Proposed rule on the health insurance marketplace stabilization

What it means for government entities

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Much of the attention surrounding the future of the Patient Protection and Affordable Care Act of 2010 (ACA) has been focused on whether, when, and how Congress will repeal and replace the law. However, there are various other mechanisms, as discussed in KPMG's January 2017 issue brief #3, "President Trump's Executive Order on the Affordable Care Act – What it means for government entities," that can impact the future of the ACA.[1] For example, under the federal rulemaking process, administering agencies may develop, amend, or repeal existing regulation.

On February 15, 2017, the Centers for Medicare & Medicaid Services (CMS), the primary agency within the U.S. Department of Health and Human Services (HHS) that administers the ACA, issued a proposed rule that aims to stabilize the health insurance marketplace for 2018.[2] While Congressional leaders will continue to deliberate more comprehensive reforms to the ACA, this rule signals that access to coverage for the millions of marketplace consumers is likely to continue for 2018.[3]

This issue brief provides an overview of the proposed rule and the potential implications for federal and state entities.

If the rule is finalized as proposed, CMS would:

— Shorten the marketplace open enrollment period from November 1 through January 31 to November 1 through December 15. Consumers would need to select a health insurance plan by December 15, 2017 for January 1, 2018 coverage. The intent is to improve the risk pool by reducing opportunities for adverse selection. For instance, this may encourage healthy individuals, who may have previously enrolled in January with a February or March coverage effective date, to enroll in coverage for the full year.

— Provide additional flexibility to issuers surrounding plan design. For instance, issuers may sell qualified health plans (QHPs) with higher deductibles and cost sharing than currently permissible to offset premium prices.

— Shift enforcement of network adequacy standards from CMS to the states. For states that do not have the authority or means to conduct sufficient network adequacy reviews, CMS would revert back to 2014 standards, and rely on an issuer's accreditation from an HHS-recognized accrediting entity.

— Limit the proportion of Essential Community Providers (ECPs) that must be covered within a QHP network from 30 to 20 percent. CMS cites that this shift will "make it easier for QHP issuers to build networks that comply with the ECP standard."

— Tighten special enrollment periods (SEPs). For instance, CMS would require consumers to pre-verify eligibility for a SEP beginning in June 2017. Electronic data sources may be used when

1 http://www.kpmg-institutes.com/content/dam/kpmg/governmentinstitute/pdf/2017/aca-exec-order.pdf

2 https://www.federalregister.gov/documents/2017/02/17/2017-03027/patient-protection-and-affordable-care-act-market-stabilization

3 http://www.kpmg-institutes.com/content/dam/kpmg/healthcarelifesciencesinstitute/pdf/2017/hhs-proposed-rule-to-stabilize-marketplace.pdf

available to verify eligibility in real-time (e.g., for the birth of a child); but consumers would otherwise need to submit paper documentation, and would have 30 days to do so.

— Allow issuers to collect past due premiums from members upon renewal. This rule is intended to prevent members from re-enrolling in coverage with the same issuer unless past due premiums are paid, but will not prohibit an individual from enrolling in coverage with a new issuer. Currently, marketplace enrollees have a 90 day "grace period" that protects them from loss of coverage for non-payment of premiums, but still requires that enrollees pay for a portion of healthcare services used during this time. The proposed rule keeps the "grace period" in place, but aims to promote continuous coverage and remove "economic incentives individuals may have had to pay premiums only when they were in need of healthcare services."[4]

CMS has extended the initial QHP application deadline from May 3, 2017 to June 21, 2017 to give issuers more time to determine whether they will participate in the marketplace for 2018 (the final certification for QHPs will still take place in October 2017).[5]

What might this mean for our state and federal government clients?

This proposed rule would amend the existing regulation pertaining to the ACA's coverage provisions with the primary objective of maintaining and/or increasing issuer participation in the marketplaces for 2018.[6] CMS is accepting comments until March 7, 2017, and will consider any comments received in issuing a final rule.

In rulemaking, it is often the case that a proposed rule is modified based on stakeholder comments. At the same time, it is reasonable to expect changes covering areas addressed in the proposed rule. Therefore, it is not too early for federal and state government entities to begin preparing for program changes for 2018, taking the following into consideration:

— Changes to marketplace rules surrounding enrollment, eligibility, and plan design will need to be communicated clearly and broadly to consumers and industry stakeholders. For instance, federal and state entities will likely need to develop robust communication campaigns to raise awareness about any changes to enrollment deadlines to help ensure enrollees are aware and issuers prepare for a shorter enrollment window. This is especially important since nearly 400,000 enrollees signed up for coverage in January 2017, representing four percent of total plan selections.[7]

— Federally facilitated marketplace (FFM) states with the authority to conduct sufficient network adequacy reviews may want to begin identifying the process for establishing and monitoring network adequacy standards for QHPs in partnership with relevant stakeholders.[8]

— State entities may want to examine how fewer ECPs within a QHP's network may impact access to coverage and / or health outcomes for low-income, underserved populations. States may look to state-based marketplace (SBMs) that adopted different standards than the FFM. For instance, Connecticut implemented stronger standards and Colorado has experience with non-quantitative ECP requirements under the ACA.[9]

— Tightening SEP requirements will likely necessitate additional verification of documentation from marketplace applicants and new processes to notify consumers and issuers of final coverage determinations. HHS and SBMs may also need to build new capabilities to verify an individual's eligibility through automated electronic means.

— Federal and state entities will want to closely monitor new marketplace entrants for 2018, as well as issuers planning to exit, and the potential effect these transitions may have on access to coverage at the local level.

4 https://www.federalregister.gov/documents/2017/02/17/2017-03027/patient-protection-and-affordable-care-act-market-stabilization

5 https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2018-Letter-to-Issuers-in-the-Federally-facilitated-Marketplaces-and-February-17-Addendum.pdf

6 https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-02-15.html

7 https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-02-03.html?DLPage=1&DLEntries=10&DLSort=0&DLSortDir=descending

8 http://www.commonwealthfund.org/publications/issue-briefs/2015/may/state-regulation-of-marketplace-plan-provider-networks

9 http://kff.org/womens-health-policy/issue-brief/federal-and-state-standards-for-essential-community-providers-under-the-aca-and-implications-for-womens-health/

Next steps

Ultimately federal and state entities will need to begin to examine how to thoughtfully and efficiently implement and evaluate forthcoming changes to the marketplaces. Specifically, how tightening rules governing enrollment, shortened enrollment periods, and greater flexibility for states and issuers may result in a more competitive, sustainable market for 2018 and beyond.

For additional insight on this rule and how the industry is responding, see the KPMG Center for Healthcare Regulatory Insight's issue brief "HHS Proposed Rule to Stabilize the Marketplace…but is it enough?"

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