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Proposed Rules on Health Insurance Reforms and Wellness Programs

On Nov. 20, 2012, federal agencies responsible for health care reform released advance copies of three proposed rules implementing provisions of the Affordable Care Act (ACA). The proposed regulations relate to:

- Health insurance market reforms and rate review;
- Essential health benefits, actuarial value and accreditation; and
- Employer-based wellness programs.

These proposed rules provide details on ACA provisions that prohibit discrimination by health plans against people with pre-existing conditions, enable consumers to compare health plan options, and help employers promote and encourage employee wellness. It is important to note that these rules are in the proposed stage, and will not go into effect until final regulations are issued.

HEALTH INSURANCE MARKET REFORMS AND RATE REVIEW

The proposed rule relating to health insurance market reforms is intended to prevent insurance companies from discriminating against people with pre-existing conditions and to provide additional consumer protections related to health coverage. This rule includes consumer protections such as:

- Guaranteeing availability and renewability of coverage;
- Limiting factors that could vary premium rates in small group and individual markets to age, tobacco use, family size and geography;
- Requiring health insurance issuers to maintain a single statewide risk pool for each of their individual and small employer markets so that premiums and annual rate changes would be based on the health risk of the entire pool;
- Providing for enrollment in catastrophic plans; and
- Amending the existing rate review program.

These health insurance market reforms would go into effect beginning in 2014.

ESSENTIAL HEALTH BENEFITS, ACTUARIAL VALUE AND ACCREDITATION STANDARDS

The proposed rule relating to essential health benefits, actuarial value and accreditation standards is intended to promote consistency across plans and ensure that plans cover a core package of items and services.

The rule outlines health insurance issuer standards related to the coverage of essential health benefits. Specifically, non-grandfathered health plans offered in the individual and small group markets must offer a core package of items and services, which are known as essential health benefits (EHB). The rule confirms prior guidance defining EHB based on a state-specific benchmark plan and requiring all plans that cover EHB to offer benefits that are substantially equal to those offered by the benchmark plan.

The rule also addresses the determination of actuarial value. Actuarial value is the percentage of total average costs for covered benefits that a plan will cover. For example, if a plan has an actuarial value of 70 percent, on average, a consumer would be responsible for 30 percent of the costs of covered benefits.

Beginning in 2014, non-grandfathered health plans in the individual and small group markets must meet certain levels of actuarial value (or "metal levels"): 60 percent for a bronze plan, 70 percent for a silver plan, 80 percent for a gold plan and 90 percent for a platinum plan. The Department of Health and Human Services (HHS) has proposed an actuarial value calculator for issuers to use to determine health plan actuarial value based on a national, standard population.

The proposed rules would allow health plans some flexibility in meeting the metal levels if the actuarial value is within two percentage points of the standard. It would also allow issuers in the small group market to exceed annual deductible limits to achieve a particular metal level.

Additionally, the rule proposes a timeline for when issuers offering coverage in a federally-facilitated exchange or state partnership exchange must become accredited. It also proposes an application process for accrediting entities seeking to be recognized to fulfill the accreditation requirements for issuers offering coverage in any exchange.

The proposed rule's requirements would go into effect beginning in 2014.

WELLNESS PROGRAMS

The proposed rules on wellness programs are intended to encourage appropriately designed, consumer-protective wellness programs in group health coverage. These proposed rules would be effective for plan years beginning on or after Jan. 1, 2014.

The proposed rules continue to support workplace wellness programs, including "participatory wellness programs" that generally are available without regard to an individual's health status (for example, programs that reimburse for the cost of membership in a fitness center). The proposed rules also outline amended standards for nondiscriminatory "health-contingent wellness programs," which generally require individuals to meet a specific standard related to their health to obtain a reward (for example, programs that provide rewards to those who do not use, or decrease their use of tobacco).

The proposed rules contain consumer protections that would require health-contingent wellness programs to follow certain rules regarding program design and individual notice requirements. The rules also ensure flexibility for employers by implementing ACA changes that:

- Increase the maximum permissible reward under a health-contingent wellness program from 20 percent to 30 percent of the cost of health coverage; and
- Further increase the maximum reward to as much as 50 percent for programs designed to prevent or reduce tobacco use.

Seubert & Associates will continue to monitor progress of the health care reform law and its implementation and will keep you informed of important developments.

Source: Departments of Health and Human Services, Labor and the Treasury