INFORMED ON REFORM

HEALTH CARE REFORM ALERT

Alerting you on health care reform legislation and regulations

October 13, 2017

Executive Action on Health Care

On Oct. 12, 2017, President Trump signed an Executive Order (EO) directing various departments to consider easing some health insurance rules related to small businesses, short-term health insurance policies and Health Reimbursement Accounts (HRAs). Through the EO, the Administration aims to provide Americans with more affordable choices and allow greater control over their health care decisions. This EO, along with the Oct. 12 White House announcement that it will stop making Cost-Sharing Reduction (CSR) payments and Interim Final Rules issued by the tri-agencies (Departments of Health and Human Services [HHS], Treasury, and Labor) last week on contraceptive coverage, are part of the Administration's ongoing efforts to modify or eliminate certain parts of the Affordable Care Act (ACA).

The EO provides guidance to various agencies, but does not make any immediate changes. Any details about potential changes will only be available once new or updated rules and guidance are released in response to the EO.

Executive Order

Association health plans

Under the EO, the Administration is directing the Department of Labor to consider proposing regulations or revising guidance to expand access to Association Health Plans (AHPs) that will allow small businesses to purchase insurance collectively across state lines. The Administration believes a "broader consumer-friendly interpretation" of ERISA could allow for AHP expansions. By joining an AHP, small employers within the same line of business could purchase plans collectively that would follow large group ACA mandates. Such health plans would not fall under small group market rules.

AHPs, as currently defined, cannot exclude any employee from participating, cannot determine premium prices based on health status, and must follow community rating rules. AHPs must also comply with other ACA patient protections, such as offering coverage to dependent children up to the age of 26, prohibiting annual or lifetime limits, and having zero cost-share for preventive services. These limitations could change as a result of the EO.

Short-term health plans

The tri-agencies are being asked to consider updating rules on short-term limited duration insurance to allow plans to last as long as 12 months and be renewable. These policies are not required to follow several of the ACA mandates, including covering Essential Health Benefits (EHBs), prohibiting annual limits, offering coverage for pre-existing conditions or ensuring Medical Loss Ratios (MLRs) are met. Currently, these policies can only be sold for periods of three months or less and cannot be renewed after a total of three months.

Health Reimbursement Accounts (HRAs)

The tri-agencies are also directed to consider ways to expand the flexibility of HRAs. The Administration specifically focused on three HRA rules it wants the agencies to consider modifying: making employer HRA contributions tax deductible, allowing HRA funds to be used for premium reimbursement, and allowing HRAs to be used in conjunction with non-group coverage.

Cost-Sharing Reduction (CSR) payments discontinued

Also on Oct. 12, 2017, the White House announced it would discontinue CSR payments to insurers immediately. The ACA requires insurers to reduce cost-sharing for eligible, low-income individuals enrolled in silver plans through their local Marketplaces. This financial assistance is in addition to the Advance Premium Tax Credit. The Administration said because Congress has not appropriated funds for the CSRs, "the government cannot lawfully make the [CSR] payment." This decision primarily affects insurers who will no longer be reimbursed for the CSRs but are required by law to offer them to eligible customers. As a result, customers who have reduced cost-sharing through the Marketplace should not see an immediate impact.

Expanded exemption for covering contraceptive services

Interim final rules (IFRs) issued Oct. 6, 2017 expanded the current exemption for employers to not cover contraceptive services under their sponsored group health plans. Effective immediately, employers may exclude coverage for contraceptive services based on moral or religious objections. This is in addition to the exemptions already outlined under the ACA for "closely-held" for-profit corporations, religious non-profit organizations and religious employers (e.g., churches).

In addition, employers with religious or moral objections are no longer required to submit a self-certification of their objections to their insurance carrier or file a notice with the HHS – a process that enabled cost-sharing responsibility to be passed to the plan's issuer or third-party administrator (TPA). Because this accommodation is now optional, it is possible that costs for contraceptive services may not be covered, passing the full financial responsibility of contraceptive services to the customer. Employers who choose to exercise the accommodation process will pass responsibility for covering contraceptive services to the carrier or TPA, alleviating the financial responsibility from their employees and their dependents.

Compliance reminder

Ongoing compliance with the ACA is required unless and until official guidance to the contrary is issued. The CSR payment discontinuation and IFRs on contraceptive coverage are effective immediately. It is important to note, however, that the EO does not immediately affect any current ACA rules and regulations, but directs the tri-agencies to begin modifying or creating new rules. Cigna will keep you updated when the new rules are released.

Staying Informed
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