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State Reinsurance Programs Aimed at Stabilizing Marketplaces Could Impact Employers

Several states are taking steps to help reduce high premiums in the ACA individual marketplaces after Congress was unable to pass a plan to stabilize those markets. State programs are designed to address the impact of high-risk individuals in the marketplaces, and, in some cases, involve section 1332 waivers under ACA to establish a reinsurance program. These reinsurance programs could involve increased costs for employers if states look to them as a source of tax revenue to boost the marketplaces.

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Federal Reinsurance Programs

The Affordable Care Act (ACA) included a transitional reinsurance program designed to provide temporary funding to insurers for high claims costs incurred by enrollees in the individual marketplaces. This program was intended to reduce the uncertainty of insurance risk in the individual market by partially offsetting risk for high-cost enrollees. The reinsurance program was funded by fees assessed against insured and self-insured health plans for 2014, 2015 and 2016. These fees were assessed on a per-covered-life basis — and included not only enrolled employees, but also spouses and other dependents. (See our December 6, 2012 *For Your Information*.) The expiration of this program after 2016 has been one of the reasons why premiums have increased in the ACA marketplaces.

Congress has attempted to address the need for a new federal reinsurance program. For example, there were two bipartisan Senate bills — one cosponsored by Senators Susan Collins, R-Maine, and Bill Nelson, D-Fla., and the other by Lamar Alexander, R-Tenn., and Patty Murray, D-Wash. — that would have provided $5 billion a year to finance the states' reinsurance pools. (See our *Legislate* from January 12, 2018.) But to date, no legislation has been enacted at a federal level.

State-Based Reinsurance Programs

In part due to the absence of federal action, states have begun establishing their own reinsurance programs to help reduce premiums and stabilize their individual marketplace. In some cases, states are using section 1332 waivers under the ACA that allow them to apply to the federal government for "innovation waivers." These waivers give states the flexibility to pursue their own innovative strategies to provide their residents with access to high quality, affordable health insurance and receive some federal funding. The list of states considering or implementing reinsurance programs is growing rapidly. Over a dozen are already considering or implementing in this area, including Alaska, Hawaii, Indiana, Louisiana, Maryland, Minnesota, New Jersey, Oregon and Wisconsin.

A key issue for many of these state initiatives is identifying a revenue source to help fund the programs. While states are taking different approaches, some may look to employer health plans to help provide funding — as the federal transitional reinsurance program did. Specifically:

- This week, the Louisiana House passed legislation that includes an assessment of approximately $1.40 per covered individual in health plans. This assessment could apply to both insured and self-insured group health plans. The bill now goes to the state Senate.
- New Jersey legislation would include an assessment on "all qualified health benefit plans, including plans administered by third party administrators."

Looking Ahead

Competitive and stable individual marketplaces will benefit many employers, even if only indirectly. For example, a stable individual marketplace will reduce uncompensated care costs that would otherwise be passed on to employer plans through higher healthcare costs. It can also serve as an alternative source of coverage for COBRA beneficiaries, early retirees and part-time employees who are not eligible for an employer plan. But state-based reinsurance programs could have a significant impact on employers through not only potential new taxes or assessments, but also the administrative burden of complying with different and varied state requirements.

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