PUBLICATION

Trump Administration Expands Access to ACA-Exempt Short-Term Plans

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On August 1, 2018, the Departments of Treasury, Labor, and Health and Human Services (HHS) issued a final rule to expand the availability of short-term, limited duration insurance (STLDI or short-term plans). The final rule will allow individuals to enroll in short-term plans for an initial period of less than 12 months, compared to less than three months previously, and renew those plans for a maximum duration of no longer than 36 months in total. Short-term plans are not required to meet the Affordable Care Act's (ACA) comprehensive coverage standards, including providing coverage for individuals with pre-existing conditions. The Trump Administration and some Republican lawmakers argue that expanding short-term plans will provide more affordable coverage options, create greater flexibility for individuals transitioning between coverage options, and promote more market competition. In contrast, Democrats and some health insurers assert that the new regulation will likely increase premiums and destabilize the individual market further by siphoning off younger and healthier consumers.

The Centers for Medicare and Medicaid Services press release on the final rule is available here and the fact sheet is available here. The final rule takes effect 60 days after publication in the Federal Register, or approximately the beginning of October, just prior to the November 1 start of Open Enrollment for 2019.

Background and Analysis

The final rule is the second of three regulations resulting from President Trump's October 2017 executive order seeking to shape the ACA through the regulatory process. The Administration released a final rule earlier this year to expand access to association health plans (AHPs), which allow employers to form groups to collectively purchase health coverage for their employees (see Baker Donelson's overview here). The Administration has yet to release the third proposal expected to expand the use of health reimbursement arrangements (HRAs).

Short-term plans are designed to fill temporary gaps in coverage when an individual transitions between coverage options, such as between jobs or a student taking time off from school. 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 comprehensive plans on the individual market.

In line with the Administration's proposed rule, the final rule amends the definition of short-term plans to allow insurers to offer these plans up to an initial period of less than 12 months. In October 2016, the Obama Administration limited the initial duration of short-term plans to less than three months. The final rule retains the requirement for insurers to provide a notice to help consumers understand the coverage benefits and limitations of short-term plans. The final rule strengthens the language required in the notice and adds new language deferring further regulation of short-term plans to state authority.

In a notable change from the proposed rule, the final rule will allow insurers to permit renewals and extensions of short-term plans for a maximum duration of no longer than 36 months in total, similar to the maximum period for COBRA coverage. However, the Trump Administration declined to provide short-term coverage with guaranteed renewability, meaning that insurers could increase premiums or deny coverage based on health status. In explaining the duration change, the Administration stated that in addition to providing temporary coverage, short-term plans could also provide "a more affordable, and potentially desirable, coverage option for some consumers, such as those who cannot afford unsubsidized coverage in the individual market." Beyond the requirements for initial duration, total duration, and a consumer notice, the Administration declined to adopt additional federal standards on short-term plans, deferring to the states to adopt other standards as they see fit.

Revising their initial estimates in the proposed rule, HHS projects that approximately 600,000 individuals will enroll in short-term plans in 2019. Of these enrollees, HHS estimates that 200,000 individuals will shift from the ACA insurance exchanges to short-term coverage, 300,000 will shift from off-exchange comprehensive insurance plans to short-term coverage, and the remaining 100,000 will be new consumers who were previously uninsured. Under the final rule, the expanded availability of short-term plans and the repeal of the ACA's individual mandate penalty will both take effect in 2019. Previously, short-term plans were limited because they do not comply with the ACA's individual mandate, so individuals enrolling in short-term plans were forced to pay the individual mandate penalty. Starting in 2019, short-term plans may be more attractive than they were previously without the individual mandate penalty in effect.

Democrats and some insurers warn that the expansion of short-term plans will further destabilize the individual insurance market. Experts expect the final rule, in conjunction with the Administration's other ACA regulatory changes, to contribute to a bifurcated individual insurance market. Young and healthy individuals may likely opt for short-term plans that are cheaper and provide limited benefits, increasing premiums for sicker and costlier individuals – including people with pre-existing conditions – that remain enrolled in comprehensive coverage within the ACA's insurance exchanges. If this dynamic occurs, middle-income individuals seeking comprehensive coverage may be more exposed to premium increases, because lower-income individuals would likely be protected by the ACA's premium subsidies.

Based on the proposed rules for AHPs and short-term plans, the Congressional Budget Office (CBO) estimates that roughly 6 million additional people would enroll in either AHPs or short-term plans by 2023, including about 4 million in AHPs and about 2 million in short-term plans. CBO's analysis did not include the impacts of allowing short-term plan extensions up to 36 months, which may increase their take-up rates even further. CBO estimates that the proposed rules would decrease the number of uninsured individuals by roughly 1 million in 2023 and each year thereafter, with the majority of the previously uninsured enrolling in short-term plans. Finally, CBO estimates that the proposed rules on AHPs and short-term plans will cause average premiums to increase two to three percent in the ACA insurance exchanges. CBO will likely issue new estimates to account for the final regulations.

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