

Latest Challenge to Affordable Care Act Arises in Idaho

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The decision of Blue Cross of Idaho to offer health insurance plans that appear to violate federal law begins the latest chapter in the continuing saga of the Affordable Care Act's increasingly tenuous existence. Blue Cross filed five individual "state based plans" on Tuesday with the Idaho Department of Insurance. Among the features: premium rates based on an applicant's health status. One of the central features of the ACA, or Obamacare, of course, is that health insurance coverage in the individual market cannot be underwritten on the basis of health factors. In so doing, the Idaho Blue's plans run afoul of the consumer protection mandates that became effective in 2014 under the ACA.

The ACA has been attacked on multiple fronts since it was first enacted. It has survived a welter of lawsuits, numerous legislative repeal attempts, online enrollment glitches, and, in 2013, a filibuster and government shutdown. It may even be able to withstand the loss of the federal mandate requiring individuals buy health insurance or face a tax penalty if they don't. But observers agree that this is the latest "beginning of the end." If Idaho's state officials approve the plans, experts predict that they will immediately draw considerable market interest from consumers whose relatively good health will qualify them for lower-cost plans. This in turn will "rob" the federal healthcare exchange-approved plans of healthy insureds, leaving them with a less desirable book of business, in turn requiring premium increases that will make such plans even less desirable. Other states—in particular, solidly "red" states—might allow similar plans to be marketed unless the federal government steps in to stop the practice.

Given the Administration's very vocal disdain for the ACA, intervention is not a sure bet. More likely: litigation in Idaho and other states, as consumer rights and medical advocacy groups bring suit to enjoin marketing of non-ACA compliant plans and protect Obamacare—which itself is in need of some urgent care these days.