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Health Care Legislation Status

Troubled Exchanges Increase Pressure to Repeal, Replace, Repair or Repackage the ACA

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On June 6, 2017, Anthem Inc. announced that it would exit the health insurance Exchange in Ohio next year, leaving 18 Ohio counties with no exchange plans available next year, according to the Ohio Department of Insurance. Similar to the decisions of several carriers across varying regions of the country, Anthem cited the volatile market and ongoing uncertainty regarding future cost cost-sharing payments to offset rising costs. Cost-sharing payments specifically reduce costs for low income individuals. Notably, Humana Inc. and Aetna Inc. have previously announced that they will exit all of their current health insurance Exchanges in 2018. These critical decisions directly impact the individual health insurance marketplace, as well as the marketplace for small group health insurance. Collectively, the consolidation drives up costs for employer-sponsored health insurance, as well, and adds pressure to Republicans leaders in the Senate to pass a replacement for the ACA.

Anthem's Decision in Ohio

Anthem is a key carrier in approximately 14 states with nearly 1.6 M enrolled in its ACA plans and 1.1 M of those bought through the Exchange. Nationally, 302 counties have only Anthem plans available on the Exchange, according to the Kaiser foundation. As of June 9th, Anthem has filed 2018 ACA plans with regulators in other states, but it could still make changes, and publicly stated the decisions following a state-by state evaluation. Anthem has yet to disclose final decisions for any state other than Ohio. Regarding Ohio, Anthem said that an "increasing lack of overall predictability simply does not provide a sustainable path forward to provide affordable plan choices for consumers."

The Ohio Department of Insurance issued a statement that it "is looking for options to help the approximately 10,500 Ohioans in counties where there may not be an exchange plan when this takes effect in 2018." Ohio has 11 Exchange carriers overall this year (17 in 2016). According to the Kaiser Family Foundation, in 2017, 32% of U.S. counties have just one carrier on the Exchange. In short, if another insurer does not replace Anthem within the 18 affected counties, it is unclear what emergency actions the state or federal government may take to provide insurance.

Crystal Ball into the Future

Anthem's decision was immediately seized on by both sides of the debate over the Republican health bill, the American Health Care Act (AHCA), which passed in the House on May 6, 2017, to face resistance in the Senate. Republicans point to insurers' withdrawals and rate increases as signs of trouble with the ACA.

Senator Portman of Ohio said, “This is one more reason why the status quo on health care is unsustainable.” Democrats, on the other hand, argue the insurers are reacting to uncertainty created by GOP lawmakers and the White House. Senator Brown of Ohio said that Anthem’s exit is a result of “the dangerous game President Trump and Washington politicians are playing.”

The ACA mandates that all individuals have health coverage and offers subsidies as needed, however to attain subsidies, individuals must purchase insurance through the Exchanges. Therefore, when there are no ACA exchange plans in a region, consumers are stuck between the mandate and lack of options, creating, at a minimum, significant confusion and frustration. Absent a change in the law, options include coverage mandate waivers, but any solutions are speculations at this point, leaving many looking to Washington for answers and clarity.

What Happens Next?

The AHCA has moved to the Senate where additional modifications are anticipated. If modified, a joint committee of House and Senate members will rework the legislation to seek a compromise. Importantly, it is very likely that the Senate will draft a separate bill, which will lead to additional negotiations and compromises within the spectrum from moderate-to-conservative positions. Senate Majority Leader Mitch McConnell (R., Ky.) cannot lose more than two of the 52 Senate Republicans if there is no bipartisan support. Overall, the GOP leadership has stated consistently the process to repeal and replace the ACA will occur in three phases.

Phase One is the AHCA, which is a budget reconciliation bill limited to budget-specific provisions. Importantly, a reconciliation bill requires a simple majority vote in the Senate, rather than the typical 60-vote requirement to avoid a filibuster.

Phase Two focuses on regulatory directives, as instructed by President Trump’s Executive Order and by the AHCA. Similarly to the ACA, the language “*HHS Shall…”* appears in the AHCA, thereby instructing the Department of HHS to execute the law’s intent. Of note, when the ACA first passed in March 2010, the ACA language authorized HHS to issue regulatory directives over 900 times.

Phase Three occurs outside of the initial reconciliation budget-focused legislative efforts and requires 60 votes in the Senate, rather than a simple 51 majority. In the Senate, legislation needs at least eight Democrats to support any changes.

Discussion and debate are anticipated in the coming months as current uncertainty influences insurance underwriters in both setting rates as well as making business decisions. As the legislative process continues in the Senate, Oswald will provide ongoing guidance and strategic direction for employers based on the most current information available. We will remain vigilant in monitoring all regulatory actions, and through our relationships with industry experts in Washington, DC, we will continue our proactive communication efforts to anticipate change. Importantly, until the AHCA is signed by the President, the Affordable Care Act (ACA) remains the law today; therefore, all current compliance requirements remain in place today.

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