PENNSYLVANIA
Health Law
PROJECT

Update on Federal Health Reform!
Proposed Federal Rule Threatens to Weaken the Affordable Care Act

A Proposed Rule Issued on February 21, 2018 by the U.S. Departments of Treasury, Labor and Health and Human Services threatens to further weaken the Affordable Care Act.

Background
The Trump Administration has steadfastly worked to weaken the Patient Protection and Affordable Care Act (ACA) and its benefits to millions of Americans. Last fall, the President signed an Executive Order stating, "Within 60 days of the date of this order, the Secretaries of the Treasury, Labor and Health and Human Services shall consider proposing regulations or revising guidance, consistent with law, to expand the availability of short-term, limited-duration insurance. To the extent permitted by law and supported by sound policy, the Secretaries should consider allowing such insurance to cover longer periods and be renewed by the consumer."

In December, the President signed tax reform legislation that included a provision eliminating the "individual shared responsibility payment", beginning in 2019, which was an essential building block of the ACA. The individual payment encouraged young, healthy adults to share in the health insurance risk pool to keep premiums affordable for all people including those with chronic conditions and disabilities.

The above Executive Order combined with the tax law eliminating the individual shared responsibility works to reverse the very intent of the ACA.

Proposed Rule
If the proposed rule is approved, insurers will again be able to sell short-term health insurance good for up to 12 months that could further agitate the marketplace that sells ACA-compliant health insurance policies. The short-term coverage would require applicants to answer a string of medical questions, and insurers could reject applicants with preexisting medical problems, which ACA plans cannot do. These policies would not have to include the ACA required essential health benefits and cover treatment for mental health and substance abuse or maternity care.

The Departments anticipate that these less expensive policies will most likely be purchased by young, healthy Americans banking on staying well, some of whom are currently enrolled in ACA marketplace plan.   But commentary to the proposed rule also noted that some people who switch from ACA coverage plans to these new short-term coverage plans may see “reduced access to some services,” and “increased out of pocket costs, possibly leading to financial hardship.”

Under the proposed rules, short-term policies would have to carry a disclosure: “This coverage is not required to comply with federal requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your policy carefully to make sure you understand what the policy does and doesn’t cover.”

Some insurers worry that consumers will be confused and may see short-term policies as a substitute for major medical coverage. “Expanded use of short-term policies could further fragment the individual market, which would lead to higher premiums for many consumers, particularly those with pre-existing conditions,” said a spokeswoman for America’s Health Insurance Plans, a trade group for insurers.

The federal government is accepting comments from individuals and organizations until April 23 (60 days from February 21st). Comments can be submitted electronically to https://www.regulations.gov (follow the “Submit a comment” instructions) or by regular mail to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-9924-P, P.O. Box 8010, Baltimore, MD 21244-8010.

This special alert is supported by a grant from the Pennsylvania Developmental Disabilities Council.