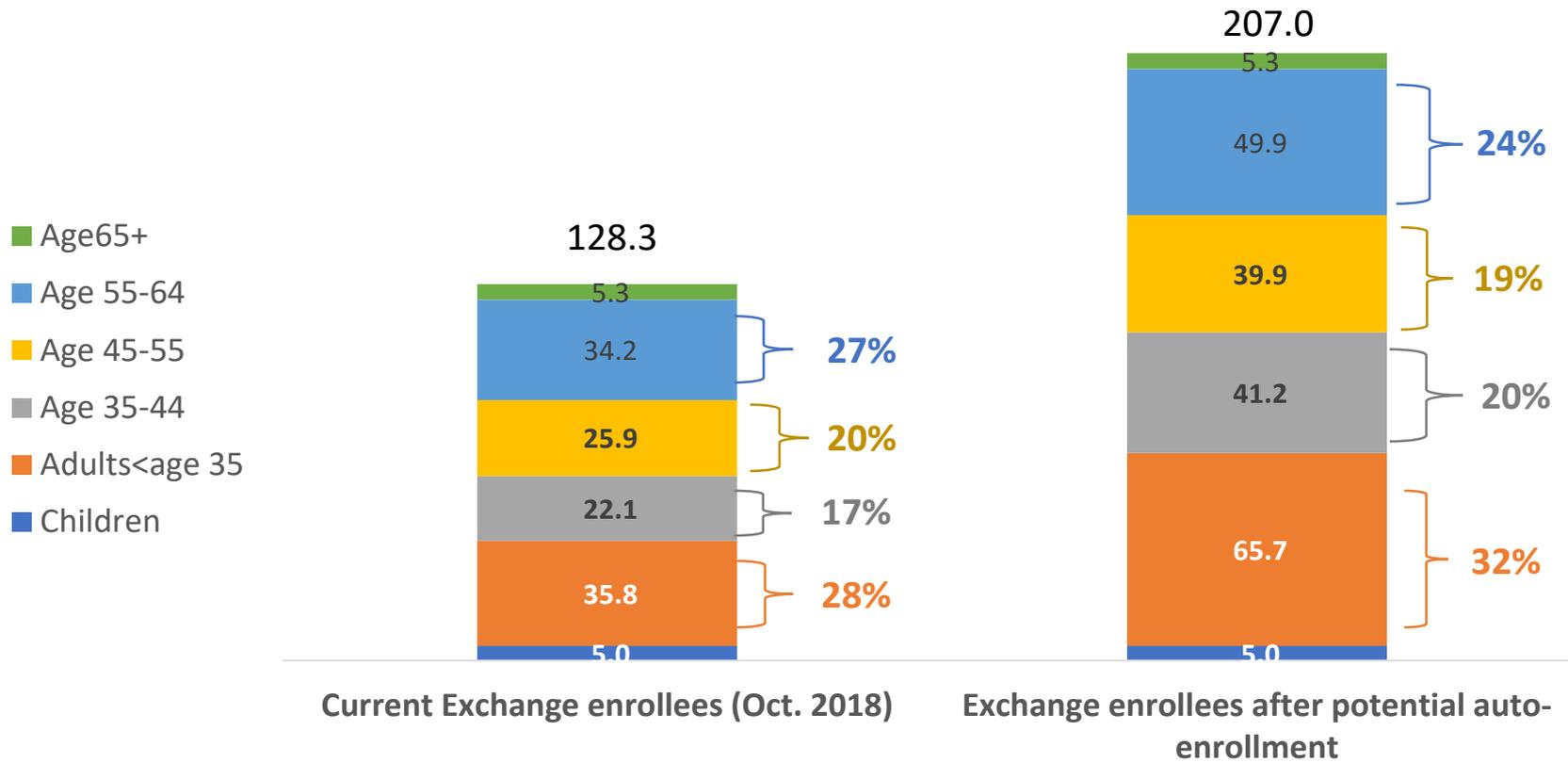


Source: Families USA analysis of 2016 ACS data, 2019 MHBE premiums, and MHBE reports of 2018 enrollment. Note: MHBE adult enrollment estimates, but not auto-enrollment estimates, include 18-year-olds.



# Impact on total Exchange enrollment and age mix

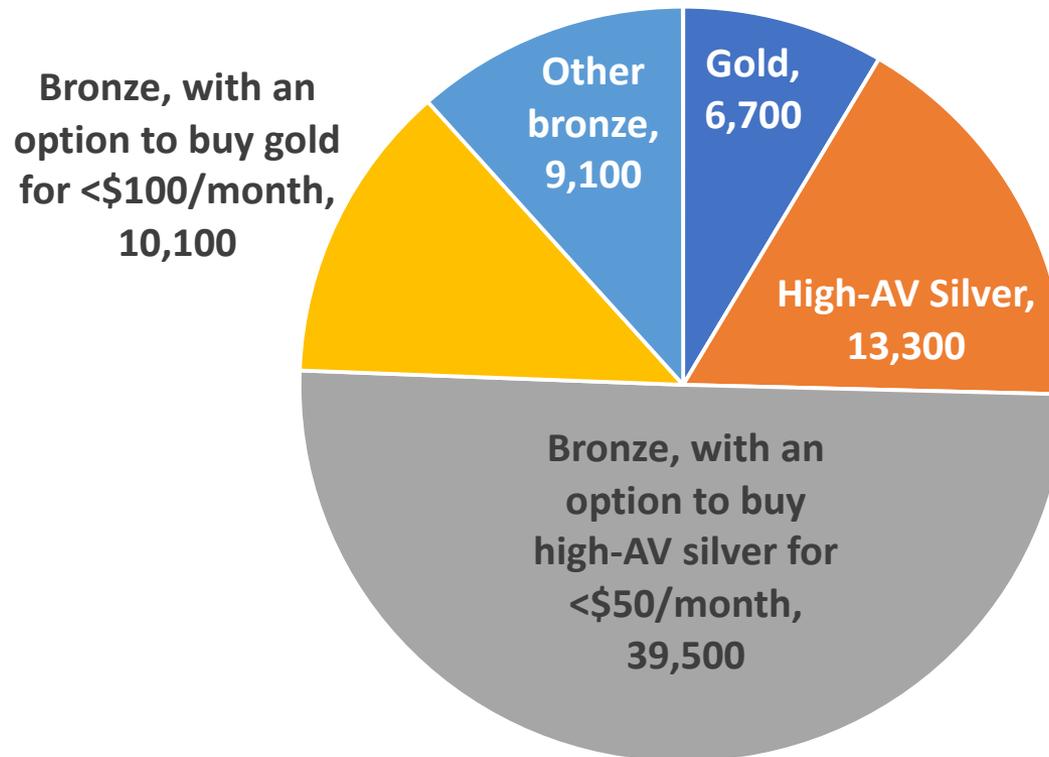
Estimated number and age distribution of Marylanders in Exchange plans, currently and under down-payment bill (thousands)



Source: Families USA analysis of 2016 ACS data, 2019 MHBE premiums, and MHBE reports of 2018 enrollment. Note: MHBE adult enrollment estimates, but not auto-enrollment estimates, include 18-year-olds.



# Number of uninsured receiving coverage at various metal-levels, with auto-enrollment into zero-additional-premium plans



Source: Families USA analysis of 2016 ACS data and 2019 MHBE premiums. Note: High-AV Silver plans are limited to consumers with incomes at or below 200% of FPL. They have lower deductibles than Gold plans.

# Potential auto-enrollees into zero-additional-premium plans, by geographic area and metal level

	Gold	High-AV silver	Bronze, with access to high-AV silver for <\$50 a month	Bronze, with access to gold for <\$100 a month	Other bronze	Total
Two-carrier areas	-	8,500	39,500	10,100	9,100	<b>67,200</b>
One-carrier areas	6,700	4,800	-	-	-	<b>11,500</b>
<b>Total</b>	<b>6,700</b>	<b>13,300</b>	<b>39,500</b>	<b>10,100</b>	<b>9,100</b>	<b>78,600</b>

Source: Families USA analysis of 2016 ACS data and 2019 MHBE premiums.



# Auto-enrollment

- Makes huge difference to participation levels
  - Louisiana Express Lane Eligibility: adding a SNAP opt-in box cut child health enrollment by 62%
- Used with health care
  - Medicare, Parts B and D
  - Medicaid auto-assignment
  - 1.8 million annual auto-renewals in healthcare.gov
- In this context, particularly important
  - People have access to essentially free coverage, not enrolled. Nationally:
    - ❖ 4.5 million uninsured--54% of PTC-eligible uninsured--are offered coverage that costs less than PTC
    - ❖ 5.8 million--70% of PTC-eligible uninsured--are offered coverage that costs less than PTC plus penalty
  - This is a low-risk group. Enrolling them improves risk pool, lowers premiums, stabilizes market
- Not fully automatic
  - Must consent to share tax data on tax return
  - Chance to select any plan during special enrollment period
    - ❖ Public education
    - ❖ Navigator help
  - Advance claims of PTCs: requires information updating and year-end tax filing
  - Can opt out or buy up after receiving information about the zero-premium plan
  - In some cases, exchange may need more information from consumer to determine eligibility
  - Immigrant protections
  - When a family has >1 way to spend down payment for zero-additional-premium coverage, contact the family to see preferred choice

# Other factors

- Impact on jobs and Maryland economy: 71% increase in take-up of federal PTCs
  - 110,300 (October 2018) to
  - 188,900
- Protects markets in case reinsurance ends or gets cut back
- Administratively complex
  - Last session's fiscal note, with a more complex down payment bill, estimated administrative costs:
    - ❖ Year 1: \$4.9 million
    - ❖ Later years: \$2.8 million
  - Best estimate: more than \$30 million a year in penalty payments will not be used for insurance, available to cover administrative costs.
- The number with access to zero-additional-premium plans may change from year to year
  - One year's default enrollment will leave fewer uninsured the next year
  - If federal policy changes lower premium tax credit amounts, could be large drop
    - ❖ Trump administration guidance supportive of "silver loading," but that could change. New guidance for 2020 plan year will provide further information about administration posture.
    - ❖ Congress could restore CSR payments, ending silver loading
      - Unlikely that House Democrats would accept that change without significant offsetting increases to premium tax credits
  - New carriers in exchange could reduce the number of people with access to zero-additional-premium coverage
  - If reinsurance ends, the number with access to zero-premium plans could increase
  - Bottom line: likely to be a large impact, but the precise amount of new default enrollment will change from year to year

# Conclusion

- Enforcing the individual responsibility to obtain coverage would help the market
- Going beyond “straight vanilla” mandate to the down payment plan would
  - Cover numerous low- and moderate-income uninsured in Maryland
  - Lower private health insurance costs in Maryland
  - Stabilize Maryland’s individual insurance market
  - Point the way to a better approach for other states and the nation
- Philosophy behind this approach to strengthening the individual market:

**We’re all in this together.**

**Expanding the circle of coverage lowers costs for everyone.**

- However: it will not be a walk in the park to achieve those gains

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DOING IS EASY.**

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