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OAHU Regulatory Alert!

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April 10, 2018**

CMS extends Transitional Plans

I am pleased to report great news! Yesterday, the U.S. Department of Health & Human Services, Center for Medicare & Medicaid Services (CMS) extended its transitional plans policy to years beginning on or before October 1, 2019, provided that all such policies end by December 31, 2019. Below is the text of the Bulletin CMS issued along with links to related information.

Date 2018-04-09

Title

CMS issues final 2019 Payment Notice Rule to increase access to affordable health plans for Americans suffering from high Obamacare premiums

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Final rule will improve program integrity, increase state flexibility, and reduce regulatory burdens

Today, the Centers for Medicare & Medicaid Services (CMS) issued the HHS Notice of Benefit and Payment Parameters for 2019. The final rule will mitigate the harmful impacts of Obamacare and empower states to regulate their insurance market. The rule will do this by advancing the Administration's goals to increase state flexibility, improve affordability, strengthen program integrity, empower consumers, promote stability, and reduce unnecessary regulatory burdens imposed by the Patient Protection and Affordable Care Act.

"Too many Americans are facing skyrocketing premiums that they can't afford and every year consumers are faced with the threat of fewer choices. This rule gives states new tools to stabilize their health insurance markets and empower citizens to find coverage that fits their families' needs and budgets," said CMS Administrator Seema Verma.

The Patient Protection and Affordable Care Act has led to higher premiums and fewer choices. Between 2013 and 2017, the average premiums more than doubled in the states using the Federal Health Insurance Exchange platform and half of the counties in America had only one issuer to choose from this year. The final rule provides states with the tools needed to help lower health premiums or, stabilize premium growth. The final rule will also enhance consumer choice by removing provisions that discourage issuers from offering plans that address the specific needs of Americans.

The final rule builds on the significant steps already taken by the Administration to promote health care choice and competition and decrease costs. Earlier this year, the Departments of Health and Human Services, Labor, and the Treasury published a [proposed rule](#) to expand the availability of short-term, limited-duration health insurance to provide consumers with more affordable options. CMS also issued the Market Stabilization Rule last year, which was implemented to lower premiums and increase consumer choice. All of this work is especially important at a time when the impact of the Patient Protection and Affordable Care Act has priced many consumers out of the insurance market.

The final rule issued today includes the following key provisions:

Increasing Flexibility

- **Essential Health Benefits (EHB):** To allow insurers to offer more affordable health plans, CMS is providing states with additional flexibility in how they select their EHB-benchmark plan. The final rule provides states with substantially more options in what they can select as an EHB-benchmark plan. Instead of being limited to 10 options, states will now be able to choose from the 50 EHB-benchmark plans used for the 2017 plan year in other states or select specific EHB categories, such as drug coverage or hospitalization, from among the categories used for the 2017 plan year in other states.
- States will also now be able to build their own set of benefits that could potentially become their EHB-benchmark plan, subject to certain scope of benefits requirements.
- **Qualified Health Plan (QHP) Certification Standards:** The final rule returns important oversight authority to states regarding state review of network adequacy, and eases burden on issuers related to essential community providers. The rule also eliminates the meaningful difference requirement for QHPs to give insurers more flexibility in designing plans.

Improving Affordability

- **Exemptions:** Exchanges will be able to make a determination of lack of affordable coverage based on projected income using the lowest cost Exchange metal level plan offered through the Exchange when there is no bronze level plan available in the service area.

Strengthening Program Integrity

- **Risk Adjustment:** The final rule amends the HHS-operated risk adjustment data validation program to reduce burdens on issuers. In addition, the HHS-operated risk adjustment program is recalibrated for the 2019 benefit year to incorporate new data that reflects the actual experience of individual and small group market enrollees, which should more closely reflect the risk within markets. In States where HHS operates the risk adjustment program, CMS will also provide states with the flexibility to request a reduction to the otherwise applicable risk adjustment transfers in the individual, small group or merged market by up to 50 percent beginning with the 2020 benefit year, which may be helpful in attracting and retaining insurers and more precisely accounting for relative risk differences in the state market. States requesting such a reduction must provide evidence and analysis that show the state-specific rules or market dynamics warrant the adjustment to more precisely account for the relative risk differences in the State's market and justifies the reduction amount requested.
- **Advanced Premium Tax Credit (APTC) Program Integrity:** The final rule improves program integrity by requiring Exchanges to implement stronger checks to verify applicants actually earn the income they claim to qualify for APTCs. The rule also requires Exchanges to discontinue APTCs for enrollees who fail to file taxes and reconcile past APTCs, even if the Exchange does not first send notice directly to the tax filer.

Empowering Consumers

- **Special Enrollment Periods (SEPs):** CMS is aligning the enrollment options for all dependents who are newly enrolling in Exchange coverage through an SEP and are being added to an application with current enrollees, regardless of the SEP the dependent qualifies under. For consumers newly gaining or becoming a dependent and enrolling through the birth, adoption, foster care placement, or court order SEPs, CMS amended and standardized the alternate coverage start date options available under all of these SEPs. CMS will also allow pregnant women who are receiving health care services through Children's Health Insurance Program (CHIP) coverage for their unborn child to qualify for a loss of coverage SEP upon losing access to this coverage. Finally, CMS exempts consumers from the prior coverage requirement that applies to certain special enrollment periods if they lived in a service area without qualified health plans available through an Exchange.

Promoting Stability

- **Medical Loss Ratio (MLR):** The final rule amends MLR requirements to reduce regulatory burden in order to stabilize insurance markets, increase insurer participation and expand consumer choice. Specifically, the rule reduces quality improvement activity reporting burdens on insurers and allows states to request reasonable adjustments to the MLR standard for the individual market if the state shows a lower MLR standard could help stabilize its individual insurance market.

Reducing Unnecessary Regulatory Burden

- **Small Business Health Options Program (SHOP):** The final rule removes several regulatory requirements on SHOPS and outlines a new enrollment process in the SHOP Exchanges using the Federal platform. This change allows SHOPS to eliminate the online enrollment process and allows employers to enroll directly with an Exchange-registered agent, broker, or issuer and, the FF-SHOPs and SBE-FP for SHOPS will exercise the flexibilities outlined in the notice for plan years beginning on or after January 1, 2018. By January 1, 2017 only 7,600 employer groups, covering 39,000 lives, were in enrolled in the federal SHOP Exchange, far short of the 4 million people the Congressional Budget Office once projected would be enrolled by 2017. Turning over enrollment to qualified agents and brokers will help small business more easily enroll in coverage and lower costs.
- **Rate Review:** The final rule increases the primary role of state regulators in the rate review process, while reducing the regulatory burden for states and issuers. The rule exempts student health insurance coverage from Federal rate review requirements, and raises the default threshold for review of reasonableness from 10 percent to 15 percent

The Final Annual Issuer Letter was also released today. This Letter provides operational and technical guidance to issuers that want to offer Qualified Health Plans (QHPs) in the Federally-facilitated Exchanges (FEEs) for plan years beginning in 2019.

CMS also issued new guidance today expanding hardship exemptions. Under this hardship exemption guidance, individuals who live in counties with no issuers or only one issuer, will now qualify for a hardship exemption from paying the Affordable Care Act's penalty for not having coverage. The guidance also allows CMS to consider a broad range of circumstances that result in consumers needing hardship exemptions.

In addition, CMS issued a bulletin today to extend the transitional policy for one additional year. This policy allows for the transition to fully Affordable Care Act compliant coverage in the individual and small group health insurance markets until 2019. CMS is releasing this bulletin to provide states additional flexibility and control over their health insurance markets.

To view the Final Annual Issuer Letter, please visit:

<https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2019-Letter-to-Issuers.pdf>

To view the Hardship Exemption guidance, please visit: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2018-Hardship-Exemption-Guidance.pdf>

To view the Extended Transitional Policy guidance, please visit:

<https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Extension-Transitional-Policy-Through-CY2019.pdf>

To view the Payment Notice Fact Sheet associated with this rule, please visit:

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2018-Fact-sheets-items/2018-04-09.html>

To view the Final Notice on the Federal Register, please visit:

<https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-07355.pdf>

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