

CMS Proposes Affordable Care Act Exchange, Individual, and Small Group Insurance Market Changes

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Not relying on Congress to take action on the Affordable Care Act, the Centers for Medicare and Medicaid Services (“CMS”) has proposed new regulations intended to attract health insurance issuers back into ACA health insurance exchanges and stabilize the individual and small group insurance markets.

On February 17, 2017 CMS proposed a set of modifications to regulations promulgated pursuant to The Patient Protection and Affordable Care Act (Pub. L. 111-148) and The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), collectively known as the “Affordable Care Act” or “ACA.”

A primary goal of the proposals is to improve the insurance risk pool in the ACA exchanges, individual, and small group markets by promoting continuous health insurance coverage and reducing incentives for individuals to enroll in health insurance plans only when they require services.

For example, the proposed rule would allow CMS to verify that individuals seeking to enroll in the Exchanges within a special enrollment period (i.e., outside of the annual open enrollment period) are eligible for special enrollment. Current CMS policy allows individuals to self-attest that they meet special enrollment period eligibility requirements and enroll without further verification.

The proposed rule would also reduce the annual Exchange open enrollment period for 2018 so that it begins November 1, 2017 and ends December 15, 2017 (current regulations have the 2018 plan year enrollment period lasting until January 1, 2018). CMS states that the 15 day enrollment period reduction may have a positive impact on the Exchange risk pool by reducing the adverse impact of enrolling individuals who learn they will need services in late December.

Another proposal aimed at promoting continuous insurance coverage (rather than enrollment when services are needed) is to permit insurance issuers to attribute an individual's premium payment for new coverage to any debt the individual owes for

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premium non-payment for coverage from the same issuer within the prior 12 months. The issuer would be permitted to deny enrollment for the new coverage and apply payment to the past debt. Regulations at 45 C.F.R. § 147.104 state that issuers must guarantee availability of coverage to individuals and employers, and current interpretation of that regulation allows an individual to avoid premium payment for current coverage at the end of a plan year, yet obtain new coverage from the same issuer so long as one month's premium is paid at the beginning of the plan year.

CMS also proposes to increase the flexibility issuers have to design health plans that meet the Affordable Care Act's required coverage level. Under the proposal, health plans that have an actuarial value ranging from -4 to + 2 percentage points from the required actuarial value of health coverage would be considered a *de minimis* variation, and would meet the individual and small group market standard. Current regulations allow a variation of -2 to +2 percentage points.

CMS proposes that the States review the adequacy of an issuer's provider network, rather than requiring issuers to comply with CMS network adequacy guidance. Where a State does not have a sufficient network adequacy review process, CMS would rely on an issuer's accreditation from the National Committee for Quality Assurance, URAC, or the Accreditation Association for Ambulatory Health Care as a network adequacy review.

Lastly, the proposal would reduce by 10% the minimum percentage of Essential Community Providers (providers that serve predominantly low-income and medically underserved individuals) in a plan service area that an issuer must include in its network, and would allow greater flexibility to identify Essential Community Providers.

Whether these proposals are finalized and are enough to attract health insurance issuers back to the Exchange marketplace remains to be seen. And legislation to repeal or significantly modify the ACA could make the latest CMS proposals moot. Nonetheless, CMS is not assuming the ACA Exchanges will disappear, and appears to be moving forward with efforts to stabilize the Exchanges and individual and small group markets.

A copy of the proposed rule is available here: <https://www.gpo.gov/fdsys/pkg/FR-2017-02-17/pdf/2017-03027.pdf>