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ACA ENROLLMENT BY THE NUMBERS

ADMINISTRATION'S ATTEMPTS TO STALL THE ACA AT WORK?

With headlines focused elsewhere, much of the political discourse in 2019 has avoided Healthcare Reform.

In contrast, 2017 and 2018 featured many headlines with the current Administration doing everything within Its power to make good on a touchstone of Its 2016 campaign platform; President Trump and the Republican Party pushed for repeal and replacement of the Affordable Care Act.

When they were unable to garner the votes, the President utilized powers outside the control of Congress to weaken key parts of the Law designed to ensure the viability of the Insurance Marketplace, as well as keeping the American public in the dark regarding enrollment by virtually defunding marketing efforts. Many feared these tactics would encourage disengagement of the young and healthy, demographics crucial to maintaining a balanced risk pool covered by the Marketplace. Did it work?

It all came to a head when the late Senator John McCain stood on the Senate floor and casted his vote with a momentous thumbs down.

This iconic moment marked the end of a legislative war of words, highlighted to that point by Twitter attacks from the President, himself, where the Republican Party was unable to garner the 50 votes necessary under the Budget Reconciliation Act to pass the Better Care Reconciliation Act. What followed was a tactical maneuvering by President Trump to undermine of key features of the ACA through his control of federal agencies and national purse strings.

First the Administration built Reform provisions into a tax bill. In December of 2017, President Trump signed the Tax Cuts and Jobs Act ("TCJA"). Among many other provisions, the Bill effectively directed the Internal Revenue Service to cease enforcing the Individual Mandate.

In so doing, the Government would no longer penalize Americans who chose not to purchase health insurance. So, even though the Affordable Care Act was still the Law of the Land, one of the key provisions intended to protect the health of the risk pool by ensuring it was balanced and included not only the old and sick but also the young and healthy, now had no teeth.

Many posited this lack of enforcement could hamstring the Law by encouraging the very malady it was designed to avoid, adverse selection. Without the tax to be levied upon non-compliant Americans, another important challenge to the Law was also set in motion, Its constitutionality.

When now Chief Justice Roberts upheld the constitutionality of the Affordable Care Act in an historic 2012 Supreme Court decision, it was upon enforcement of this provision that he relied. Specifically, Roberts held in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) that the Law was constitutional because the Federal Government was empowered to generate revenue.

This penalty, as it was initially labeled, to be levied against Americans who chose not to purchase health insurance, then, was actually a tax, a permissible exercise of the Government's power of taxation. So, too, was the Affordable Care Act considered constitutional.

With the Administration's removal of enforcement of this tax, without repealing the Law or provision itself, the constitutionality of the Affordable Care Act is again called into question because where no revenue is generated, the Individual Mandate is now arguably invalid. Such is the question to be answered by The Supreme Court when it issues a ruling *Texas v. US*, 809 F. 3d 134 (2015). Though oral arguments took place in July of 2019, no ruling has been issued.

The final act taken by the Administration was an exercise of the Executive Branch's control of money. Specifically, it is within the power of the president to control how certain federal funds are spent, a power which allowed President Trump to slash the Affordable Care Act's marketing budget by 90%. The fear? With significantly less advertising of open enrollment, would American's be aware of the Open Enrollment period and how they could go about purchasing coverage on the Exchange?

Though not significant, the efforts may have had some impact on the enrollment which occurred from November 1 through December 15, 2018. According to Kaiser Family Foundation as well as the Centers for Medicare & Medicaid Services ("CMS"), enrollment through Healthcare.gov was down 4% in 2018 as compared to 2017.

Overall, enrollment was down 3% in 2018 as compared to 2017. Those numbers seem insignificant when you consider the significant budgetary limitations that were placed on advertising, but perhaps the more telling and concerning data lies in the decline of new enrollees and percentage of those who qualified for subsidies. With respect to enrollees, 39% of enrollees were new in 2016. That number in 2017 had fallen to 31%, and even further in 2018 to 24%.

Perhaps the most concerning data point, however, is the percentage of new enrollees who qualify for premium subsides/tax credits. Those who qualify for these subsidies do so because they are individuals or families with low to moderate income levels.

In 2017, 83% of new enrollees qualified for these subsidies. In 2018, that number grew to 87%. This indicates that lower income individuals and families are flocking to the health insurance exchanges at significantly higher rates than their wealthier (and perhaps, healthier) counterparts. Historically, data suggests that lower income individuals also tend to be less healthy.

Accordingly, it appears the fear of adverse selection may indeed be manifesting itself as the young and healthy seem to be avoiding entering the Marketplace, either due to obtaining benefits through employee sponsored plans, or their willingness to gamble on their youth to save a buck.

It is difficult to ascertain with certainty whether the policy decisions made by the current Administration truly have a causal link to the drop indicated above, or if the connection is simply correlative. The numbers themselves speak to a very ominous reality. The number of new enrollees is declining each year.

Additionally, the Marketplace appears to be obtaining a higher rate of enrollees annually in the low to moderate income demographic. Finally, 1/3 of new enrollees, annually, appear to be over the age of 55 and 64% are over the age of 35.

As we head into 2020 and what should be another year of significant reform rhetoric, a Supreme Court decision that could leave the Country without a healthcare system on the books, and Healthcare once again top of mind in a presidential election cycle, the Administration will continue to attempt to repeal the Affordable Care Act, or endeavor to limit its efficacy.

If adverse selection is in fact coming to fruition as the data seems to support, the Affordable Care Act may be headed for its demise either organically or through direct legislative attacks. It will certainly not be aided by an administration that will actively undermine the parts of a healthcare system that were intended to ensure its success; a flawed system that often leaves Americans footing a significant bill.

Even with these attempts, the Republican Party has failed to clearly put forth a viable replacement. Be it with the ACA in some form, a Republican alternative, or the "Medicare for All" approach being touted by the large contingent Democratic candidates, Healthcare discussion is here to stay. ■

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He has recovered millions of dollars on behalf of benefit plans in virtually every state and federal jurisdiction. He also holds the distinction of a Certified Subrogation Recovery Professional. Although Chris spent several years dabbling in other areas of benefit plan cost containment, including plan drafting as well as plan consulting matters ranging from plan language analysis, claims appeal assistance, balance billing defense, overpayment recovery, stop loss, PPO, and administrative service agreements.

Chris is a regular contributor to The Self Insurer Magazine and is invited to present annually at the National Association of Subrogation Professionals National Conference.