SEYFARTH SHAW

Health Care Reform Management Alert Series

HHS Moves Ahead In Face of ACA Uncertainty

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This is the one hundred and eighth issue in our series of alerts for employers on selected topics on health care reform. (Click here to access our general Summary of Health Care Reform and other issues in this series.) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

So, what is going on with the ACA Repeal and Replace efforts in recent days? When Paul Ryan faced defection in his own party from members of the Freedom Caucus who believed his American Health Care Act (AHCA) didn't go far enough, the bill was abruptly pulled from consideration by the House. The GOP faced the harsh reality of a splintered party where moderates (faced with pressure from their constituents at home) are looking for a solution that would retain much of the ACA's expanded coverage at a reduced cost, and where farther right conservatives want the federal government out of the business of individuals' health care entirely. The AHCA seemed to accomplish neither camp's goals, causing a loss of coverage at a potentially higher cost for individuals.

Trying to save President Trump's reputation as a deal maker, the White House seemed to move into the driver's seat meeting with members of the Freedom Caucus in early April. The White House allegedly made several concessions to the Freedom Caucus, including allowing states to apply for waivers from the essential health benefits standards, which required insurance policies to cover certain types of benefits, and the community rating restrictions, which limited the ability of insurers to charge more to sick people. Those changes, of course, would not necessarily play well with the GOP moderates, and Congress was allowed to adjourn on April 7th without any further movement. Even so, during the Congressional recess President Trump has indicated he still hopes to address health care reform prior to moving on to tax reform later this year.

In the face of this uncertainty with the future of the ACA, the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) have moved ahead with finalizing their proposed changes to ACA rules. The final rules, published on April 18, 2017 and effective June 17, 2017, primarily impact the individual and small group markets. The agencies perceive that individuals are not maintaining their coverage on the exchanges or enrolling only after discovering a health problem, contributing to the increase in the cost of premiums. As a result, the final rules make a number of discreet changes to improve the risk pool, including:

- **Open Enrollment Period.** Shortening the annual open enrollment period, which currently runs from November 1st to the following January 15th, to one which starts on November 1st and closes before the policy year starts on December 15th. This change will take place for the 2018 benefit year, but was already the rule for years starting in 2019.

- **Special Enrollment in HealthCare.gov.** All of those seeking to enroll in an exchange maintained on HealthCare.gov in a special enrollment period will be subject to pre-enrollment verification (from a pilot sample of 50%). State-based exchanges will remain free to determine whether and how to implement pre-enrollment verification of eligibility for a special enrollment period. Several other changes will be made to the rules surrounding special enrollment periods.
- **Premium Debt.** Insurers will be allowed to apply a premium payment to an individual's past debt for coverage from that issuer (or a related issuer) before counting the payment toward the newly elected coverage, without being deemed to violate the guaranteed availability requirement.
- **Actuarial Value.** The final rules increase the de minimis variation in the actuarial values used to determine the metal levels of coverage for the 2018 benefit year and beyond, to allow issuers greater flexibility in designing new plan options.

Other changes in the final rules are "intended to affirm the traditional role of States in overseeing their health insurance markets while reducing the regulatory burden of participating in Exchanges for issuers." These changes impact Qualifying Health Plans.

- **Network Adequacy.** The agencies will defer to the states with sufficient network adequacy review.
- **Essential Community Providers.** Issuers will be allowed to continue to use a write-in process to identify essential community providers who are not on the agency's list, and will lower the standard to 20% (from 30%), making it easier to build a provider network.

Seyfarth Shaw will continue to monitor Congressional and regulatory efforts and will alert clients as new developments occur.

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