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compliance ALERT

Health and Human Services Finalizes Regulation Changing Affordable Care Act Exchange Rules

April 25, 2017

On April 18, 2017, the Department of Health and Human Services (HHS) issued a **final regulation** ("Final Rules") designed to stabilize the Affordable Care Act's (ACA) individual and small group health insurance (SHOP) markets during continued discussions in Washington D.C. over the repeal and replacement of the ACA. These rules were designed primarily to calm the fears of insurers and prevent them from leaving the Exchanges.

What Has Changed in the Final Rules?

The provisions of the Final Rules were not very different from the provisions of the proposed regulation, proposed in February of 2017 (discussed in our eAlert **here** and below).

The only notable difference was that the Final Rules added new regulations primarily for use by insurers, including a revised 2018 Actuarial Value Calculator and Methodology. These new rules allow additional actuarial value flexibility, and were designed to ease insurer concerns about the Exchanges and to promote market stability.

The Final Rules make changes to the ACA's guaranteed-availability rules, Exchange annual open enrollment rules, Exchange special enrollment period rules and other Exchange standards. Below is a summary of the highlights:

Guaranteed-Availability Rules: The Final Rules change the HHS interpretation of the ACA's guaranteed availability rules to remove an economic incentive for individuals to pay premiums only when they actually need coverage. This prevents individuals from only enrolling in Exchange plans when they know they will need services.

Under HHS' prior interpretation of the rules, individuals whose coverage was previously terminated for non-payment of premiums could apply for coverage under a different product from the same insurer, and the rules required that insurer to issue the new coverage without applying higher premiums to past-due amounts.

Under the Final Rules, to the extent permitted by applicable state law, insurers can refuse to enroll the individual in new coverage and instead apply new premium payments to outstanding debt associated with non-payment of premiums for up to the prior 12 months of coverage.

SYNOPSIS

- **The Final Rules added new regulations for use by insurers, including a revised 2018 Actuarial Value Calculator and Methodology.**
- **Final Rules are designed to calm the fears of insurers and prevent them from leaving the Exchanges.**

Exchange Annual Enrollment Rules: The Final Rules shorten the annual open enrollment period for obtaining Exchange coverage for the 2018 plan year so that it will begin on November 1, 2017 and end on December 15, 2017.

Previously, HHS had set the open enrollment period from November 1, 2017 to January 31, 2018 for 2018 coverage. The shift to the earlier end date was already set to begin for 2019 coverage.

Exchange Special Enrollment Rules: The Final Rules require individuals to submit more supporting documentation to obtain Exchange coverage during a special enrollment period than was previously required. This was done in response to insurer concerns that individuals were misusing and abusing these rules.

How Does this Affect Employers?

While these rules primarily affect individuals trying to obtain coverage on the Exchanges, the end result will likely be beneficial for employers concerned about facing penalties under the ACA's Employer Shared Responsibility provisions (commonly referred to as "Pay or Play" or "the Employer Mandate" provisions). This is because the new Exchange rules make it harder for individuals to obtain coverage on the Exchanges and the ACA Pay or Play penalties are only imposed on an employer if an employee qualifies for and receives a premium tax credit on an Exchange.

The Final Rules are generally effective beginning June 19, 2017.

When do the Final Rules Go into Effect?

The Final Rules are generally effective beginning June 19, 2017.

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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