

Affordability and Accessibility: A National Perspective

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Government Relations Overview

- Political Landscape
 - ◆ Elections
 - ◆ Funding
 - ◆ Consumer Protections
- Instead of “repeal and replace,” potential Market Disruption
 - ◆ Association Health Plan rule
 - ◆ Short Term Limited Duration Insurance (STLDI)
 - ◆ Sec. 1332 waivers – Reinsurance/Risk Pools
 - ◆ Federal Health Savings Account bills

Political Landscape

- Elections
 - ◆ 46 states and DC will hold elections
 - ◆ 36 Governors (26-R, 9-D and 1 independent)
- Funding
 - ◆ Federal CSR payments have ended
 - ◆ Risk Adjustment Payments have ended (2018)
 - ◆ States looking to shore up individual market and Medicaid
- Consumer Protections
 - ◆ Cybersecurity
 - ◆ “Suitability”/Fiduciary/Best Interest Standards of Care
 - ◆ Cost of Rx Drugs

Market Disruption: Association Health Plan

- Two Tracks for AHPs
 - ◆ Existing “bona fide association” (5 year existence, same trade or industry, not formed for insurance)
 - ◆ New Associations
- For new AHPs, meet 1 of 2 tests:
 - ◆ Commonality of Interest
 - Associations eligible to sponsor AHPs under the new rules must either be in the “same trade or industry, line of business or profession”; or
 - ◆ Shared geography
 - same state or “metropolitan region” including metropolitan regions that encompass more than one state
- Organizational Requirements and Employer Control
 - ◆ Governing body and bylaws or other indication of formality, required. Control must exist in “form and substance.”

Market Disruption: Association Health Plan

■ Working Owners

- ◆ Are eligible to form or join AHP
- ◆ May not self-certify employment
- ◆ Health insurers can establish verification and monitoring requirement
- ◆ AHP can exclude working owners

Market Disruption: Association Health Plan

- Non-Discrimination
 - ◆ Cannot use health as a basis for eligibility
 - ◆ Can vary premium based on age, gender, case size, industry, region or occupation
 - ◆ Can create different plans for different occupations within the AHP
 - ◆ Can offer wellness programs in line with ACA (30% of total cost of coverage, or up to 50% with smoking cessation)

Market Disruption: Association Health Plan

■ Applicability of State Laws

- ◆ Does NOT limit existing state authority
 - Preserves future mechanism for preempting state laws that go too far in regulating self-funded AHPs
- ◆ AHP's can be subject to licensing, registration, certification and financial reporting to ensure appropriate funding or reserves
- ◆ State laws regulating fully-insured AHPs can be applied to self-funded AHPs
- ◆ State MEWA laws can be applied to fully insured AHPs

Market Disruption: Association Health Plan

- **Applicability of Federal Mandates**
 - ◆ Do NOT need to include EHBs
 - ◆ Do NOT need to meet Minimum Value
 - ◆ DO need to comply with ACA:
 - Preventive services without cost sharing
 - Protections for in-network providers (primary care, OB/GYN and pediatricians) without prior authorization
 - Coverage for emergency room services
 - Dependent coverage up to age 26

Market Disruption: Association Health Plan

- Applicability of other federal laws
 - ◆ Mental Health Parity – 50 and above
 - ◆ AHP must offer COBRA (Treasury/IRS to issue guidance)
 - ◆ AHP's must provide post-breast cancer surgery benefits; childbirth length of stay; claim appeal and external review

Market Disruption: Association Health Plan

- **ERISA Protections and Requirements**
- AHPs are subject to all ERISA provisions applicable to group health plans, including the fiduciary responsibility and prohibited transaction provisions in Title I of ERISA
- AHPs must provide ERISA disclosures, including but not limited to:
 - ◆ Summary Plan Description
 - ◆ Summary of Material Modifications
 - ◆ Summaries of Material Reductions in Covered Services or Benefits
 - ◆ Summary of Benefits and Coverage (and Uniform Glossary)
- AHPs must file with DOL Form M-1 and Form 5500
 - ◆ DOL intends to reexamine existing reporting requirements for AHPs/MEWAs, including Form M-1 and Form 5500, with an eye towards providing class or individual prohibited transaction exemptions for AHPs that want to use affiliates to serve as their administrative service providers or act as issuers providing benefits under the AHP

Market Disruption: Association Health Plan

- Effective date of August 20, 2018, with following implementation dates:
 - ◆ **September 1, 2018:** All associations (new or existing) may establish a fully-insured AHP;
 - ◆ **January 1, 2019:** Existing associations that sponsored an AHP on or before the date the final rule was published may establish a self-funded AHP; and,
 - ◆ **April 1, 2019:** All other associations (new or existing) may establish a self-funded AHP.
- <https://www.federalregister.gov/documents/2018/06/21/2018-12992/definition-of-employer-under-section-35-of-erisa-association-health-plans>

Market Disruption: the “other stuff”

- **Short Term Limited Duration Insurance (STLDI)**
 - ◆ Final Rule published August 3, 2018 – effective October 2, 2018
 - ◆ Allows 364 day plan with up to a 36 month renewal
 - ◆ States may adopt shorter duration limits
 - ◆ Disclosures required

- **Sec. 1332 waivers – Reinsurance/Risk Pools**
 - ◆ States must apply to HHS for a waiver from ACA
 - 6 permitted: Alaska, HI, ME, MN, OR and WI (WI and ME under Trump administration)
 - 4 pending: MD and NJ

- **Health Savings Account: Federal legislation**
 - ◆ H.R. 6311 / H.R. 6199 -“Increasing Access to Lower Premium Plans and Expanding HSAs Act.” Includes a two-year suspension (for 2020 and 2021) of the ACA health insurance tax; increase contribution limits for HSAs
 - ◆ HR 5138 – “Bipartisan Health Savings Account Improvement Act” – allows HSA plans to offer preductible services at onsite employee or retail clinics, wellness benefits, including exercise, telehealth and second opinions

Consumer Protections

- Cybersecurity
 - ◆ NY Reg. 500 – “first in the nation”
 - ◆ CA – AB375
- “Suitability”/Fiduciary/Best Interest Standards of Care
 - ◆ DOL Rule struck down by 5th Circuit
 - ◆ SEC working on standards of conduct for broker/dealers, investment advisors and financial planners
 - ◆ NAIC working on annuity suitability
 - ◆ NYDFS adopted rules for Best Interest Standards of Care for life and annuity products
- Cost of Rx Drugs – the *Debate* about *Rebates*
 - ◆ President Trump’s Blueprint to Lower Drug Prices
 - ◆ HHS Rules at OMB

Questions?

Thank you!

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