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Ducking Obamacare with health insurance move, Idaho gambles

So far, the feds aren't pushing back, but questions abound

Idaho has caught national attention as health care experts try to make sense of the state's rogue move – letting health insurance companies sell plans that don't follow federal law.

The executive order signed in early January by Gov. Butch Otter and Lt. Gov. Brad Little would let insurers bring new plans to market that break the rules of the Affordable Care Act.

The proposal would create a separate health insurance market using many of the rules Idaho insurers followed before Obamacare. Though that's been considered forbidden since the ACA passed, one state official says the Trump administration isn't pushing back on the idea.

"We're not just pulling these things out of our hat," Dean Cameron, director of the state Department of Insurance, told the Statesman last week. "We're using Idaho law as the foundation for them."

Officials are referring to the plans as "state-based." Under additional guidance issued Jan. 24, insurers can:

A carve out benefits, like maternity coverage. However, any insurer offering state-based plans must have at least one with maternity, which includes prenatal care.

A restore co-pays for preventive care, such as colonoscopies.

A limit annual claims to $1 million, at which point those high-cost patients would be moved onto ACA-compliant plans sold through Idaho's health insurance exchange.

A deny coverage for pre-existing conditions, to a limited degree.

In maybe the biggest change, a person can end up paying higher premiums because of a history or high risk of expensive medical conditions. In order to get the state-based plans, people can be required to fill out a questionnaire that asks about past health care claims, disorders and treatments, ranging from the near-universal – allergies, depression/anxiety, arthritis – to the less common – a stem cell transplant or spina bifida.

One effect of these changes, according to Cameron, is cheaper premiums for state-based plans, as much as 30 to 50 percent less.

The move took national health care observers by surprise, with many questioning the legality of Idaho's approach.

"These Idaho guidelines for health insurers are crazypants illegal. It's not even close," tweeted University of Michigan law professor Nicholas Bagley. "Does Idaho think the Supremacy Clause doesn't apply to it?"

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Some national reports have misconstrued what the plans would allow, such as lifetime caps. (They aren't an option, Cameron says.) A group led by Doctors for America and the Service Employees International Union plans to run a television ad in Idaho during Sunday's political talk shows, criticizing the proposal. It mistakenly claims newborn care wouldn't be covered. (Infants are on their parent's plan from the moment of birth, regardless of maternity coverage.) Another change it cites, charging older people more, is already allowed by the ACA, although the age-related pricing could be steeper under the state plans.

Other observers wondered how the federal government would respond. Will the Trump administration, which detests the ACA and seeks to curb regulation, decide Idaho is moving in the right direction?

And does Idaho's proposal make the state, or insurers who participate, vulnerable to lawsuits? People, advocacy groups, and even members of the health care and health insurance industries could go to court if they're harmed in some way – whether it's paying more, getting worse health care or losing healthy customers to competitors.

One more big question: Will health insurance companies even want to offer these plans?

The Idaho proposal applies only to insurance that people would buy for themselves, not health insurance through work. Most Idahoans in that category who don't have health insurance are in the Medicaid gap – with incomes so low, it's hard to imagine how they'd afford even half-priced insurance plans. The vast majority of people who get ACA plans now are getting subsidies to make their premiums lower – subsidies they couldn't use for the state-based plans.

But are there thousands of people on the brink of dropping insurance because premiums are too high? Are there thousands of impoverished Idahoans who want health insurance so badly that they would find a way to pay for these plans?

Blue Cross of Idaho thinks so. The company predicted to the Statesman last fall that a large number of Idahoans would buy them.

Whatever happens may determine whether other states follow Idaho's lead.

Q: Q: What does the executive order do?

A: A: Based on the latest guidance, it gives insurers the option to do business more like they used to before the federal law took effect. There are strings attached: For example, insurers may offer only "state-based" plans if they're also selling ACA plans on the exchange.

The next step is for health insurers that want to offer these plans to file their proposals with the state for review.

Q: Q: Is the state concerned this might be illegal?

A: A: Here's what Cameron told the Statesman: "We've had lots of discussion about the legality, the rules and the statutes. And we believe we are within our full authority and ability, and we believe we are complying

with the provisions. We have had legal discussions with multiple attorneys, both inside the Department of Insurance and outside; multiple discussions with the (Idaho) Attorney General's Office and certainly with our (deputy attorneys general assigned to the DOI), with the governor's attorney, with any legal counsel we could run it through, including those who participate and represent entities on Capitol Hill."

The deputy AGs had questions early on and helped the insurance department reword the guidance, Cameron said. One change they made was tethering the ACA and state-based plans together so that the new plans "supplement or complement" the ACA plans instead of supplanting them, he said.

"We've had lots of conversations with various officials at (federal insurance and health care agencies)," he continued. "We had conversations with Secretary (Tom) Price before he left that position, and he was aware we were considering or trying to get flexibility. Since the governor issued the executive order, we've had a call from (the U.S. Center for Consumer Information and Insurance Oversight), who asked us a lot of good questions. We think we gave them good answers. We haven't had any push-back since then. We have shared the guidance with them."

Q: Q: Will the plans be cheaper?

A: A: That depends on who you are and how much health care you need.

They probably won't be cheaper for lower- and moderate-income people, who qualify for subsidies that can bring premiums for ACA plans down to nothing.

People with higher incomes and chronic medical conditions also may find ACA plans are a better deal. Those plans come with a large set of standard benefits and are guaranteed to cover a certain share of a person's medical costs.

Higher-income people who rarely use health care will probably choose the state-based plans, because they'll have lower premiums.

There are concerns that splitting up the insurance market like this could create a death spiral – with the state-based plans siphoning off the healthy patients and offering cheaper rates, while the ACA plans collapse under the cost of their sicker patients.

State officials think they can prevent the death spiral by linking the new and old plans. Insurers couldn't charge three times more for an old ACA plan than for a new state-based plan, for example.

But premiums aren't everything. The tradeoff for lower premiums on state-based plans may be higher costs when the patient actually uses his insurance – more co-pays, high deductibles or added costs for things like prescription drugs. (That tradeoff wouldn't be unique to the new state-based plans: Many Idahoans have complained that lower-premium ACA plans are too expensive to actually use.)

Q: Q: Does the executive order repeal Obamacare in Idaho?

A: A: Absolutely not.

Lt. Gov. Little, campaigning for governor, has touted the executive order as "ending Obamacare for many Idahoans."

Despite that rhetoric, the health care law is still alive. The ACA's most well-known and powerful features were its individual mandate – the rule that Americans can be fined for going uninsured, which ends next year – and the consumer protections it imposed, such as the guarantee that all Americans are eligible for coverage.

But the law is more than those two pieces. It changed how hospitals and doctors earn their money. It added millions of Americans to Medicaid. It created a federal subsidy for lower-income consumers to buy insurance. It funded "innovation" programs across the U.S., including in Idaho, to test new ways to improve health care. And it created consumer protections, such as limiting how much insurers can spend on overhead instead of actual health care.

Some of the ACA's mechanics have been disassembled by federal policy shifts, but the law remains. And in Idaho, plans that comply with the ACA had near-record sign-ups this year.

Besides that, there's the question of whether Idaho will carry out its executive order, if it's challenged in court.

Q: Q: What about pre-existing conditions?

A: A: The state-based plans would bring back a health insurance company's ability to deny coverage for pre-existing conditions. But the details here are important.

According to Cameron, a pre-existing condition is something that's been diagnosed or treated in the prior six months, and the only people who could be denied coverage for those conditions are those who were uninsured for at least 63 days. The block on coverage for that condition can last only as long as that year's policy; the next year, you'd have coverage.

Cameron argues that with ACA enrollment being closed most of the year, there's already a de-facto block on preexisting conditions. If someone didn't sign up for 2018 health insurance last fall and is diagnosed with cancer next month, they're out of luck. Their pre-existing condition waiting period is now the rest of the year – but with the added sting of having no insurance at all. (Getting sick doesn't make you eligible to enroll in ACA plans outside of the annual enrollment period. You can become eligible for other reasons, such as losing health benefits through your job.)

In another way, though, pre-existing conditions would be important for many people – including those without the 63-day lapse in coverage – because of how they could drive costs up or down in state-based plans. Under the ACA, health insurers can't charge you more because you have diabetes or once had cancer. Under the

state-based plans, that would be allowed since insurers could consider your medical history in determining your risk. And that could saddle you with higher premiums.

Q: Q: Who are the winners and losers of the state-based plans?

A: A: Critics worry the biggest winners and losers among consumers would be the very healthy and very sick. Those who are young and healthy could save money, while older and sicker patients could end up paying more. The plans would be allowed to use a steeper pricing curve based on age, so younger people could end up with cheaper premiums while older people's rates go up. And insurers would be able to take your health status into account in ways that raise or lower your premiums.

Men also could get cheaper premiums because they won't have to buy plans with maternity coverage anymore. Conversely, plans may be pricier for women who plan to have a baby (or for anyone who isn't bearing children but believes in contributing to the health of the next generation of humans).

The proposal also could benefit Idahoans in the "middle-class uninsured" group – such as an older couple whose $66,000 annual household income is too high to qualify for federal subsidies. They may be uninsured now because their full-price ACA plans would take one-third of their income and require thousands of dollars in co-payments. The cheaper state-based plans might not be as generous as the ACA plans, but they'd be better than nothing.

Blue Cross of Idaho also could claim a victory. The company has been pushing for this option since at least last year.

"Give us the ability to roll out products that really deliver choice, and at a price point for everyone. We could roll out products that are 50 percent cheaper than ACA products are, based on pre-ACA Idaho regulations," Blue Cross of Idaho CEO Charlene Maher told the Statesman last September.

The proposal could put another insurer – Mountain Health COOP – at a disadvantage. That's because of federal rules special to this type of health insurance co-op, of which Mountain Health is one of the last left in the country. At least two-thirds of co-op insurance plans must be ACA-compliant. That would restrict how much business Idaho's co-op could do in the new "state-based" market.

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