


**WHAT THE HECK IS GOING ON  
WITH THE  
AFFORDABLE CARE ACT?**

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MARCH 5, 2019**


## 2 ACA IN A NUTSHELL

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- Requires ten essential health benefits\* to be covered by individual and small group health insurance.
  - Requires employers to cover their workers, or pay penalties, with exceptions for small employers.
  - Prohibits most insurance plans from excluding people for preexisting conditions, discriminating based on health status, and imposing annual monetary caps on coverage; and reforms to require guaranteed issue and renewal of policies, premium rating rules, nondiscrimination in benefits, and mental health and substance abuse parity.
  - Require insurance plans to cover young adults on parents' policies.
  - Requires individuals to have insurance, with some exceptions, such as financial hardship or religious belief (but penalty is now \$0).
  - Requires creation of state-based (or multi-state) insurance exchanges to help individuals and small businesses purchase insurance. (Yourhealthidaho.org)
  - Expand Medicaid to cover people with incomes below 133 percent of federal poverty guidelines.
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# 3 ACA IN A NUTSHELL

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- Federal subsidies limit premium costs for low income individuals.
  - Require creation of temporary high-risk pools for those who cannot purchase insurance on the private market due to preexisting health conditions.
  - Establish a national, voluntary long-term care insurance program for “community living assistance services and supports” (CLASS), with regulations to be issued by Oct. 1, 2012.
  - Enact consumer protections to enable people to retain their insurance coverage.
  - Provisions intended to prevent illness.
  - Provisions related to improving quality and system performance.
  - Provisions related to medical workforce.
  - Provisions that intend to address rising health costs.
  - States may implement provisions—or defer to the federal government to do so—such as establishing a temporary high-risk pool or creating and administering health benefit exchanges.
  - Provides tax credits to certain small businesses that cover specified costs of health insurance for their employees, beginning in tax year 2010.
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## 4 10 ESSENTIAL HEALTH BENEFITS

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- Doctor visits
- Hospitalization
- Emergency services
- Mental health and substance abuse services
- Rehabilitative and habilitative services (like chronic disease management)
- Maternity and newborn care
- Laboratory tests
- Prescription medicine
- Preventive wellness and screenings
- Pediatric care (includes oral and vision health)

## 5 MEDICAID EXPANSION

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- In November 2018, Idaho voters passed Proposition Two to expand Medicaid and provide coverage to individuals with an annual household income up to 138% of the Federal Poverty Level.
- SBI204 (2019) required four waivers:

## 6 COVERAGE CHOICE WAIVER (1332)

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- To allow Idahoans the choice to maintain their private insurance and a tax credit rather than enrolling in Medicaid.
  - The Department of Insurance received a letter from CMS on August 29 stating that the 1332 Coverage Choice waiver the waiver was incomplete.
  - Idaho is currently taking steps to submit additional information required by CMS so that the application can be fully considered on its merits.

## 7 WORK REQUIREMENTS WAIVER (1115)

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- Requires that beneficiaries work at least 20 hours a week as a condition of being eligible for Medicaid.
  - DHW submitted the Waiver to CMS on September 27, and received an “application complete” letter on October 3.
  - DHW is currently meeting with CMS weekly on the details of this waiver with the goal of getting approval as soon as possible.
  - CMS has approved work requirements in 10 states, but courts or states have blocked implementation in 5 states. Arkansas is only state to implement its requirement.
  - DC court of appeals recently held Arkansas work requirement was “arbitrary and capricious” because it did not address how the program would promote the objective of Medicaid as defined under federal law: providing health coverage to the poor.

## 8 FAMILY PLANNING SERVICES WAIVER

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- Require individuals seeking family planning services to have a referral from their assigned medical home if the family planning service provider is outside the patient's established medical home.
  - DHW submitted the waiver to CMS on October 21 and received an “application complete” letter on October 28.
  - DHW is currently meeting with CMS weekly on the details of this waiver with a goal of getting approval as soon as possible.



## 9 INSTITUTION FOR MENTAL DISEASE EXCLUSION WAIVER

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- Would allow individuals with Medicaid coverage to receive inpatient treatment for mental health and substance use disorders in a freestanding psychiatric hospital.
  - The exclusion barred Medicaid from paying for treatment in mental health facilities with more than 16 beds.
  - These services are currently only available when rendered in the psychiatric unit of a full-service hospital.
  - This waiver was released for public comment on November 22.

# 10 TEXAS V. UNITED STATES

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- Divided panel of Fifth Circuit held entire ACA invalid because individual mandate (“shared responsibility payment”) unconstitutional.
- Remanded to lower court for severability ruling.
- Also - US House of Representatives petitioned for cert and moved to expedite consideration.
- SCOTUS declined to expedite the case; 5<sup>th</sup> circuit voted against one judge’s request for rehearing.
- Any chance SCOTUS decides case on merits before election? Or ever?

## II RISK-CORRIDOR CONSOLIDATED CASES – MODA V. UNITED STATES

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- ACA three year risk corridor program used federal funds to cover certain insurer losses and to recover profits.
- Congress did not appropriate funds to cover payments.
- Insurers sued.
- SCOTUS heard oral arguments in December 2019.
- Decision expected by summer 2020.

## 12 SHORT-TERM LIMITED DURATION RULES

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- Federal STLDI plans are exempt from minimum essential coverages standards and essential health benefits required by ACA.
- Obama admin rules limited STLDI to three months.
- New Trump admin rule allowed plans to last for less than a year, renewable for up to three years – if state law allows.
- Trial court upheld Trump STLDI rule.
- On appeal to DC Circuit. Idaho filed amicus brief.
- Idaho HB 275 (2019) authorized “enhanced short term plans.”
- IDAPA 18.04.16 implemented enhanced short term plans.

# 13 IDAHO ENHANCED SHORT TERM PLANS

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- Meant to provide an option for people who are priced out of QHPs but do not qualify for premium tax credits (aka subsidies).
- Some have similar or better actuarial value than ACA plans.
- Contain protections for people with preexisting conditions (“guaranteed issue”).
- Require essential health benefits mandated by ACA, other than pediatric dental or vision.
- Guaranteed renewable.
- Intended to attract healthy people into the market.
- ESTP carriers must also offer QHPs through the Exchange in the same service area.

# 14 ASSOCIATION HEALTH PLAN RULES (NY V. USDOL)

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- Trump admin regs sought to expand access to non-ACA plans by changing association health plan rules.
- “New” AHPs would not have MECs and EHBs.
- 11 states and DC sued in April 2019.
- Trial court held that rule’s definition of “employer” violated ERISA and the ACA. 363 F. Supp.3d 109.
- Trump admin appealed to DC Circuit.
- Oral argument held November 14, 2019

# 15 FRANCISCAN ALLIANCE V. AZAR (SECTION 1557 TRANSGENDER/ABORTION RIGHTS CASES)

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- Section 1557 of the ACA prohibits discrimination “on the basis of sex” in certain health programs. Health and Human Services rule from 2016 interpreted the prohibition of discrimination on the basis of sex in Section 1557 to include gender identity.
- Trump administration has proposed regs to eliminate protections, but rules are still pending at OMB.
- USDC, N.D. Texas issued nationwide injunction blocking OCR from enforcing DHS rule. On appeal to 5<sup>th</sup> Circuit.
- Nonetheless, because 1557 includes a private right of action against covered entities, litigation continues. Other courts have ruled that gender identity is a protected class.

## 16 LITTLE SISTERS OF THE POOR/TRUMP V. PENNSYLVANIA (RFRA CASES)

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- SCOTUS consolidated and granted cert January 2020. oral argument scheduled for April 29, 2020.
- Whether a litigant who is directly protected by an administrative rule and has been allowed to intervene to defend it lacks standing to appeal a decision invalidating the rule if the litigant is also protected by an injunction from a different court.
- Whether the federal government lawfully exempted religious objectors from the regulatory requirement to provide health plans that include contraceptive coverage.



## 17 SABOTAGE CASE – COLUMBUS V. TRUMP

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- Plaintiffs challenge Trump admin actions are contrary to ACA and designed to sabotage ACA.
- Violates oath to “take care that laws be faithfully executed.”
- Motion to Dismiss is pending in federal district court in Maryland.