

If You Won't Then We Will: States Take Affordable Health Care into Their Own Hands

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Faced with the inability to repeal the Affordable Care Act (“ACA”) outright, the Trump Administration and Congress have taken actions to provide more health insurance options for Americans. Thus far, the Administration announced that they would [no longer make cost sharing reduction \(“CSR”\) payments to insurers](#) on the Exchanges and extended the time period in which [short-term, limited-duration insurance \(“STLDI”\) plans could be offered](#). Meanwhile, Congress removed the individual mandate in the 2017 tax bill. The Administration asserts that these efforts are all solutions geared toward helping more Americans receive care as premiums are rising. A March 28, 2018 [Gallup poll](#) showing that health care costs are a higher concern for Americans, over the economy supports the Administration’s asserted justification. However, some states have recently taken their own steps to provide more health coverage options for their citizens while discounting the ACA, possibly reflecting a sense of dissatisfaction with the seemingly dragging feet of the Federal Government.

Idaho

The Governor of Idaho released an [Executive Order](#) on January 5, directing the Idaho Department of Insurance to approve options that follow all state-based requirements, even if not all ACA requirements are met, so long as the carrier offering the option also offered an exchange-certified alternative in Idaho and authorized the Director of the Department of Insurance to seek a waiver from the U.S. Department of Health and Human Services in conjunction with this Executive Order, if the Director believed it is appropriate or necessary.

Idaho officials then released [Bulletin No. 18-01](#) on January 24, which provides new provisions for “state-based plans” for those individuals who do not qualify for premium subsidies under the ACA. Under Idaho’s proposal, insurers would be allowed to (1) sell plans with 50% higher premiums for people with pre-existing conditions; (2) exclude coverage for pre-existing conditions for people who had a gap in coverage; (3) vary premiums by 5-to-1 based on age; (4) exclude coverage for some ACA essential benefits such as maternity care; and (5) set a \$1 million annual cap on benefits. All of these provisions are prohibited by the ACA.

In February, Idaho sought approval for the Bulletin by Center for Medicare and Medicaid Services (“CMS”); however, CMS denied the proposition. CMS Administrator Seema Verma [wrote a letter stating](#) that Idaho’s proposed requirements are not in compliance with the ACA and warned that, if

Idaho did not enforce the ACA standards, CMS would be forced to step in and directly enforce the ACA protections in the Idaho market. If any health insurance issuer that is subject to CMS's enforcement authority fails to comply with the ACA requirements, it may be subject to civil monetary penalties for each violation of up to \$100 each day, for each responsible entity, for each individual affected by the violation. Despite the response from CMS, Idaho still seeks to expand coverage options for Idaho residents.

Iowa

In a similar fashion, Governor Kim Reynolds urged the Iowa legislature to make health insurance affordable for Iowa residents in the [Condition of the State Address](#). On April 2, the Governor signed into law a [bill](#) that allows small businesses or self-employed individuals to band together to buy coverage through association health plans that do not comply with ACA plans. The legislation would allow insurers to deny coverage to those with pre-existing conditions, create lifetime caps, and does not offer maternity care. However, proponents of the bill emphasize that the coverage would not be considered insurance, but rather would simply function as a "health benefits plan". Proponents also note that these plans are cheaper alternatives for small employers or the self-employed.

Key Takeaways

States creating affordable health coverage with blatant disregard for the ACA is a note-worthy development in today's tense healthcare climate. The outcome of the push of these initiatives by states is crucial because they are challenging the Administration's willingness to enforce the ACA. Tolerance of such state plans would lead to cherry-picking, which would inevitably cause further destabilization of the market. Notably, CMS and Secretary of Health and Human Services Alex Azar have each emphasized upholding ACA as the law of the land. Stakeholders should pay attention to the outcome of these proposals because not only would the implementation of these plans destabilize markets, but the plans could also incentivize more states to follow suit and create their own plans.

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