

*A Special Wish To Our Members and Readers...*

Orange  
County Association of  
Health  
Underwriters

Volume 11, Issue 3  
January/February, 2017



**C.O.I.N.**

COUNTY OF ORANGE INSURANCE NEWS



OCAHU Wishes You a Safe, Healthy and Prosperous...



Happy New Year

### Inside this Edition:

- **Feature Article:** Making Healthcare Great Again...
- **January Program Details**
- **Compliance Corner—*Legal Briefing*:** 1094/1095 Extension Announced ; EEOC Wellness Regulations; Transitional Reinsurance Program Fee; California Cities with Minimum Wage, Paid Sick Leave Provisions—***Privacy & Security Updates and Enforcement:*** NEW GUIDANCE ON HIPAA & FTC ACT; UMASS BREACH; HHS/OCR VICTIM OF PHISHING SCAM REGARDING THEIR AUDIT PROGRAM
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- **Special Thank you to 2016 Corporate Sponsors**
- **Membership News**– New Members since November 1; Members Up for Renewal;
- **OCAHU Board of Directors**
- **Business Development Summit**

**DON'T MISS  
OCAHU MONTHLY MEETING**

**Tuesday, January 10, 2017**

**Marilyn Monahan,  
Monahan Law Office:**

**Health and Welfare Plan Compliance Checklist For Agents and Their Employer Clients (1 Hr of CE)**

**For More Information, See Inside this Issue!**

**Radisson Hotel Newport Beach**

*See inside for more details!*

**This Issue's Feature Article:**

**Making Healthcare Great Again?... A Look Into the Trump Administration's Likely Plan for Healthcare Reform and Its Stance on the ACA**

**By: Dorothy Cociu, RHU, REBC,  
GBA, RPA, LPRT**

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# HERE COMES THE BOOM!



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Our association is a local chapter of the National Association of Health Underwriters (NAHU). The role of OCAHU is to promote and encourage the association of professionals in the health insurance field for the purpose of educating, promoting effective legislation, sharing information and advocating fair business practices among our members, the industry and the general public.

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**Letter from OCAHU President, Maggie Stedt, LPRT**

As 2016 comes to a close and we take our breath to enjoy the holidays with family and friends, I hope you can take some down time to relax as next year promises to be one of many challenges!

In this time of change you need your association more than ever to keep you informed and prepared. Each of your individual voices are important, especially as our local, state and national associations move forward to work with new political reality. Your PAC contributions and participation in the various Operation Shouts will be a key factor for success.

Let Rob Semrow know if you are interested in joining in our Adopt a Legislator program! You also have the opportunity to join our Golf and Women in Business committees; if so, contact Pat Stiffler or John Evangelista. Do you have a passion for membership? If so, then contact our membership team of Tracy Hanson or Lynn Wischmeyer. And, new to our association, we have the Vanguard program led by David Ethington. If you are less than 5 years in the business or want to help mentor the new folks then this is a program for you!

Never doubt that you important part of this association. I was struck on election night by how in the reporting of precinct results in many states, that the difference was as low as 18 votes in those precincts as to which party would take the state!

Please plan to join us at the monthly meetings and especially for our Business Development Summit in February. It will be a chance for you to increase your knowledge, network and make your voice heard.

In January your Board of Directors will be holding a Strategic Planning Meeting to finish up the year which ends on July 1st. We look forward to hearing your comments, program ideas and concerns so email or call us before January 10<sup>th</sup>! ##

**Employers & Health Coverage Providers: You Have More Time in 2017 to Provide Information Forms to Covered Individuals**

**IRS Health Care Tax Tip 2016-78, November 30, 2016**

The IRS extended the 2017 due date for employers and coverage providers to furnish information statements to individuals. The due dates to file those returns with the IRS are not extended. This chart can help you understand the upcoming deadlines.

Action	2017 Reporting Due Dates for...		
	Applicable Large Employers – Including Those That Are Self-Insured	Self-insured Employers That Are <u>Not</u> Applicable Large Employers	Coverage Providers – other than Self-Insured Applicable Large Employers*
Provide 1095-B to responsible individuals	Not Applicable**	Mar. 2	Mar. 2
File 1094-B and 1095-B with the IRS	Not Applicable**	Paper: Feb. 28 E-file: Mar. 31*	Paper: Feb. 28 E-file: Mar. 31*
Provide 1095-C to full-time employees	Mar. 2	Not Applicable	Not Applicable
File 1095-C and 1094-C with the IRS	Paper: Feb. 28 E-file: Mar. 31*	Not Applicable	Not Applicable



**Feature Article: *Making Healthcare Great Again... A Look Into The Trump Administration's Likely Plan for Healthcare Reform and It's Stance on the ACA***

**By: Dorothy Cociu, RHU, REBC, GBA, RPA, LPRT, OCAHU V.P. Communications**

Americans went from the state of shock and disbelief, with the nation divided between Clinton supporters saddened, Republicans generally relieved, and Trump supporters ecstatic, to a state of wait and see. Fortunately, the stock markets are responding well after the election, so many Americans are open to see just what may come of our new President and the new administration. Many, many questions remain, and we'll all learn together what the new world according to Trump will mean to all of us.

Now that the election is behind us, those of us in the health insurance business are wondering what's next? The reports come in daily, and change just about as often. So what can we expect in the new Trump Era? We'll put the Crystal Ball away for now and focus on what we know, what we think we know, and what we hope to expect in 2017 and beyond. The first focus will, of course, be the first 100 days... After that, we should know the direction we are headed with relative clarity. It's fairly certain that something will have to be done to address the adverse selection issues and enhance plan design to encourage a larger population of younger, healthy Americans to become insured, possibly with higher deductibles or catastrophic coverage availability; more than allowed under the ACA.

The Trump Administration and Republican party have made it clear that their intent is to repeal and replace the Affordable Care Act. But how and when? What does that mean to all of us?

I want to start by looking back at the past two months. Back in November, news reports focused on how repealing ACA would likely prove to be more difficult than the law's initial implementation. NAHU's Newswire quoted several stories, including the Los Angeles Times, Huffington Post, Politico, AP and Kaiser Health News on this subject. LA Times reporter Levey (11/21) stated that there was much chaos after ACA was implemented in 2013, reporting that 4 million people had lost coverage that did not meet ACA requirements, and state exchanges were still under construction. The LA Times reported that this "tumultuous episode could be dwarfed by what President-Elect Donald Trump's administration and its congressional allies unleash beginning of next year." The Times reported that they intend to repeal the ACA and implement "changes that are sig-

nificantly more far-reaching and could disrupt insurance coverage for many more Americans than did the original law." Other news organizations reported similar gloom and doom for our industry. Most notably, the collapse of the individual marketplace was predicted. Politico (11/21, Cancryn, Demko) reported that Republicans have been warning for years that the ACA would result in such, yet, "repealing the law without a replacement is likely to spook health insurers, who might bolt from the markets prematurely to avoid losses as some people stop paying their premiums, while others rush to have expensive medical procedures before losing coverage." The Associated Press (11/21, Fram) reported that Republicans must choose between speed and deliberation. One risk Republicans face is the fact that "while they're laboring on a replacement, nervous insurance companies began pulling out of markets and raising premiums." (*My question is, didn't premiums start to rise long before the election? I seem to recall several news reports of rising premiums for 2017 in the weeks and months prior to the election. I'm just sayin'....*)

As December approached, things started to look a bit more positive. House Speaker Paul Ryan, during a CBS 60 Minutes interview, said that once President-Elect Trump takes office, "the first bill we're going to be working on is our Obamacare legislation." When asked if the 20 million people who gained access to healthcare coverage because of the ACA would lose it, Ryan was firm on his response, "No, we want to make sure we have a good transition period, so that people can get better coverage at a better price." It was unclear how long such a transition would take.

On December 5<sup>th</sup>, the AP reported that a federal appeals court agreed to delay hearing a suit filed by House Republicans against the Obama Administration, alleging it is illegally funding subsidies for the ACA because Congress did not appropriate the money. The parties have until Feb. 21 to make their arguments.

So, that's a bit of the recent history in the news on this subject. Let's now dive into what we know and expect... The first 100 days of the Trump Administration will set the stage on healthcare policy. So what do we know or expect? I re-

***Continued on page 15***

# Health and Welfare Plan Compliance Checklist for Agents and Their Employer Clients (Course No. 346871 | 1-Hour CE)

Scrutiny of health plans—by both the DOL and IRS—will inevitably increase in the new ACA world. Producers and employers need to be prepared. This program will take you through the essential steps every self-audit should include in order to ensure that employers are prepared for an audit and are satisfying their fiduciary obligations. The program will also feature a discussion of common pitfalls, practical compliance tips, and best practices.

**January 10, 2016**

Radisson Hotel Newport Beach

4545 MacArthur Boulevard

Registration: 11AM

OCAHU Business and Lunch: 11:30 AM

Speaker Program: 12N



**Marilyn A. Monahan, Esq.**  
*Monahan Law Office*

- Takeaways:**
- Understand what the DOL and IRS will be looking for in an audit,
  - Learn how the ACA has changed the scope of an employer's administrative responsibilities,
  - Discussion of the role the insurance producer plays in compliance,
  - Practical tips for bringing health plans into compliance.



## ***Breaking Insurance Industry News!* Washington Department of Insurance Orders Zenefits to Cease Free Distribution of Employee Benefits Software, Noting it Violates State Insurance Law**

On December 1, 2016, Insurance Commissioner Mike Kreidler ordered Zenefits to cease free distribution of its employee benefits software, noting the tactic violates Washington state insurance law against inducements.

Washington is the first state to take action against the company for violating inducement laws. Under an agreement with Kreidler, Zenefits can challenge the order within 90 days.

California-based Zenefits began operations in Washington in 2014, selling online human resources services to businesses. As a part of its free software offer, Zenefits provided certain features with a paid commission. To access these premium features, the company required the client to designate Zenefits as its broker of record, then collected the commissions associated with the insurance product sold.

"The inducement law in Washington is clear," Kreidler said.

"everyone has to play by the same rules."

Washington state law permits a licensed producer to offer no more than \$100 per person during a consecutive period of 12 months.

Zenefits markets software with a value at \$29,100 to \$45,000 per year. The company will determine what fee to charge its Washington customers starting January 1, 2017, in accordance with the order.

Kreidler also fined Zenefits \$100,000 in October, 2016 for employing unlicensed producers to sell insurance in Washington, allowing unlicensed employees to complete 179 insurance transactions between Jan. 1, 2014 and November 30, 2015. *Washington is among a handful of states most recently California, to fine Zenefits for allowing unlicensed producers to sell insurance.*

Both actions resulted from a two-year investigation of Zenefits by Kreidler's office. Their investigation also found that Zenefits offered individual clients up to \$2,000 in cash for referring companies through a program called "Friends with Zenefits," and paid at least one individual \$250 for two referrals. *(Source: Washington DOI Press Release 12-1-16) ##*

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## COIN COMPLIANCE CORNER

What Agents and Your Clients Need to Know!

### *January, 2017 Legal Briefing*

#### **From Marilyn Monahan, Monahan Law Offices**

This is a summary of some recent developments of interest to consultants and employers:

**IRS 1094/1095 Reporting:** Good news for employers: in Notice 2016-70, the IRS extended the time for furnishing the IRS Form 1095-C and 1095-B to individuals. The deadline has been extended from January 31, 2017, to March 2, 2017.

The IRS did not extend the time period for filing these forms, along with the 1094-C and 1094-B, with the IRS. Those forms generally must be filed with the IRS by February 28, 2017, if filing on paper (or March 31, 2017, if filing electronically). If you are required to file 250 or more 1095-B or 1095-C forms (the requirement applies separately), you must file electronically.

Notice 2016-70 included additional good news for employers. The IRS also extended good-faith transition relief to the 2016 reporting requirements. The good-faith relief applies only to furnishing and filing incorrect or incomplete information reported on these forms, and not to a failure to timely furnish or file them.

**EEOC Wellness Regulations:** Earlier this year, the Equal Employment Opportunity Commission (EEOC) issued regulations explaining how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply to wellness programs. These new rules go into effect as of the first day of the first plan year that begins on or after January 1, 2017. Employers offering wellness

#### ***HIPAA Privacy & Security Updates—From Dorothy Cociu, COIN Editor and HIPAA Privacy & Security Consultant & Trainer***

##### ***NEW GUIDANCE ON HIPAA & FTC ACT; UMASS BREACH; HHS/OCR VICTIM OF PHISHING SCAM REGARDING THEIR AUDIT PROGRAM***

New Guidance was released on October 21, 2016 for HIPAA and the FTC Act. If your organization shares consumer health information, you must comply with not only HIPAA but also the Federal Trade Commission Act. Your disclosure statements should also comply with the FTC Act. You can find the new guidance at <https://www.ftc.gov/tips-advice/business-center/guidance/sharing-consumer-health-information-look-hipaa-ftc-act>.

On November 22, 2016, it was reported that The University of Amherst (UMass) agreed to settle potential violations of HIPAA's Privacy & Security Rules. The settlement includes a corrective action plan and a monetary payment of \$650,000, which is reflective of the fact that the University operated at a financial loss in 2015 (i.e, if they had made a profit, the penalty would have been higher).

On June 18, 2013, UMass reported to HHS/OCR that a workstation in its Center for Language, Speech, and Hearing (the "Center") was infected with a malware program, which resulted in the impermissible disclosure of electronic PHI (ePHI) of 1,670 individuals, including names, addresses, SSNs, DOBs, health insurance information, diagnoses and procedure codes. The University determined that the malware was a generic remote access Trojan that infiltrated their system, providing impermissible access to ePHI, because UMass did not have a firewall in place.

OCR's investigation indicated several potential violations, including: 1) failure to designate all of its health

*Continued on Page 14*

*Continued on Page 14*

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*For Information about 2017 sponsorships, or to renew your sponsorship with OCAHU, contact Peter Cabot at by phone at 714 271-5430, or by email at [peter.cabot@benefitmall.com](mailto:peter.cabot@benefitmall.com). Thank you!*



## Legislation Update

By Rob Semrow, VP of Legislation

Hello Fellow OCAHU members,

To say this year was a wild ride would be an understatement. From legislative pressures to an election that was unlike any we have ever seen in modern history, this year has been full of crazy moments.

Now what? As of the writing of this article, President Elect Donald Trump and the Republicans are in charge of the Federal government, while here in California the political landscape is dominated by the Democrats. Does anyone see any issues with that?

So what does this all mean? Well, there is still a lot to be settled and while the plans are being developed federally and statewide, there are certain to be some wild ideas and unfounded rumors and concerns.

Here are some of the issues that are certain to be reviewed and discussed in the short term including fixing the individual marketplace, guaranteed issue, federal and state exchanges, tax credits, the 3 to 1 age ratio and more.

A few of the common questions that the health underwriters are receiving have been addressed by Juli Broyles, our CAHU legislative advocate. I thank CAHU, our CAHU president Rick Coburn and Juli for taking the time to address what is on all of our minds. Here are some of the questions and answers that I share with you here to help give you some perspective.

Q. Even if changes are made at the federal level, do we think California will continue down the ACA model framework? What might it look like?

A. Everyone should keep in mind that California has its own statutory framework - distinct and apart from the federal law. California law will stand, even if the federal laws are changed, replaced, or repealed, unless the federal statute also dictates a dismantling of California law. I believe that California likely keeps Covered California. However, it may look and run much differently than it does today.

Q. If exchanges go away and are replaced with an advanceable and refundable tax credit, will California shut down Covered CA or continue as the source to access Medicaid/subsidies/cost sharing reductions?

A. At this point, it seems unlikely that Covered California would shut down anytime in the near term. They are fully funded for the current fiscal year. I believe that with the makeup of our Legislature and a same party Democrat Governor, it is very possible they will search to find new funding/tax dollars to keep as much of Covered California programs operational and intact as possible.

Q. If essential benefits are adjusted or removed, how will California react? Same with adjustments to community rating methodologies? What about actuarial values? Will California now be able to create new plans that are more affordable?

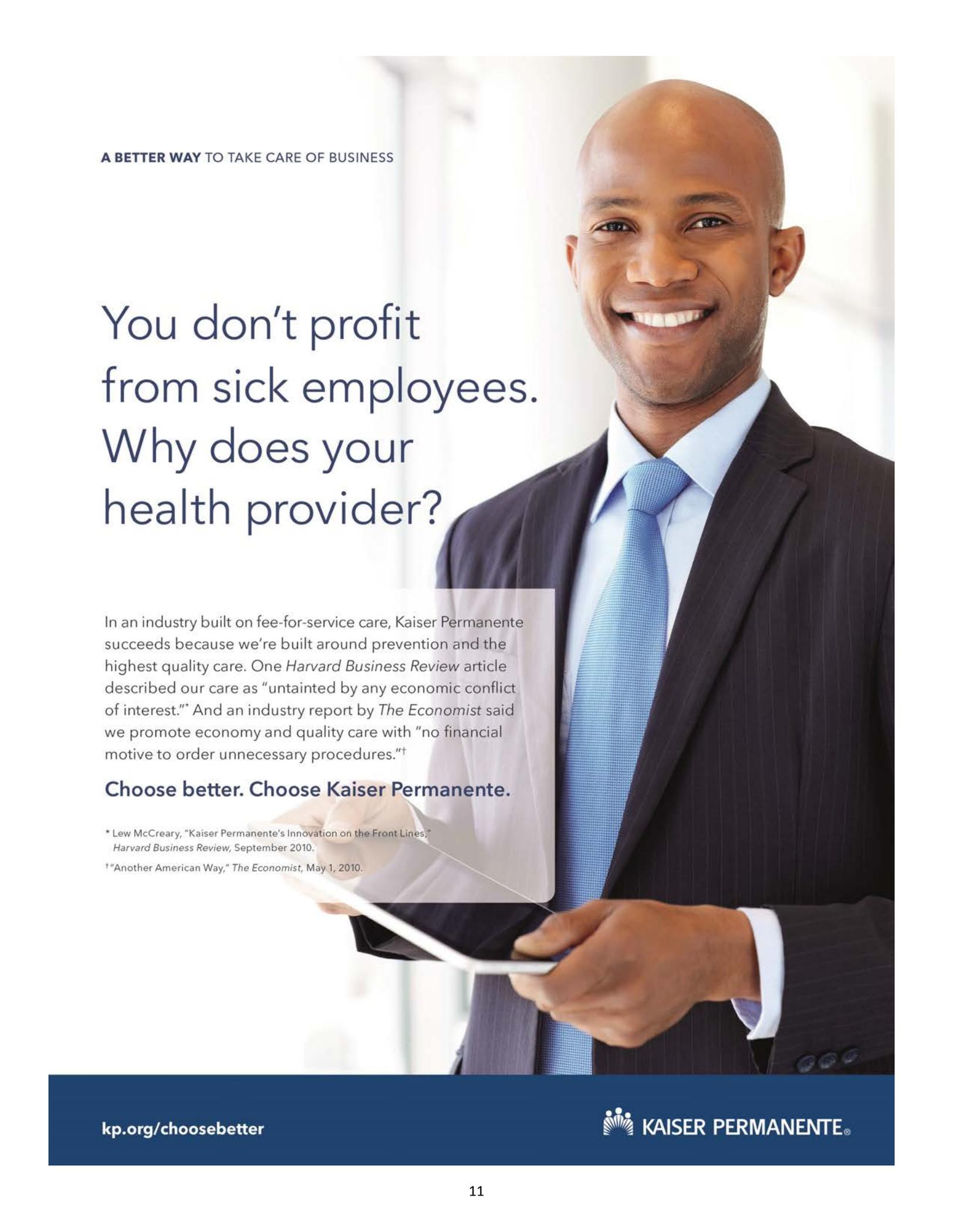
A. Remember this is only a guess, but I believe that guarantee issue may stay, but ways may have to be found to permit other types of underwriting so that pricing has a stable basis again. I also believe it is likely that the recently passed balance billing repair will stay.

Please remember that there is a lot of work ahead before any changes can or will be made. So stay informed, lend your voice and expertise where needed and be patient.

I'll close by saying to all of you, thank you for all that you do for our industry and the clients you serve!

##

*Continued on Page 12*

A smiling man in a dark suit, light blue shirt, and blue tie, holding a tablet. The background is a bright, out-of-focus office setting.

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\* Lew McCreary, "Kaiser Permanente's Innovation on the Front Lines," *Harvard Business Review*, September 2010.

† "Another American Way," *The Economist*, May 1, 2010.

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## Women In Business Brief: Patricia Stiffler

The OCAHU Women in Business committee has already been hard at work planning for our exciting 2017 event. Please mark your calendars for June 2, 2017 at the Pasea Hotel and Spa in Huntington Beach. Be sure to attend the Business Development Summit where we will announce the theme of this year's luncheon and the location of our Grand Prize. Sponsorship opportunities are still available. Please contact Pat Stiffler at 714-695-0674 or at [key-stonepatty@aol.com](mailto:key-stonepatty@aol.com) or Gail James Clarke at 866-921-6440 or [orangecountyyahoo.yahoo.com](mailto:orangecountyyahoo.yahoo.com) for more information.

### Employer Reporting— Continued from Chart on Page 4

\*If you file 250 or more Forms 1095-B or Forms 1095-C, you must electronically file them with the IRS. Electronically filing ACA information returns requires an [application process](#) separate from other electronic filing systems. Additional information about electronic filing of ACA Information Returns is on the [Affordable Care Act Information Reporting \(AIR\) Program](#) page on IRS.gov and in Publications [5164](#) and [5165](#).

\*\*Applicable large employers that provide employer-sponsored self-insured health coverage to non-employees may use either Forms 1095-B or Form 1095-C to report coverage for those individuals and other family members.

This chart applies only for reporting in 2017 for coverage in 2016.

See [IRS Notice 2016-70](#) for more information.



Above: WIB 2016 Pre-event Prep.



2016 WIB Event Photos, Huntington Beach, CA

Be sure to join us on June 2, 2017 for more great Women In Business Memories!



**Political Action in Orange County**  
**Ryan Dorigan V.P. PAC**

Congratulations on surviving another crazy 4<sup>th</sup> quarter!!

It's time now to relax and unwind and have a fun evening with colleagues and fellow members of this outstanding organization. The Orange County Association of Health Underwriters is excited to see everyone at the upcoming Poker Night on January 20<sup>th</sup> at Irvine Lanes. We will have live music, a buffet dinner, a cash bar and a chance to win great prizes with a full night of Casino action. We will offer everything from Black Jack and Roulette to Texas Hold'em and Craps. For those who are not poker fans we will have lanes open and bowling available as well. If you would like to play poker but you aren't sure of all of the rules, we will have professionals on site to help anyone who has ever wanted to learn how to play.

We will also be raising funds for PAC so it's fitting I think to host this event on Inauguration Day. Whether you were happy with the election results or disappointed, the important thing to remember is that we still have a lot of work to do. There will be a lot of new faces both in the State and National Government and one of the top priorities for the new administration is going to be to try to revamp our healthcare model. It's critical that we as Insurance Brokers have our voice heard in this debate. It's easy to feel overwhelmed with families, and bills, and responsibilities while also trying to find time to service your clients. Don't allow yourself to get stuck on the sideline. We may see changes to our industry within the next few months that are completely unprecedented but always remember that NAHU is your voice. The funds that we collect throughout the year through donations from your fellow members of this organization or from fund raising events like the Angels game will go directly to supporting the legislation and the reforms that protect the role of the independent broker. For the price of two cups of coffee a month you can help to insure your future. Join us for a night of fun and while you are there make sure to give to your PAC

We will be using this fun event to feature our Vanguard Council. Please invite friends and industry professionals who are not members of our organization or don't normally attend monthly OCAHU events. The Vanguard

Council is a group of innovative and inspiring professionals who are dynamically changing the way we look at managing our businesses by improving communication and networking platforms. The folks who are involved with the Vanguard council today will be the industry leaders of tomorrow.

Just to quickly recap... *We have Food, Fun, Booze, Music, Poker, Bowling and a chance to network with your friends from this organization and even raise money for a great cause. Please! Please! Please! join us on January 20<sup>th</sup> at 6PM at the Irvine Lanes.* Registration forms are available on the Orange County Association of Health Underwriters website ([www.ocahu.org](http://www.ocahu.org)) Sponsorships are available and this event is open to non-OCAHU members as well so invite your friends and family. No children under 21 will be allowed. If you need more information please call me at 714-348-0255 or email me at [rdorigan@appliedga.com](mailto:rdorigan@appliedga.com)

Thank you and let's make 2017 the year to give PAC!

##



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programs must ensure that their plans are fully compliant with the new EEOC regulations, along with all other governing regulations and laws.

**Transitional Reinsurance Program Fee:** Self-funded plans must pay the transitional reinsurance program fee for 2016 by January 17, 2017.

**California Cities with Minimum Wage, Paid Sick**

**Leave Provisions:** Cities throughout California have adopted ordinances setting minimum wages (and, in some cases, establishing paid sick leave) for employees working in those cities. Employers should make certain they are in compliance with these mandates.

*(Editor's Note: Special thanks to Marilyn Monahan for her legal brief. She promises to provide additional information in later issues of the COIN! Marilyn Monahan can be contacted at Marilyn A. Monahan, 4712 Admiralty Way, #349, Marina del Rey, California 90292; (310) 301-3300 (o) (310) 301-3309 (fax) [marilyn@monahanlawoffice.com](mailto:marilyn@monahanlawoffice.com)*

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**COIN Compliance Corner– HIPAA Privacy & Security Updates, Continued from page 8**

care components when hybridizing, incorrectly determining that while its University Health Services was a covered health care component, other components, including the Center where the breach of ePHI occurred, were not covered components. Because UMass failed to designate the Center as a health care component, UMass did not implement policies and procedures at the Center to ensure compliance with the HIPAA Privacy & Security Rules; 2) UMass failed to implement technical security measures at the Center to guard against unauthorized access to ePHI transmitted over an electronic communications network by ensuring firewalls were in place; 3) UMass did not conduct an accurate and thorough risk analysis until September, 2015.

In addition to the monetary settlement, UMass agreed to a corrective action plan that requires the organization to conduct enterprise-wide risk analysis; develop and implement a

risk management plan; revise its policies and procedures, and train its staff on these P&Ps.

On November 28, 2016, HHS/OCR issued an Alert, notifying entities that phishing email disguised as official OCR audit communication was being circulated on mock HHS departmental letterhead under the signature of OCR's director, Jocelyn Samuels. The email targets employees of HIPAA covered entities and their business associates.

The email prompts recipients to click on a link regarding possible inclusion in the HIPAA Privacy, Security, and Breach Rules Audit Program. The link directs individuals to a non-governmental website marketing a firm's cybersecurity services.

HHS/OCR alerted entities that in no way is this firm associated with the US Department of Health and Human Services or the Office for Civil Rights.

On November 30, 2016, additional clarification was released regarding the incident and audits of Business Associates.

A listserv announcement warning covered entities and their business associates about a phishing email that disguises itself as an official communication from the department. **OCR wanted to further share that this phishing email originates from the email address [OSOCRAudit@hhs.gov](mailto:OSOCRAudit@hhs.gov) and directs individuals to a URL at <http://www.hhs.gov>. This is a subtle difference from the official email address of the HIPAA Audit Program, [OSOCRAudit@hhs.gov](mailto:OSOCRAudit@hhs.gov), but is typical in phishing scams.**

HHS/OCR stated that covered entities and business associates should alert their employees of this issue and take note that official communications from the HIPAA Audit Program are sent to selected auditees from the email address [OSOCRAudit@hhs.gov](mailto:OSOCRAudit@hhs.gov).

*More updates will appear in the next issue of the COIN. ##*

***Not a member! If you're enjoying reading this issue and want to become a member, contact OCAHU!***



# Membership News—New! New Members and Renewals!

*OCAHU is proud to announce  
the list of new members  
since September 1st!*

- |                                |                   |
|--------------------------------|-------------------|
| Lucia Benavidez                | Allan H Ly        |
| Bruce N. Canetti,<br>CLU, ChFC | Linda S. Mason    |
| Mike D. Collins                | Amanda Morris     |
| Danillo A. Diaz                | Gabrielle Ruelas  |
| David P. Hagen                 | Darren Sugiyama   |
| Norman Ireland                 | Kenda Jean Taylor |

**WELCOME NEW OCAHU MEMBERS!!!!**

**Feature Article: (continued from page 5)**

cently asked [Janet Trautwein, CEO of the National Association of Health Underwriters](#), a well-known and respected health insurance expert in Washington, DC, for her thoughts on the subject. In light of the highly unexpected Trump presidential victory, in general, I asked Janet, what do you think their Administration will be able to accomplish in the first 100 days related to healthcare reform? There are many questions, as well as concerns. What will they work on first? What is their priority? Will the Paul Ryan influence on budgets be the deciding factor in the outcome of the Trump Administration’s healthcare policy? Budget reconciliation will likely be a top priority.

[“I think we will see Congress repeal parts of the ACA through budget reconciliation, but most of the market reform provisions will require bipartisan legislative action and can’t be accomplished using the budget procedure.”](#) Janet went on stating “This means we will be taking some of the items away that support those market reforms, such as the individual mandate for example, so we will be working to be sure that any market instability due to increased adverse selection is mitigated in other ways.”

There is much talk about the federal and state marketplaces, and what will happen with them. Is there a chance they will remain open and solvent? I asked Janet Trautwein this, and asked her to address the individual market in the post-ACA

**Pending Renewals (Billed but not yet Paid, since November 1, 2016)**

- |                             |                                 |
|-----------------------------|---------------------------------|
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| James D. Larid              | Louise Valencia                 |
| Tina Lacaste Mahinan        | John M. Wayland RHU             |
| Richard A. Mason CLU        | John Word III CLU, RHU,<br>REBC |
| Warren P. Paul              |                                 |

world.

“I think some of the state marketplaces will continue to exist for an extended period of time, and the federal marketplace will still continue at least as long as the tax credits continue, which could be as long as through 2018” stated Janet. “It will be difficult for Republicans to pull the 8 Democratic votes they would need in the Senate to discontinue the Marketplaces, so we may be operating under a scaled down version after tax credits are eliminated for an extended period of time.”

So what is the fate of the individual market? That “really depends on what is done about adverse selection”, said Janet. Adverse selection was of course one of the key factors that critics of the ACA used as a reason the law would fail, and many think that was indeed the case. Our fears of young, healthy adults choosing to continue to remain uninsured, rather than pay high premiums, seemed to indeed result, and older and sicker individuals ran quickly to apply for coverage, leaving the markets unstable. “I think there is an intention to keep some form of guaranteed issue although perhaps not make it as broad as it is now with annual enrollment periods,” Janet predicted. “Republicans intend to use some modified form of high risk pools – although these might look very different than they have in the past and would primarily be

**Continued on page 20**

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## Feature Article (continued from page 15)

for people who had not maintained continuous coverage. We could also see some reinsurance pools in some states instead of high risk pools and various other efforts to mitigate risk.” Of course many industry experts felt that the penalties for not enrolling were far too low to incentivize the better risks to indeed enroll in coverage.

So what type of timeline are we looking at? “It will take a while for the current schedule of benefits and modified community rating to change given this will take bipartisan legislative action that will be difficult to obtain initially,” continued Janet. “And without an individual mandate, we may see some people putting off enrolling in coverage. When this is combined with a roll back of the Medicaid expansion, we may have a period of time where the number of uninsured is higher before things stabilize.”

Here in California, many are asking about our state exchange, Covered California. Although politics will prevail, there is much discussion on the subject of the state of the state marketplace. I discussed this with [Julianne Broyles](#) (Juli) of California Advocates, Sacramento, California, where she and Mike Belote, Esq., work jointly as lobbyists and legislative analyst for the California Association of Health Underwriters.

“At this point,” stated Juli, “there is not a lot to report on Covered California action. For 2017, the state marketplace is set and nothing will change that as it would be too disruptive to the consumer. We also have to keep in mind that Covered California is also authorized by state statute. So it will take state statutory changes to change the mission of Covered California on going-forward basis.”

So what do we expect may happen? “At the Covered California Board meeting in November 2016,” Juli reported, “the board members took the sensible action of collecting comments from various experts and a futurist. However, all they could do is speculate on what the future of health insurance might be in California.” So, we wait in anticipation of the 2017 actions.

“The new California legislative session is just starting”, Juli continued. “The new members are being sworn in December 5. The remainder of December is given to the legislators to hire staff and organize their district and Capitol offices. They will also be preparing legislative ideas for the 2017 legislative year. New bills can be introduced up until February 17, 2017. [It is likely, given the early adoption of the ACA here, that the Legislature will protect and maintain as much of the](#)

[state marketplace as possible.](#) But CAHU will not have a reliable picture of what that looks like until CAHU has reviewed all the new proposed legislation after the bill introduction deadline.” We all hope that more will be known after the first quarter of 2017.

Back on the national regulatory front, I again questioned Janet Trautwein how things may play out. “Some of those other ways will include regulatory actions by the administration to modify existing regulations or to take action on other things we may have requested in the past but were unsuccessful in getting the current administration to do.”

It has been reported that President-Elect Trump is in favor of keeping some of the current provisions of the ACA, particularly that Trump will likely keep the Age 26 dependents and pre-existing conditions provisions of ACA, but eliminate or greatly change the remaining pieces of ACA. What do you think the likely plan will be to dismantle the ACA, I asked Janet, and can you comment on the hurdles they will encounter in attempting to do so?

[“The first step will be the repeal of budget related provisions through the budget reconciliation process, followed by some additional legislative efforts on non-controversial provisions of the law that could be amended on an interim basis to provide stability.](#) Some of the most important changes to be made will take a while, and some of the things Republicans want to do will be met with a good bit of opposition from Democrats. So, this is a multi-year effort to make real changes. [In the meantime, we will be working under a modified ACA, rather than a fully-repealed ACA.”](#)

So what does all this mean for those heavily impacted currently by the ACA? What about large employers, who provide healthcare coverage to their employees, which we all know, provide a very high percentage of the health insurance offered nationwide, are now mandated with pay or play rules and difficult reporting requirements?

Many large employer groups are asking about the Applicable Large Employer (ALE) mandate, and if that piece of the ACA will remain in place or be eliminated long-term. I asked Ms. Trautwein her thoughts on this subject. Will the penalties prevail?

[“The penalty for the mandate will be the one of the first things to go as it can be done through budget reconciliation,”](#) Janet stated. “But that doesn’t take away any of the other items, so technically, at least on a temporary basis, the mandate remains but without the penalty for non-compliance.

*Continued on page 21*



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### **Feature Article, (Continued from Page 20)**

However, some of the items that flow from the mandate carry other penalties, so it will be very important to watch to see exactly how broad any appeal is to determine what areas still require compliance.” So if the penalty is eliminated, how can anyone enforce the ALE requirements? Will the employer reporting continue, or will it be eliminated?

“There is bipartisan support for changing reporting,” commented Janet, “but it is unlikely to be eliminated entirely for a while. However, it is possible that reporting could be swept into a reconciliation bill – we just don’t know at this point.” So, if your large employer clients are asking, as mine are, I guess we’ll have to wait and see. So, pull out that crystal ball again... At least to take a peek at it from time to time.

Personally, my hope is that efforts will be made to make prescription drug pricing reform and provider transparency a priority. How long can consumers and insurers accept the huge increases in drug prices, including Hepatitis C drugs, the recent escalation in necessary routine medications like Epi-pens and other out of control drug costs? Recently one of our PBM companies used by our self-insured groups was audited, resulting in tens of thousands of dollars per employer of overcharges by the PBM’s to our self-funded clients. Yes, they will soon be receiving refunds, but if this sort of thing isn’t pro-

tected with checks and balances, the cost of prescription drugs will continue to escalate. And although Hep-C drugs are literally a wonder-drug to those with the illness, the surcharges placed on the insured groups and individuals to cover this risk is out of control. Are the patents on new drugs too long? Once those expire, of course, generic drugs save us all money. Yes, we need more R&D to find new, innovative and effective drugs, but we also need new ways to keep the costs in check. I would hope that this issue is addressed in Washington in the coming months and years.

On the transparency issue, I really hope that someone in Congress will take this on as a project. NAHU has of course supported transparency for some time. *We all shop online for our holiday gifts, our vacations, our vehicles... We compare prices and make good decisions. So why can’t we compare the cost of surgeries and hospital stays the same way? Why shouldn’t Americans be allowed to compare the cost of their upcoming medical services among the three or four providers in our area offering such services?* I would hope that under the administration of a business-man like Donald Trump, someone will see the value in letting the market prevail, and letting competition help solve some of these issues

**Continued on Page 22**

**Feature Article—(continued from page 21)**

of rising costs. No crystal ball there... Just my personal opinion, for whatever it's worth.

We know that NAHU and CAHU will be working toward satisfactory outcomes for our members. We will continue to rely on our federal and state experts, including Janet and Juli, for helpful information. "We are working with the incoming administration and Congress go ensure that the transition relative to health care is as stable as possible," Janet stated. "Change always causes some disruption but we will be working hard to ensure that our members and their clients are as protected as possible during the coming years."

We will, of course, continue to report to our members as things progress in both Washington and Sacramento. Look to your local NAHU chapter's legislative team to keep all of us informed!

##

### Suzanne Purnell Retirement

Suzanne Purnell, one of our founding members and Women in Business Chair has stepped down from her role as a member of the board of directors after 31 years of service. We wish her the best in her future endeavors! Thank you, Suzanne!



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