

# Health Care Legislation Status

## States Seek Waivers to Amend the ACA

August 25, 2017

Officials in all states are working to determine health insurance premium rates for 2018. In certain states, officials are seeking state-specific waivers to amend the Affordable Care Act (ACA). Effective January 1, 2017, a lesser known provision of the ACA grants states the option to request waivers to amend the federal law. Certain conditions must be met for the approval of these waivers, including that coverage must be as affordable and comprehensive as under the federal law.

### The Affordable Care Act (ACA)

#### SECTION 1332: STATE INNOVATION WAIVERS

Section 1332 of the Affordable Care Act (ACA) permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing their residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA. State Innovation Waivers allow states to implement innovative ways to provide access to quality health care that is at least as comprehensive and affordable as would be provided absent the waiver, provides coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and does not increase the federal deficit. State Innovation Waivers are available beginning January 1, 2017. State Innovation Waivers are approved for five-year periods, and can be renewed. Waivers must not increase the Federal deficit.

Overall, **13 states** have passed laws authorizing state officials to craft ACA waiver requests with six additional states on the record as considering such legislation. President Trump's administration has already approved a waiver for Alaska, permitting a reinsurance program to limit claims costs for insurance companies.

**Iowa** is setting a new precedent as the first state seeking federal permission to alter **substantial portions** of the ACA in 2018. **Inevitably, many states will track Iowa's waiver submission progress and the federal response to rewriting portions of the ACA.**

Officials from the Centers for Medicaid and Medicare Services (CMS) have signaled that waivers may be expedited for approval. HHS Secretary Price has actively encouraged states to review the process and request waivers, as needed.

### Iowa's Waiver Request -- Setting a New Path?

In **Ohio**, state officials are considering a proposal that will deregulate the prominent ACA requirement that all individuals purchase health insurance or pay a penalty. In **Oklahoma**, state officials initially submitted a limited waiver request to structure a reinsurance program, but are now crafting a broader proposal to reduce the number of health benefits that insurance plans must cover.

If these state-by-state proposals are granted by President Trump's administration, the result could be various ACA hybrid offerings across the nation.

## Iowa's Waiver Request -- Details

The Iowa proposal restructures ACA premium subsidies by establishing flat payments tied to age and income. Under the ACA, caps the amount that lower income individuals pay toward those monthly bills, and subsidies are tied to a geographical region. Iowa's waiver also eliminates the cost-sharing subsidies that help cover deductibles and other out-of-pocket costs. In Iowa, to purchase plans after the open enrollment window, January 1, 2018, consumers must prove continuous coverage with no gap longer than 60 days in the previous 12 months. A reinsurance program would limit health insurers' costs for the most-expensive enrollees.

Patient activist groups are voicing concerns about the elimination of the cost-sharing subsidies, which may leave some enrollees with high deductibles and out-of-pocket charges. An Iowa affiliate of the American Cancer Society pressed for a limited waiver application with a sole focus on a reinsurance pool. The affiliate warned that Iowa's waiver "would likely result in decreased access to care for many Iowans" and likely wouldn't meet ACA requirements that waivers provide coverage as affordable as the current law "absent additional policies to ensure that low-income individuals will have access to affordable care options."

## The GOP Subsidy Conundrum

As a result of the stalled legislative process to repeal and replace the ACA, President Trump's administration faces several important decisions as to how, and to what extent, to implement and enforce the ACA. The **immediate consideration** is the continuation of ACA subsidies to insurance companies. The ACA subsidies reimburse insurers for reducing deductibles, co-payments and out-of-pocket costs on the health insurance exchange. Trump's administration has suggested an end to these subsidies as a way to advance the ACA's gradual repeal, yet on August 16<sup>th</sup>, the administration announced the next payment to insurers will, in fact, be paid to keep the health market stable. However, HHS Secretary Tom Price reiterated that **no final decisions** have been made regarding the long-term continuation of these month-to-month payments.

Additionally, on August 10<sup>th</sup>, as a temporary stop-gap measure, the administration gave insurers a **three week extension** to submit their 2018 premium rates to Healthcare.gov.

The ACA regulations, subsidies, waivers and enforcement are a political issue in D.C. The rate increases and insurer subsidies are an immediate concern for health insurers and those Americans facing escalating premiums. Without payments to insurance companies; consumers will face higher premiums and limited plan options. In addition, the risk of more insurers exiting the health insurance exchange remains.

An August 15<sup>th</sup> report issued by the Congressional Budget Office (CBO) estimates premiums for the base-level "silver" plans will increase by 20 percent, if the Trump administration does not continue the subsidies to insurance companies. Further, the CBO estimates that 5% of Americans may not have access to an insurance carrier in the individual insurance market without these subsidies.

By contrast, many congressional Republicans continue to refer to these payments as a bailout for insurance companies in an ongoing effort to accomplish campaign promises to repeal the ACA. Without the subsidies, insurance companies will need an estimated \$7-10 B from another source in 2018. This other source is nonexistent, as the ACA is written.

**What is the impact on the individual market if subsidies are eliminated?** Approximately six million Americans benefit from the subsidies. Subsidy termination will save the federal government approximately \$8 B in 2018 and a total of \$118 B through 2026, according to the CBO.

## What to Expect Next

Senator McConnell can only lose two Republican Senators to pass any legislation during the **budgetary reconciliation** process. If future legislative efforts are deemed beyond the limited scope of a budget-specific reconciliation bill, Republicans will need at least eight Democrats to move forward. It remains unclear whether the Republican Senators will switch their agenda to tax reform or attempt further ACA replacement efforts in September. Both Republicans and Democrats have expressed an idealistic goal to work together to stabilize the health insurance marketplace.

Regardless of whether ACA replacement legislation gains traction during this fall, **regulatory action is anticipated**. Republican leadership may pursue other ways to dismantle or modify the ACA, including regulatory action, regulatory non-enforcement or executive action. Regulatory action and executive orders are expected to assist in stabilizing the individual health insurance marketplace.

Within the ACA, the language "*HHS Shall...*" instructs the Department of HHS to execute the law's intent with broad regulatory options. These instructions may vary significantly under the new HHS Secretary, Dr. Tom Price, compared to those issued by the HHS Secretaries under the direction of under President Obama.

Until any replacement legislation is signed by the President, the ACA remains the law today and all current compliance requirements remain in place.

## Takeaways

As additional information is released, Oswald will provide ongoing guidance and strategic direction for employers. 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.

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