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After repeated failures by Republicans in Congress to repeal and replace the [Affordable Care Act \(ACA\)](#), President Donald Trump seems to have taken matters into his own hands, chipping away at key provisions of the legislation in what has widely been characterized as sabotage. But states are fighting back, and Washington state is in the forefront of the fray.

[Affordable Care Act: threats and responses](#)

Attacks on the ACA

On October 6, 2017, the Department of Health and Human Services issued two rules exempting many employers from the ACA requirement that employer health plans must include birth control coverage. The new rules allow employers to claim exemption based on “religious beliefs or moral convictions.” Meanwhile, Attorney General Jeff Sessions issued a guidance to federal agencies and prosecutors to defend such religion-based discrimination in court.

A week later, Trump signed an executive order purporting to expand access to healthcare, primarily by encouraging association health plans, which usually pair low-cost premiums with minimal coverage. Later that night, the administration announced the federal government will halt the ACA’s cost-sharing reduction (CSR) payments. The CSRs reimburse insurance companies for a portion of low-income patients’ out-of-pocket costs, enabling insurance companies to offer premiums at lower rates.

The curtailment of the CSRs was legally premised on a U.S. District Court ruling in the case of U.S. House of Representatives v. Burwell. Despite concerns that the lawsuit itself may be unconstitutional, the court found the payments unconstitutional. Both the Obama and Trump administrations had continued the monthly payments pending the outcome of an appeal.

In Washington state, industry insecurity over continuation of the CSR payments had already led to expectations of a 24% increase in health exchange premiums for 2018. With up to 180,000 constituents affected, the state is fighting the changes.

Washington state and Tennessee representatives propose bipartisan legislation

Washington Senator Patty Murray, ranking Democrat of the Senate’s health committee, has developed a bipartisan healthcare deal with the committee chair, Lamar Alexander (R-TN). Their draft agreement would reinstate the CSR payments for two years; restore \$106 million in funds for outreach programs to encourage ACA enrollment; and maintain critical consumer protections for pre-existing conditions and essential health benefits while also expanding cheaper catastrophic insurance plans and offering concessions for states to opt out of some regulations.

The proposed Alexander-Murray bill has new urgency in the wake of Trump’s move to cancel CSR payments, garnering support on both sides of the aisle. But with key Republican figures holding out for clear guidance from the White House, it is too soon to tell whether the deal will pass in time to avoid premium increases of 30% to 40% in 2018.

Legal action in support of the ACA

Washington state Attorney General Bob Ferguson filed a federal lawsuit in U.S. District Court in Seattle to reinstate the contraceptive requirement, which saves nearly \$160 million in maternal and birth-related costs annually in Washington state. Similar lawsuits were filed by California and Massachusetts, and the American Civil Liberties Union.

In August, Ferguson’s motion to intervene was granted in the case of the U.S. House of Representatives v. Price, a lawsuit defending the CSR subsidies. Ferguson has now also joined a coalition of eighteen states and the District of Columbia in filing a new lawsuit calling for an injunction compelling the federal government to continue CSR payments until a final decision is reached. An injunction granted before the open enrollment period could help stabilize 2018 rates, but time is running out.

Tagged ACA, health care, insurance, obamacare

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