



What Employers Need to Know Right Now About Health Care Reform

Insurers Given Permission to Renew Policies That Don't Meet PPACA Requirements

Yesterday (Nov. 14, 2013) the White House announced that insurers will not be required to meet most of the provisions of the Patient Protection and Affordable Care Act (PPACA) if they renew individual or small group policies that were in effect on Oct. 1, 2013. The Department of Health and Human Services (HHS) concurrently sent a Letter to all Insurance Commissioners that provides additional details on the waiver. Essentially, coverage that does not meet the "insurance market reforms" that are scheduled to take effect in 2014 may still be provided for renewals with policy years beginning between Jan. 1, 2014 and Oct. 1, 2014. All newly issued policies must meet the PPACA requirements.

Insurers are not required to retract previously sent cancellations and provide coverage that does not meet the 2014 requirements and at this time it is unclear whether all insurance departments will permit this and which insurers (if any) will choose to offer current coverage into 2014.

Insurers that choose to renew existing policies must send a notice to all individuals and small businesses that have received a cancellation or termination notice, or who would soon receive a cancellation or termination notice, that explains:

- Any changes in the options that are available to them
- Which of the market reforms would not be included in the renewed policy
- The person's potential right to enroll in a qualified health plan offered through a Health Insurance Marketplace and possibly qualify for financial assistance
- How to access coverage through a Marketplace
- The person's right to enroll in health insurance coverage outside of a Marketplace that complies with the market reforms

The insurer must send the notice as soon as reasonably possible to individuals or small businesses that have already received a cancellation or termination notice. The notice must be sent by the time a notice of cancellation or termination would have been provided for those renewing later.

If an insurer chooses to reinstate previously cancelled policies and renew others that are not PPACA-compliant, it appears that the renewed policies will largely follow the current rules. According to the HHS letter, these renewed policies will not need to:

- Include the ten essential health benefits or meet the metal levels
- Have deductible and out-of-pocket limits
- Be guaranteed issue
- Have community rating
- Cover expenses of those undergoing clinical trials incurred outside the trial

Presumably, the Administration expects that existing policies and rate structures will remain available -- for renewal only -- well into 2014, and that insurance departments will take whatever action would be needed to essentially grandfather these existing policies and rates. This extension is intended to provide additional time to resolve the problems in the Marketplaces and address the "sticker shock" issues some are having over 2014 premium levels.

According to the HHS letter, these renewed policies will still need to meet a few of the new requirements:

- Limit eligibility waiting periods to 90 days (as of the start of the 2014 plan year)
- Remove pre-existing condition limitations for adults in the group market
- Satisfy the health non-discrimination rules (which includes the wellness program rules)

Newly issued policies will need to meet all of the PPACA requirements starting in 2014. Existing policyholders who are offered a chance to renew their current policy will still have the option to instead purchase a PPACA-compliant policy, without underwriting and with modified community rates, either through or outside the Marketplace.

The HHS letter only addresses individual and small group policies, so it appears that insured plans in the large group market and self-funded plans will still be required to meet all of the PPACA requirements, including the out-of-pocket limit, maximum waiting period, pre-existing condition limitation prohibition and dollar limit prohibition, as of the start of the 2014 plan year.

HHS said it will adjust the risk stabilization program if necessary to accommodate this change.

These renewed policies would satisfy the individual's requirement to have "minimum essential" coverage in 2014.

There are many unanswered questions, including whether an insurer may provide the option to renew current coverage only to certain policyholders, whether new rate filings will be required (or allowed), whether state laws that now include PPACA requirements would be violated with the extension and how feasible reversal is so late in the year. We will provide additional information as it becomes available.

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