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Changes to Stabilize HealthCare.gov Have Implications for Employer Sponsored Health Plans

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We learn early on that for any action there is a reaction. On Friday, the Department of Health and Human Services released "Market Stabilization" final regulations that will impact group health plans as they plan for 2018. The Market Stabilization final regulations do not apply to employer sponsored group health plans, but they do impact when individuals can enroll in health coverage through the federal marketplace both for annual enrollment and for special enrollments. How then do these impact your group health plan? Well these regulations are designed to stabilize the individual insurance market and limit special enrollment opportunities on the federal marketplace through HealthCare.gov and limit the annual enrollment period for the same, and when access to other coverage is limited or more restricted, then employers may find an increase in requests for enrollment in their group health plan coverage. For example, an individual may seek to enroll in the federal marketplace under the new special enrollment rules and find that they are not accepted (e.g., they do not submit the correct supporting paperwork), and then they may come to the employer's group health plan seeking enrollment for the same event triggering a special enrollment period (e.g., marriage, birth, etc.), but now the request is coming after the request to the federal marketplace has been denied and may no longer be a timely request under the employer's group health plan and cafeteria plan.

Some employees will compare the coverage available on the federal marketplace (HealthCare.gov) with their employer's group health plan. The time when the coverage will be available to the employees from HealthCare.gov will be significantly limited this fall in annual enrollment.

- The annual enrollment period for coverage through HealthCare.gov will only be November 1 through December 15, 2017, for coverage effective January 1, 2018. The annual enrollment period for HealthCare.gov will not extend into January 2018 as in the past. Employers may want to review the timing of their annual enrollment period to be certain it overlaps at some point with the shortened annual enrollment period for HealthCare.gov to facilitate employees having information on all coverage when they make their decision on enrollment.
- Employers may want to look at their communications, such as their ACA mandated marketplace notices (the notice telling employees about coverage on HealthCare.gov) and other communications to be certain the shortened annual enrollment period for HealthCare.gov limiting the employee's period to make decisions is highlighted.

The Market Stabilization final regulations also tighten up the availability of mid-year election changes for individuals seeking coverage from HealthCare.gov due to certain events under special enrollment periods. HealthCare.gov will now verify the eligibility of all individuals seeking a special enrollment period from HealthCare.gov to buy individual health insurance and HealthCare.gov will require submission of documentation to support each individual's eligibility for such requested special enrollment period and review such submissions.

- This may slow down the process of individuals enrolling in coverage on HealthCare.gov or the federal exchange, which may in turn lead to employers seeing more requests for special enrollments when employees are shopping for coverage due to a special enrollment event that qualifies under both the employer plan and under HealthCare.gov as a protective strategy to ensure coverage availability.
- Employers may see more late requests for special enrollment if employees first try to obtain coverage on HealthCare.gov for a special enrollment period and wait for approval after the new 100% review. A reminder regarding special enrollment period triggering events and what does not trigger a special enrollment period in the employer's group health plan under the tax law rules for pre-tax deduction election changes may be worth considering (e.g., you do not receive a special enrollment period or an extension for being denied coverage on HealthCare.gov).

- In addition, employers may see more COBRA elections by individuals whose special enrollment event (e.g., a reduction in hours or termination of employment) was also a qualifying event triggering a right to COBRA coverage to avoid coverage lapses in the event the special enrollment process for HealthCare.gov with 100% verification of requests becomes a slow process and the former employee wants to ensure health coverage is available.
- Employers may want to consider reviewing their COBRA notices and communications regarding marketplace notices and deadlines for elections.

While insurers offering individuals coverage on HealthCare.gov may require individuals to pay for back premiums owed to other insurance companies in the insurer's controlled group before reinstating individual coverage to such individual purchased through HealthCare.gov, this provision was not extended to employer sponsored group health plans. So the Market Stabilization final regulation does not apply to add any additional requirement to repaying premiums due during periods of statutorily mandated leave (e.g., FMLA) beyond what already exists, and the rules for premium payments during protected leaves have not been changed by the market stabilization final regulations.

GAO Report to Congressional Committees on Telehealth and Remote Patient Monitoring in Federal Programs

For those interested in developments in the field of telemedicine, The Government Accountability Office prepared a report to Congressional Committees on the use of telemedicine in federal programs, Medicare, Medicaid, Department of Defense and Veterans Administration medical programs earlier this month. It discusses the growing utilization of telemedicine in these programs in recent years. Six state Medicaid programs' use of telemedicine are highlighted along with the state law changes to enable the use of telemedicine. Many employer sponsored plans use or are considering use of telemedicine. The recognition of new medical service procedures or delivery methods by federal programs often leads to changes in recognition of the same for reimbursement in the private sector and perhaps it will also lead to changes in state laws on the practice of medicine for the states that have not yet recognized telemedicine.

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