Live from NAHU!

December 1, 2016

There were a number of questions around MLR and the new Trump administration. Rather than address each of them separately, we offer the following:

1. Status of MLR Legislation

We have been pursuing MLR changes by both legislation and regulation. With the new administration, we see a possible opportunity to pursue a full repeal of the medical loss ratio requirement, rather than our more targeted approach. The argument we're making is that lifting the restriction that 80% of premium dollars must be spent on medical costs and 20% on administrative costs will provide relief to health insurance carriers struggling to meet the current restrictions, which will result in lowering premium costs and encouraging carriers to remain in the health insurance market. Since health insurance plans have already been approved for 2017, we suggest an effective date of January 1, 2018.

2. Trump Transition/Congressional Meetings

NAHU staff has continued a series of meetings with policymakers regarding the plans to use the budget reconciliation process next year to repeal certain provisions of the ACA. Our meetings with key staff at the House Ways and Means and Energy and Commerce Committees, among others, were to review our primary concerns about the implications for employers and individuals if certain provisions of the ACA were to be repealed while other provisions remained in place, and the potential damaging effects that this could have to the various health insurance markets, plans, and pricing. We also offered our solutions for how health insurance can be reformed without harming consumers.

3. What is Reconciliation and what is our Strategy for it?

The reconciliation process allows certain legislation that specifically deals with spending, revenues and the debt limit to only require a simple majority of both chambers for passage (51 Senate votes instead of 60 votes, plus 218 House votes). Reconciliation also eliminates the Senate filibuster as debate is limited to 20 hours, and non-germane amendments are banned from being added to the bills in the Senate debate. The tradeoff for reconciliation only requiring simple majorities is that there are several restrictions on its usage—largely that it is limited to one spending/revenue bill per year, or per budget resolution, and that it doesn't change the overall level of spending or revenue, or where such a change is merely "incidental."

Currently, Republicans are seeking to make sweeping changes to the ACA through a two-step process: first to repeal certain aspects of the law through the budget reconciliation process, and second to approve a yet-to-be-determined replacement plan. Republicans successfully passed a reconciliation repeal of portions of the ACA last December, but that was vetoed by President Obama in January. That is why the first order of business when Congress convenes in January would be to seek budget related repeals to the ACA through reconciliation.

While the ACA was partially amended through the budget reconciliation process, it cannot be fully repealed this way because ultimately the law was passed by the 111th Congress through regular order in 2010. The Patient Protection and Affordable Care Act was passed by the Senate in December 2009, and then passed the House and was signed by President Obama in March 2010. Following passage, both chambers agreed on a subsequent budget reconciliation bill, the Health Care and Education Reconciliation Act that made marginal budget-relevant changes that met the stringent

requirements of the reconciliation process.

That reconciliation package increased the amounts of the tax credits, eliminated several special deals such as Senator Ben Nelson's (D-NE) “Cornhusker Kickback,” closed the Medicare Part D "donut hole" by 2020, delayed the implementation of the Cadillac/excise tax until 2018, increased Medicaid reimbursement rates to primary care doctors to match Medicare reimbursement rates, made the federal government pay all costs of expanding Medicaid under the reform until 2016 and gradually lower to 90% by 2020, set penalty amounts for the employer mandate, and established a Medicare tax on the unearned incomes of families that earn more than $250,000 annually.

As the ACA reconciliation process only addressed budget-relevant items of the law that was otherwise passed by regular order, any repeal of the law using the reconciliation process would likewise only be able to address budget-relevant items. The reconciliation that was vetoed by President Obama earlier this year provides a roadmap for the items Republicans would seek to repeal in a future attempt. That bill would have repealed the state-optional Medicaid expansion beginning in 2018, the individual and employer mandates by changing the penalties to $0 as a workaround to budget rules, and the bulk of the law’s 21 tax increases.

NAHU’s conversations with policymakers in Congress have been to determine how to change the ACA in ways that will not lead to adverse consequences for the stability of the health insurance markets or your clients.

Q: What are the chances now of getting commissions out of the MLR
A See #1

Q: What about the nuclear option where the Democrats pushed through a 51 majority, will that come back to haunt the Democrats?
A: Anytime legislation is passed without bipartisan support there are political implications as we’ve seen with the ACA.

Q: What are the chances that broker commissions are removed from the MLR?
A: See #1

Q: Please explain the concept of block grants
A: A block grant provides a lump sum of dollars to achieve an objective. For example, a Medicaid block grant would provide states a sum of money and would give states significant latitude in designing their Medicaid program using those funds.

Q: Is NAHU working to get MLR requirements repealed?
A: Yes. See #1

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Q: What are they going to do about subsidies?
A: If the "repeal and replace" effort is pursued, subsidies may change from how they are currently calculated. Current discussion in Washington is that any subsidy changes will likely be done at a time in the future.

Q: Since NAHU supports expanding HSAs, why not take a supporting position on Flake/Brat bill which expands HSAs?
A: We have not taken a position on this bill.

Q: Any word on individual mandate and employer ALE mandate. Future of 1095's?
A: Everything is up in the air. If there is a repeal initiative in reconciliation the mandates would be likely repeal targets.

Q: Republicans want to allow purchase across state lines-am I missing something-how would that work-I live in NC, I buy a plan from Colorado-how would the network, etc., even work, etc.
A: We don't see the value in this provision. The expectation is that it would increase competition among insurers. Whether that would occur and how it would impact the insurance market is open to debate. There may be some value in insurance markets where the job market crosses state lines such as in the Washington DC area.

Q: Wasn't Al Franken necessary to win that ACA vote?
A: That is one theory among many.

Q: At the NAHU National Convention in New Mexico, we heard from two very outspoken speakers, Donna Brazile and Anna Chavez who were vehemently anti-Trump. Your own speech left no doubt that you favored the Democratic nominee. Given what's happened, I and many of my fellow members are concerned about how yours and NAHU's public posture may have damaged NAHU's and your own credibility in Washington, as well as among our members.

1. What are your plans and NAHU's plans for repairing the potential fallout from this miscalculation?
2. Has NAHU been in contact with the new administration?
3. What are NAHU's plans going forward in terms of reaching out to the new administration, to CMS, HHS and Congress?

A: NAHU is a non-partisan organization. Our political PAC contributes to members on both sides of the aisle with Republicans garnering more dollars than Democrats. We do not, as a matter of routine, endorse a candidate in the Presidential race and did not do so in this past election. We have provided white papers to both party platform committees and to the transition teams for the nominees prior to the election. Since the election we have met with a number of Congressional offices with our suggestions on how to proceed with the Republican administration objectives on health reform. We are also active in a number of coalitions pursuing agenda's that compliment ours.

Q: If all 51 Senators do reconciliation, why is it so difficult to replace or get rid of the ACA? Why can't it be repealed the same way it was passed?

A: Clarification: The ACA was passed by the Senate in Dec. 2009 with 60 votes and by a simple majority of the House in Mar. 2010. Several budget-relevant changes were made to the ACA in late Mar. 2010 using the reconciliation process, but the law itself was passed under regular order and therefore any repeal that is non budget-relevant would need to be passed with regular order (60 votes in Senate). See #3

Q: Has there been any discussions on open enrollment dates and possibly finding a solution that will enable folks to enroll throughout the year based on the birthday for example
A: This has been one of our recommendations in the past.

Q: Is it true that the majority of 'new insured' were those that got coverage through Medicaid expansion? If that is true, if we take away the Medicaid expansion and don't have income based tax credits, how are we going to get lower income Americans affordable coverage?
A: That is a big question. NAHU has always spoken about the need to have affordable coverage options.

Q: Democrats passed ACA on a simple majority through the reconciliation process. Why can't Republicans do the same?
A: Clarification: The ACA was passed by the Senate in Dec. 2009 with 60 votes and by a simple majority of the House in Mar. 2010. Several budget-relevant changes were made to the ACA in late Mar. 2010 using the reconciliation process, but the law itself was passed under regular order and therefore any repeal that is non budget-relevant would need to be passed with regular order (60 votes in Senate). See #3

Q: Do you anticipate any further delays in ACA Reporting?
A: We had a delay announced just before Thanksgiving. Whether there are additional delays, who knows? One should proceed assuming there will not be any delays.

Q: What do you think will happen with the 1094 1095 filings?
A: We are advocating for simplifying the process, at a minimum. If the employer mandate is repealed it is unclear if these filings must continue.

Q: Please address what NAHU is doing to restore and protect broker commissions.
A: We have consistently advocated for the MLR to exclude broker commissions advancing bills in each Congress to that effect. See #1

Q: Why all of the continuing resolutions instead of a legitimate budget?
A: The budget debate is highly partisan. The continuing resolution allows lawmakers to delay some very difficult votes.

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Q: As of 10/28/16, Obama reduced the short term medical market to a 3 month span effective after 4/1/17. What is the possibility that this EO will be undone?
A: Executive orders are a top priority for President –Elect Trump. The short term medical issue is a published rule and not an executive order. This is likely to be one of the rules that come under the new administration's review.

Q: Can the MLR Bill be passed through the Reconciliation process?
A: Some experts say yes and others say no. It was not included in the bill that President Obama vetoed in 2015 which is seen as a possible template for the reconciliation process this coming year. See #1 and #3

Q: If the ACA was entirely passed under reconciliation why can't it be entirely repealed in the same way?
A: Clarification: The ACA was passed by the Senate in Dec. 2009 with 60 votes and by a simple majority of the House in Mar. 2010. Several budget-relevant changes were made to the ACA in late Mar. 2010 using the reconciliation process, but the law itself was passed under regular order and therefore any repeal that is non budget-relevant would need to be passed with regular order (60 votes in Senate). See#3

Q: When will the Medicare Advantage reinstatement take effect? Immediately?
A: The Medicare Advantage OEP provision takes effect in January 2019.

Q: Is there any expectation of expanding community health centers if Medicaid is reduced?
A: I don't believe the administration has commented on this.

Q: How can states implement policies to reduce the risk of a death spiral if repeal is passed without replace?
A: That's the big question. Initially steps can be taken to stem the losses that carriers are facing now showing them that the administration is serious about having a viable market. This could prove a lifeline to carriers that will encourage them to remain in the market.

Q: Passed... the House, not the Senate, right?
A: Correct. Cures was passed by the House last night and is currently under consideration by the Senate.

Q: Do you see states going for single payer just because of the ACA repeal
A: Some states will look at this as an option. But, the price tag for single payer has caused states to back away as was seen in Vermont.

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Q: Number One on the H.R. 5447 should be the ERISA problem that occurs when an employer is sponsoring an individual plan
A: There are provisions in the bill that limit or eliminate ERISA exposure.

Q: Will the MLR be removed with reconciliation? Or through any other means?
A: We are pursuing a strategy to remove If not through reconciliation then through regular order. See #1

Q: Does the CURES Medicare piece take effect for 2017 or does it need to move through a regulatory process that delays it for 2018?
A: If you're referring to the Medicare Advantage OEP, January 2019 is the effective date.

Q: Won't the new HHS secretary have some authority to make positive changes affecting carriers to renter the market?
A: Yes, to some degree.

Q: Can the carrier MLR restraints be addressed through reconciliation?
A: Perhaps. We are pursuing this strategy in addition to seeking legislative action. See #1 and #3

Q: What remains if key carriers exit from the individual market?
A: This is a concern that we continue to express.

Q: Has there been any talk by NAHU or others to change the Med Advantage open enrollment from Oct through Dec to the quarter of the person's birthday. That would allow the agents to spread out the renewal process and then have more time to enroll clients on exchanges or direct? This would be a great way to reduce the stress on the agents and the carriers and the clients.
A: Yes. We continue to make this point.

Q: With the new Administration, do you think the ERISA documents currently being recommended for tiny group health plans could fade away....and go back to recommending ERISA docs only for retirement plans and for groups of 100 or more employees?
A: We hope that this is one of the regulations that goes away as it is not final. Whether a scaling back of ERISA requirements occurs, it is unlikely.

Q: What about the 40 hour work week? Are we still supporting changing this to something lower?

A: We have been advocating for the ACA to define a full-time employee as 40 hours per week. This is a provision that will be considered as a part of any repeal and replace effort.

Q: Is the Cadillac tax dead? There seems to be a lot of opposition to it from both sides of the political views.
A: It is on hold as you know. It is unpopular with both sides of the aisle. That being said, it isn't dead yet.

Q: What happens with minimum loss ratios and broker compensation?
A: See #1

Q: Does any of this affect the NAHU approach to MLR?
A: See #1

Q: Will reconciliation repeal the penalties for not reporting for employers?
A: See #3

Q: Can Congress stop the flow of money to the exchanges?
A: Congress controls the purse. But, we hope that any actions taken are done without significant and undue disruption to coverage.

Q: Maybe I missed it, but what about removing commissions from the MLR calculation?
A: See #1

Q: how does the Republican majority and the President view the role and importance of we the Broker/Agent
A: This is a case that we must continue to make despite having made impressive gains in Congress regarding the importance of brokers.

Q: Does NAHU have an existing relationship with the incoming CMS and HHS leaders?
A: Yes.

Q: There has never been a more critical time for NAHU to PRIORITIZE fixing the high cost of care - Rx reform, Bringing attention to excessive carrier Executive pay increases that have been well documented - PPO arrangements being a 30-40% hidden tax on employer plans!!!! NOW IS THE TIME! Anything else for reform is a waste of time until we get

pricing under CONTROL.
A: Thank you for your comments. We have always said that insurance premiums are high because the cost of care is high.

Q: You say "continue to advocate for a strong private health insurance market" Why do you not come out against the proposed insurance company mergers
A: Mergers are very complicated with the results of any one of them difficult to predict. We have always advocated for a competitive market.

Q: Do you have a feel for what might happen to employer transition relief?
A: I'm not sure which relief you're speaking of.

Q: For the upcoming CAP conference is there an option to get a high ranking member of the Trump presidency to come and address us?
A: We have invitations in to a number of topical speakers. Complicating things is that members of the Trump administration may just be going through the confirmation process.

Q: Any possibility for new administration on getting the min. number of hours required for group coverage bumped back to 40 hours?
A: This is one of the issues that may hinge on the "repeal and replace" effort.

Q: Are there any efforts underway to dismantle the exchanges
A: That would likely be part of any "repeal and replace" effort, likely deferring to the states on how to proceed.

Q: How does the Republican majority and the President elect view the role/importance of we the Broker/Agent? Any chance of an increase in commissions?
A: We believe it's still important to remind old - and new – friends about the role and importance of the broker. We want to encourage everyone to send in stories to http://www.brokersmakingadifference.org/ . Commissions have always waxed and waned as they have always reflected the priorities and goals of the carriers. We don't see that changing.

Q: Has NAHU given any thought about staring an association health insurance plan for independent agents because premiums and deductibles have become almost unaffordable in the individual market.
A: Association plans are sure to be one of the issues considered by the new administration. Thanks for the suggestion.

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Q: What are your thoughts about selling across state lines? It does not seem very viable. Will it help in some way that I am not aware of?
A: It is expected that the approach will increase competition. Whether it would do so is likely to vary by the state of the market in the states involved. We don't know that the current proposals really understand how health insurance works.

Q: Can Congress pass both corporate tax reform and ACA changes through Reconciliation in the same year? Or do they have to pick one or the other? If one or the other, which is more likely?
A: See #3

Q: Do you see a greater advantage to our clients buying insurance across state lines, or is this a real problem?
A: It is expected that the approach will increase competition. Whether it would do so is likely to vary by the state of the market in the states involved. We don't know that the current proposals really understand how health insurance works.

Q: In one sentence, why is the topic of allowing insurance to be sold across state lines such a priority?
A: It is expected that the approach will increase competition. Whether it would do so is likely to vary by the state of the market in the states involved. We don't know that the current proposals really understand how health insurance works.

Q: What does NAHU think would be better than community rating for small groups?
A: Community rating has worked in some states and been a disaster in others. That's why rating decisions should generally be made by the states.

Q: With repeal likely, what might happen to the shrinkage of Medicare prescription doughnut hole that the pharmaceutical industry agreed to? Might they continue this practice on track to eliminate doughnut hole by 2020?
A: This hasn't been an issue that has received much attention.

Q: Why wouldn't Republicans want to keep the individual mandate to stabilize the individual market and keep the young healthy ones in the system?
A: The idea of individual freedom has been the rationale for opposing the individual mandate.

Q: What is the future of COBRA as creditable coverage for Medicare?
A: This effort will be one that we continue to pursue.

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Q: I didn't catch the full comment regarding Medicare Open Enrollment change? There was a slide on that.
A: The OEP provision of the legislation (Sec. 17005, Preservation of Medicare beneficiary choice under Medicare Advantage) addresses a needed change to restore an option that was taken away by the ACA. Beneficiaries enrolled in a Medicare Advantage (MA) plan used to be able to make a one-time switch to another MA plan that better met their healthcare needs between January and March. Under the ACA, beneficiaries enrolled in MA plans who wish to make a plan change only have one option—disenrolling from their MA plan to enroll in traditional Medicare. As a result, low-income beneficiaries may experience significant gaps in coverage, leaving vulnerable seniors unable to afford a supplement or Medigap plan to cover these gaps.

The 21st Century Cures Act provides for MA eligible individuals to make a one-time change during the first three months of any year to another MA plan, elect original Medicare fee-for-service program, or to elect coverage under part D. This provision will be effective beginning in 2019. NAHU worked with Representatives Keith Rothfus (R-PA-12) and Kurt Schrader (D-OR-5) as the primary sponsors of the original legislation. Language from the bill had been passed by the House Ways and Means Committee in June 2015, but that language was later stripped from the bill's final passage by the House chamber, before ultimately being included in the 21st Century Cures Act.

Q: Is it likely to have the "Employer Reporting" requirement for 2017 (and 2018)?
A: Yes, for the time being. Stay the course until we have a change that is official.

Q: What's the likelihood the Trump Administration will drop its appeal of House v. Burwell?
A: That will cause problems of its own as the law requires the cost-sharing payments. But, this is one of the items that will be an early focus of the administration.

Q: Will the Essential Benefits go away in any part to lower the cost of premiums?
A: We may see some changes in essential benefits or it may be that states will have a greater role in selecting them. Really everything is on the table at this point in time.

Q: What about grandmothered policies for Individuals and small employers?
A: No changes at this time.

Q: Do we advise our employers to get their ACA reports complete or wait for possible changes or further delays?
A: Stay the course!

Q: Why hasn't NAHU, with all their health plan knowledge, proposed a model of a functioning national healthcare

policy?
A: We have done so many times over the years. See #2 and #3 as well.

Q: If ACA is replaced with tax-advantaged HSA's for all, does that mean the end of group health insurance as we know it? Would plans still be offered thru employers? What would that mean for group health consultants?
A: We continue to remind Congressional leaders that employers have an important role in providing affordable quality coverage for employees.

Q: Re: Selling across state lines; Carriers in "cheaper" states would need to charge more to cover "expensive" states residents. So other than sounding good politically, what the big deal?
A: That is one of the points that we continue to make.