

PUBLICATION

HHS Finalizes Rule Aimed at Stabilizing ACA Individual Marketplace

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April 14, 2017

On Thursday, April 13, the Department of Health and Human Services finalized a long-awaited regulation intended to stabilize the Affordable Care Act (ACA) individual health insurance marketplace. The final rule tracks closely to the proposed rule by shortening the open enrollment period, tightening eligibility for special enrollment periods, modifying the actuarial values (AVs) used to determine levels of coverage, deferring to states to certify network adequacy, and reducing the threshold requirement for essential community provider (ECP) network participation.

Significant changes to existing regulations include:

- **Guaranteed Availability of Coverage:** Allows issuers to require individuals to pay any outstanding premium debt from the prior 12 months of service prior to enrolling in a plan without violating guaranteed availability guidelines.
- **Open Enrollment Period:** Shortens the open enrollment period for 2018 from three months to six weeks. Open enrollment will now extend from November 1, 2017 to December 15, 2017, rather than until January 31, 2018.
- **Special Enrollment Periods:** Requires pre-enrollment verification of all applicable individual market special enrollment periods for all states served by the HealthCare.gov platform. Previously, consumers had the option to self-attest to their eligibility for special enrollment.
- **Levels of Coverage:** Increases the "de minimis variation" used in the actuarial variations to determine the level of coverage of a plan from +2/-2 to +2/-4 for all non-grandfathered individual and small group plans. For expanded bronze plans, the de minimis variation will be expanded from +5/-2 to +5/-4. Allows states to impose stricter AV requirements so long as they are consistent with federal law.
- **Network Adequacy:** Defers to states to certify whether a plan sold under a federally-facilitated exchange meets network adequacy requirements. For states that do not have the authority or means to conduct such network adequacy reviews, Centers for Medicare and Medicaid Services will now rely on an issuer's accreditation from an HHS-recognized accrediting entity.
- **Essential Community Providers:** Allows issuers to continue to write-in ECPs to meet the threshold requirement for certification and reduces the threshold from 30 percent to 20 percent of available ECPs in a plan's service area.

It is important to note that while insurers have viewed the final regulation as an important step toward stabilizing the individual marketplace, there remain challenges to the marketplace outside the scope of this regulation. In particular, insurers have made clear that the continuation of cost-sharing reduction subsidies for individuals between 100 and 250 percent of the federal poverty level is critical to ensuring both affordable coverage and their continued participation in the marketplace.

Please see our February 16 alert "[HHS Makes Its First Move to Stabilize the Individual Health Insurance Market](#)" which provides additional analysis of the changes finalized yesterday.

If you have any questions regarding the finalized regulation or are in need of assistance, please contact Sheila Burke, Chair of Baker Donelson's Government Relations and Public Policy Group or Tiffani Williams, Senior Vice President and Public Policy Advisor with The Daschle Group, a Public Policy Advisory of Baker Donelson.