



HEALIO SPECIAL REPORT:
Health Care and Politics

'Scant bipartisanship' not enough to end 'political war over Obamacare'

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Senators **Lamar Alexander**, R-Tenn., and **Patty Murray**, D-Wash., introduced a bipartisan bill that will finance cost-sharing subsidy payments to health insurance companies for the next 2 years.

"This agreement provides certainty on out-of-pocket reduction payments for the next 2 years [and] will address attempts by this administration to keep people from getting enrolled in care they need," Murray said during a speech on the Senate floor.

A bipartisan bill is "a significant development," particularly for Republicans, who are "at a crossroads" after repeated, unsuccessful attempts to repeal and replace the Affordable Care Act (ACA), according to **Jonathan Oberlander, PhD**, professor and chair, department of social medicine, and professor in the department of health policy and management at the University of North Carolina-Chapel Hill.

"When it comes to the ACA, there has been scant bipartisanship," Oberlander told *Healio.com*. "I imagine there will be strong Democratic support to maintain funding for cost-sharing reductions, but will Republicans go along with this effort? Is there enough in the deal to satisfy conservatives who want to end the ACA?"

The bill, which must still be approved by Congress and signed by **President Donald J. Trump**, was introduced 4 days after attorneys general from 18 states and Washington, D.C., sued the Trump administration in response to the announcement that the administration would end cost-sharing subsidy payments to health insurers. California Attorney General **Xavier Becerra** led the states in filing the lawsuit.

The administration is "... refusing to comply with federal law in a way that will hike the cost of care for millions of Americans by withholding critical subsidies that make care more affordable," Becerra said in a statement. "Taking these legally required subsidies away from working families' health plans and forcing them to choose between paying rent or their medical bills is completely reckless."

In the complaint, the plaintiffs stated that stopping the payments "directly subverts the ACA and will injure the plaintiff states, their residents and the entire health care system." The complaint also contends that this action is part of the administration's efforts to 'explode' the ACA.

The decision to end the payments was rooted in a legal opinion from **Attorney General Jeff Sessions**, according to a statement from the White House.

"After a thorough legal review, ... we believe that the last administration overstepped the legal boundaries drawn by our constitution," the statement said. "Congress has not appropriated money for cost-sharing reductions payments and we will discontinue these payments immediately."

Chasing a 'self-fulfilling prophecy'

Cost-sharing reductions increase the incentives for purchasing insurance through better actuarial value, according to **Aaron Yelowitz, PhD**, associate professor in the department of economics and director of the John H. Schnatter Institute for the Study of Free Enterprise at the University of Kentucky, said in an interview with *Healio.com*. This is particularly relevant for consumers who choose a silver plan, which has an actuarial value of 70%. Under this plan, 70% of an individual's health care expenses would be paid by insurance; the remaining 30% of expenses would be paid by the individual through deductibles, copays and co-insurance.

"Eliminating cost-sharing reductions makes it less appealing to purchase a silver plan vs. moving to a bronze plan or one of the new types of plans, like association health plans," Yelowitz said.

Ending the cost-sharing reductions payments does have the potential to reduce the number of people who enroll in ACA insurance plans, but the decrease may not be as drastic as anticipated. Individuals are eligible for insurance plans subsidized through cost-sharing reductions, the number of people who enroll in these plans increases in line

with the percentage of health care expenses that are covered, according to a study in the *Journal of Health Economics*. The researchers found “no evidence that cost-sharing reductions influence the extensive margin — that is, the decision to purchase health insurance through the ACA marketplaces.”

In addition, it appears that eliminating these subsidies will raise the federal deficit and could increase, rather than decrease, the cost to the government. An analysis from the Congressional Budget Office and the Joint Committee on Taxation estimated that the federal deficit would experience a net increase of \$194 billion between 2017 and 2026 if subsidies are eliminated. The same analysis found that the elimination of subsidy payments would be countered by an expanding number of tax credits given to people to purchase insurance outside of the marketplace.

“The Trump administration is pursuing a self-fulfilling prophecy in declaring that the ACA insurance marketplaces are collapsing and then taking actions that could collapse them,” Oberlander told *Healio.com*. “Ending cost-sharing payments to insurers is part of the administration’s multipronged strategy to do what Congress couldn’t: unravel the ACA. This decision will raise costs for consumers, create turmoil in insurance markets and jeopardize access to health insurance. But, the Trump administration is fine with all of that because, after taking steps to set the ACA marketplaces up for failure, they will turn around and say it is failing.”

Groundwork for cost, coverage reduction

The cost-sharing subsidies’ events are the latest in a series of health care-related developments from the Trump administration in recent weeks. First was the reversal of an Obama-era policy that required health insurance companies to cover birth control without a copay — any employer may now refuse to provide such coverage on religious or moral grounds. Second was an executive order designed to “expand choices and alternatives” to insurance plans offered through the ACA. Trump signed this order the day before the subsidy announcement.

The executive order allows the secretary of labor to increase access to association health plans on a national scale, in part by expanding the Employee Retirement Income Security Act. It also provides two directives for the Department of Labor, the Department of the Treasury and HHS. The first encourages these departments to increase coverage through short-term, limited duration insurance, which is not affected by mandates and rules outlined in the

ACA. The second recommends that these departments explore altering health reimbursement arrangements, which are “employer-funded accounts that reimburse employees for health care expenses, including deductibles and copayments,” according to a statement issued by the White House.

The provision of the executive order that allows for greater use of short-term insurance would have an explicit impact on the ACA, as such plans do not have to abide by “costly Obamacare mandates and rules,” according to the statement from the White House. In addition, access to association health plans on a national scale could allow insurance companies to operate across state lines, Oberlander told *Healio.com*. This could further increase the number of plans that are not subject to ACA regulations.

“If association health plans could be created and offered as Employee Retirement Income Security Act group plans, they, too, could potentially circumvent state regulations, which might allow them to operate across state lines,” he said. “Moreover, while the ACA closely regulates the individual and small group insurance markets, larger employers are exempt from some of its key regulations. If associations of small businesses are treated like a large business, they, too, would be exempt and could offer plans that don’t have to abide by ACA regulations.”

These plans are likely to create an imbalance in the insurance marketplace, according to Yelowitz.

“To the extent that these plans achieve their intent — which is, in some ways, to offer pared-down, cheaper coverage — it would be appealing to healthy individuals,” Yelowitz said. “What that does, in turn, is exacerbate what economists call an adverse selection death spiral, something that I believe is already happening. Premiums will fall for healthier individuals because they can purchase less comprehensive coverage with lower expected costs and because the mix of people in the pared-down plans is healthier. That leaves sicker individuals in plans available through the health insurance marketplace.”

Medical societies voice concern

Multiple medical organizations responded to the actions taken by the Trump administration, including the Endocrine Society, the American College of Cardiology, the American College of Physicians and the HIV Medicine Association.

“The combined effect of these policies adds further uncertainty to the health insurance market, where insurers and individuals are preparing for the start of open enrollment on November 1,” the Endocrine Society said in a statement. “These actions also add new pressure for Congress to pass bipartisan legislation to stabilize health insurance markets.”

However, disagreement “about whether and how these policies can be implemented via regulation” makes the actual impact of these regulations uncertain, according to the statement.

The American College of Cardiology noted that “the full extent of the effects will not be immediately clear, as the order largely does not make changes itself,” and cited concerns about different analyses that suggest that “the proposed changes could destabilize the insurance market, causing certain premiums to spike.” The College “remains steadfast in urging all policy makers to prioritize access to affordable coverage and preventative care in the development of all health reform efforts,” according to its statement

The HIV Medicine Association expressed concern that the executive order “could begin to unravel health reforms that leveled the playing field for individuals with HIV” and other patients with pre-existing conditions. In addition, the executive order may increase pressure on “safety net health systems” like public hospitals, which would negatively impact “our attempts to control and eliminate our domestic HIV epidemic, especially in the South.”

The American College of Physicians (ACP) said the executive order “puts in motion changes through the regulatory process that would lift many of the ACA’s insurance rules.” In addition, the executive order enables small employers to purchase insurance plans that do not abide by the ACA prerequisite to offer essential health benefits.

The executive order from President Trump does not abide by “the clear intent” of the ACA to provide all Americans with an insurance plan “that covers needed care, does not impose annual or lifetime limits, or exclude or charge more to those with preexisting conditions,” according to the statement from the ACP.

“The executive order must not stand,” the ACP concluded. “ACP will consider all avenues to prevent these changes from taking place.”

At the time of publication, no further actions had been announced regarding the Alexander-Murray bill. In that regard, Oberlander encouraged patience — and caution.

“Keep in mind that this a narrow, short-term deal that fixes a problem the Trump administration created by ending the cost-sharing reductions payments,” he told *Healio.com*. “It doesn’t indicate broader bipartisanship. The political war over Obamacare will continue, even if there is a deal on this one front.” – by *Julia Ernst, MS*

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