

NEW ADMINISTRATION: IMPACT ON THE INSURANCE INDUSTRY

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History of Federal Regulation of Insurance

McCann-Ferguson Act, 15 U.S.C. 1011-1015, exempts the business of insurance from federal regulation. (1945 legislation responsive to United States v. South-Eastern Underwriters Assn, 322 U.S. 533 (1944) holding Sherman Antitrust Act applicable to insurance under the interstate commerce clause.)

Some exceptions – risk retention groups, federal subsidization of insurance, e.g., flood insurance, terrorism.

Current federal activity

- Health insurance
- Flood insurance
- Terrorism insurance
- State employee benefits

PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA “OBAMACARE”) – 2010-2014

- Historical Development of Health Insurance From Employee Benefit to a “Right”
- Two Cohorts: Obamacare Expansion

Medicaid Eligibility

Originally (1965), needy families, persons with physical, intellectual and development disabilities, severe mental illness, chronic disease and foster children



ACA increased Medicaid eligibility

U.S. citizens and legal residents with income up to 133% of poverty line – including adults without dependent children 138% of the poverty level.

Federal funding of Medicaid expansion:

2014-2016	100%
2017	95%
2018	94%
2019	93%
2020	90%

11 million persons newly eligible for Medicaid

Individual Insurance Markets (“Exchange”)

Health insurance Exchanges – regulated, online individual insurance marketplace offering plans from commercial insurers and health care service contractors.

State-administered Exchanges – rate and provider network regulation and additional essential health benefits. See WAC 284-43-5602 and 5642

Federal subsidies

- Premium offset paid to insurers and
- Tax credit (advance) to offset out-of-pocket payments,
e.g., deductibles, co-pays (“OOP”)

Reforms:

- ◆ Guaranteed issue – no pre-existing condition exclusion but limited open enrollment periods
- ◆ Level premium in 3 age bands with oldest band (age 45-64) limited to 3x age 18-24 cohort premium
 - tobacco can be considered
 - gender, no
- ◆ No annual or lifetime benefit caps
- ◆ Essential Health Benefits – equivalent to a “typical employer plan” – Regence “Direct Gold” Small Group. WAC 284-43-5602.
 - e.g., preventive care including contraception
- ◆ Non-renewal or cancellation by insurer for health reasons prohibited
 - maximum annual out-of-pocket

Coverage Tier: Bronze, silver, gold, platinum

- All cover “essential health benefits” (10 PPACA categories and state EHBS, if any)
- Low premium = high OOP

Bronze – 40% OOP

Platinum – 10% OOP

Loss Ratio – 80-85% with rebates to ensure compliance

Individual Mandate

- buy or pay penalty
- intended to avoid death spiral, i.e., moral hazard/adverse selection.

CURRENT AND POSSIBLE REFORM

- Republicans – three repeal bills, died in Senate
 - most recently, “skinny repeal” failed in the Senate when Collins, Murkowski and McCain voted “no”
- President Trump Executive Orders

CURRENT STATUS OF PPACA

Insurers

- five major health insurers lost money on ACA policies in 2016
- Insurers have withdrawn from some Exchanges and some counties citing losses, e.g., United Healthcare, Anthem, Humana
- Estimated that 1,472 counties have one insurer in 2017 according to *California v. Trump Complaint*, ¶ 8
- Losses attributed to higher percentage of low income enrollees (older and sicker) than projected, i.e., lower participation from higher income households

President Trump

- ◆ Executive Order October 17, 2017*
 - not self-actuating
- “Three areas for improvement in the near term”
- ◆ Association Health Plans (AHP)
 - expanded access
 - not subject to PPACA provisions

- ◆ Short-term limited duration insurance (STLDI)
 - Medical underwriting
 - High deductible
 - No Rx coverage
 - Limited benefits
- ◆ Health reimbursement arrangements (HRA)

* <https://www.whitehouse.gov/the-press-office/2017/10/12/presidential-executive-order-promoting-healthcare-choice-and-competition>.

Two net effects:

- Lower premium for AHP and STLDI purchasers: (1) healthier cohort and (2) lesser benefits
- Reduces healthy enrollee participation in Exchanges

Ending subsidies for OOP

- President Obama ordered funding by Executive Order after Congress refused to appropriate
- Held unconstitutional* – *U.S. House of Representatives v. Burwell* (Dept. of HHS Secretary), 30 F. Supp. 3d 53 (2015)

* <http://www.scotusblog.com/wp-content/uploads/2016/05/HofR-challenge-to-ACA-DCt-5-12-16.pdf>

State of California v. Donald J. Trump (U.S. District Court, Northern District of California, Cause No. 17-cv-05895-VC)

- 17 states sought preliminary injunction compelling Trump administration to continue OOP subsidies
- On October 25, 2017, the Court issued an Order Denying Motion for Preliminary Injunction

OTHER FEDERAL INSURANCE

- ◆ National Flood Insurance
- ◆ Terrorism Risk Insurance Act of 2002

◆ State Regulated Private Retirement Plans (DOL Rule)

History – Congress recognized Social Security relied on exclusively by many

- 55 million private sector employees with no 401k-type plan

States authorized to create and regulate small employer IRAs

- automatic enrollment
- payroll deduction
- opt out permitted

Congressional repeal of Obama rule allowing such plans

Some states proceeding