PUBLICATION

New ACA Regulation: HHS Proposes Expanded Access to Short-Term Insurance

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On February 20, 2018, the Departments of Treasury, Labor, and Health and Human Services (HHS) issued a proposed rule to expand the availability of Short-Term, Limited Duration Insurance (STLDI). Building on President Trump's October 2017 executive order, the proposed rule represents the Trump Administration's next step to continue shaping the Affordable Care Act (ACA) through the regulatory process. The Administration believes that the proposed changes will provide more affordable coverage options, create greater flexibility for individuals to purchase health insurance, and promote more market competition. In contrast, critics assert that the proposal has the potential to destabilize the individual market further and increase premiums for enrollees with pre-existing conditions.

The HHS press release on the proposed rule is available here, a fact sheet is available here, and the link to the full proposed rule is available here. The Centers for Medicare and Medicaid Services (CMS) will accept comments on the proposed rule for 60 days, until April 23, 2018.

Background and Analysis

STLDI plans are designed to fill temporary gaps in coverage when an individual is transitioning from one form of coverage to another form of coverage. These plans are not subject to the ACA's guaranteed issue, essential health benefits, and annual/lifetime limit coverage requirements, which allows for significantly lower premiums and less generous coverage than other more comprehensive plans on the individual market.

The proposed rule amends the definition of STLDI to allow insurers to offer these plans up to a maximum duration of one year. In October 2016, the Obama Administration limited the duration of coverage under STLDI to a maximum duration of three months (90 days). The proposed rule also requires insurers to provide a notice to help consumers who purchase short-term plans to understand the coverage they are receiving.

HHS projects that approximately 100,000 – 200,000 individuals would shift from an ACA-compliant individual market plan to STLDI in 2019. The projection is based on enrollment trends prior to the Obama Administration's October 2016 final rule. HHS predicts that most of these individuals switching to short-term plans would be young or healthy, and only about 10 percent would have been subsidy-eligible if they maintained their insurance exchange coverage.

Under this proposed rule, the expanded availability of STLDI and repeal of the ACA's individual mandate penalty will both take effect in 2019. The coinciding effects of these policies means that actual enrollment in short-term plans in 2019 may be higher than HHS' projections. HHS claims their estimate incorporates the effects of repealing the individual mandate penalty, but it is unclear whether prior enrollment trends will serve as an accurate benchmark for predicting enrollment in short-term plans in 2019 without the individual mandate penalty in effect. Previously, short-term plans were limited because they do not comply with the ACA's individual mandate, so individuals enrolling in STLDI were forced to pay the individual mandate penalty. Starting in 2019, short-term plans may be more attractive than they were previously once the individual mandate penalty is repealed.

Democrats and some insurers have criticized this proposal because of its potential to destabilize the individual market further. The proposed change, taken together with the Administration's other ACA regulatory changes, is expected to encourage a bifurcated insurance market, whereby young and healthy individuals opt for short-term plans that are less costly and have fewer benefits, which will increase premiums for sicker and more costly individuals that remain in the ACA's insurance exchanges. If this dynamic occurs, it is likely that middle-income individuals would be exposed to potential premium increases, because lower-income individuals would likely be protected by the ACA's premium subsidies.

We will continue to monitor and report on HHS' proposed changes to the ACA as more information becomes available.