

CMS Proposes Enrollment Changes Aimed at Propping Up ACA Marketplaces, for Now

The Trump administration is seeking to stabilize the ACA marketplaces while it works with Congress on ACA repeal and replace efforts. Specifically, CMS has proposed shortening the marketplace open enrollment period and tightening special enrollment rules in order to improve risk pools and thereby encourage insurers to stay in the marketplaces in 2018. Employers wishing to provide marketplace-related information to qualified COBRA beneficiaries, early retirees, employees on leave, and others who are about to lose, or have already lost, employer-sponsored coverage should pay attention to this proposal.

Background

Under the Affordable Care Act (ACA), states either established a state-based health insurance marketplace (also known as an exchange) to facilitate the purchase of health insurance or participate in the federally facilitated marketplace (FFM). Electing marketplace coverage is generally permitted only during an annual open enrollment period. However, similar to employer plans, the marketplaces also offer “special enrollment” periods that allow individuals to enroll in a marketplace plan or change from one marketplace plan to another following particular qualifying events. (See our [August 4, 2014 For Your Information.](#))

The Trump administration and GOP-led Congress are moving forward with ACA repeal and replace efforts. (See our [February 20, 2017 Legislate.](#)) In the meantime, however, premium spikes and insurer exits threaten the stability of the ACA marketplaces. Some insurers have pointed to marketplace special enrollment periods as a particular source of adverse selection. They maintain that the current rules allow too many individuals to enroll in coverage only after they discover that they require health services, undermining the risk pool. This phenomenon has led some insurers to stop offering marketplace coverage in certain geographical areas and to increase rates where they continue to offer coverage. Higher rates, in turn, can discourage healthier people from obtaining coverage – further damaging the risk pool.



Marketplace Enrollment Changes

On February 15, 2017, the US Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) [proposed rules](#) designed to encourage insurers to stay in the market for the 2018 benefit year. Comments on the proposal are due on March 7, 2017.

Shortened Open Enrollment Period

CMS proposed shortening the marketplace open enrollment for the 2018 benefit year to November 1, 2017 through December 15, 2017. Under current rules, open enrollment lasts through January 31, 2018. CMS hopes this change will (1) improve the risk pool by weeding out people who learn in late December 2017 or early January 2018 that they will need health services in 2018, and (2) encourage healthier people who might have otherwise enrolled in partial year coverage (meaning coverage starting later than January 1, 2018) to enroll instead in full-year coverage. The proposed change is consistent with current rules for the 2019 benefit year open enrollment, which is from November 1, 2018 to December 15, 2018.

These CMS rules only apply to FFMs. CMS asked for comments on the capacity of state-based marketplaces to implement the shorter open enrollment period for the 2018 benefit year.

Tightening Special Enrollment Rules

Concerned that abuse of special enrollment rules allows individuals to enroll in coverage only after realizing that they need health services, CMS proposed increasing the scope of pre-enrollment verification of eligibility for FFM special enrollment, starting in June 2017. Consumers would have 30 days to provide documentation of eligibility for special enrollment, during which time their application would be “pending.” CMS recommends that state-based exchanges that do not already require pre-enrollment verification consider doing so.

Under this proposal, CMS would also: limit changes to levels of coverage in connection with special enrollment, let insurers reject special enrollment where there is a record of termination due to non-payment of premiums, expand verification requirements for special enrollments related to marriages and permanent moves, and curtail the availability of the “exceptional circumstances” special enrollment category.

Other Changes

CMS proposed revising its interpretation of the “guaranteed availability” requirement, which generally mandates that insurers accept every individual who applies for coverage. The proposal would let insurers apply a premium payment to an individual’s past debt owed for coverage within the prior 12 months – and thereby limit the incentive to pay premiums only when an individual needs health services.

CMS would also change actuarial values used to determine metal levels of coverage for the 2018 benefit year as a way to give insurers greater flexibility in plan design and more options for keeping cost sharing the same from year to year.

In Closing

While the Trump administration works toward its goal of ACA repeal and replace, it seeks to avoid marketplace collapse in the interim. This proposal, coupled with [postponed](#) deadlines for insurers to make their initial submission for 2018 marketplace rates, are designed to encourage insurers to stay in the marketplaces in 2018.

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