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Commercial Health Care: What's Next?

A Health Section Strategic Initiative

By David Dillon

In June 2017, the Society of Actuaries (SOA) Health Section released a new strategic initiative titled “Commercial Health Care: What’s Next?” This initiative was designed to be an anthology series of white papers and articles focusing on education and research concerning key issues associated with health care reform. This article contains a summary and brief excerpts from a recent white paper. All articles and newly released companion pieces are located at www.theactuarymagazine.org/category/web-exclusives/commercial-health-care-whats-next/.

NEW RULES TO EXPAND ASSOCIATION HEALTH PLANS: HOW WILL THEY AFFECT THE INDIVIDUAL MARKET?

By Sabrina Corlette, Josh Hammerquist and Pete Nakahata

On June 19, 2018, the Trump Administration released new rules¹ that would expand enrollment in association health plans (AHPs). In a recent article for *The Actuary*,² we provided an overview of the federal and state regulatory framework for AHPs and project enrollment and morbidity in the Affordable Care Act (ACA)-compliant individual markets under an expansion of AHPs.

A New Regulatory Framework for AHPs

Prior to publication of this regulation, the U.S. Department of Labor (DOL) did not consider an AHP offered by an association of member employers to be a single employer benefit plan subject to ERISA except under rare conditions. However, if DOL deems an association a single employer group with more than 50 employee members, it can be regulated under large group market rules, even if its primary membership is derived from small employer groups (see Table 1 on page 30). Until now, DOL has not considered associations with self-employed members to be eligible for this group status.

The Trump Administration’s new policy allows groups to more easily form AHPs so that they can offer coverage that is regulated under federal law as large group coverage. Under this more flexible approach:

- An AHP can have as its primary purpose the provision of insurance benefits, although it must have at least one substantial business purpose unrelated to providing benefits, such as public relations or educational support for members.
- AHPs must include employer-members that are either (1) in the same trade, industry, line of business or profession or (2) located within the same geographic region, either within a state or a metropolitan region that includes more than one state. In the former case, the AHP could sell coverage nationwide.
- Member employers must control the functions and activities of the group or association.
- AHPs may enroll the self-employed. Such self-employed members must work a minimum number of hours or earn a minimum income. However, the rule does not describe how the AHP should enforce this requirement.
- AHPs that gain single employer plan status under the DOL’s new rules cannot discriminate in eligibility, benefits or premiums based on a health factor between employer groups—including any self-employed members—that make up the AHP. The final rule does permit the use of unlimited age and gender rating and other nonhealth attributes such as industry or region to distinguish member employers, and nonhealth attributes to segment their workforce (such as employees’ occupations, date of hire, full-time vs. part-time status, and other factors).
- By easing the criteria by which an AHP can gain status as a single employer group, they can be exempt from key ACA provisions such as essential health benefits, the single risk pool and the risk-adjustment program.

Potential Impact of New AHP Regulation

Our analysis focuses on self-employed individuals enrolled in ACA-compliant plans who may have new incentives to shift to AHPs. The final rules create these incentives by offering lower-cost alternatives for self-employed individuals who are relatively young and healthy. Proponents of AHPs believe that they will

Table 1
Application of ACA Insurance Protections by Market Segment (Fully Insured)

ACA Market Reform	Individual Market	Small Group Market*	Large Group Market*
Guaranteed issue	Yes	Yes	Yes
Pre-existing condition exclusions prohibited	Yes	Yes	Yes
Out-of-pocket maximums	Yes	Yes	Yes
Annual and lifetime limits prohibited	Yes	Yes	Yes
Preventive services covered without cost-sharing	Yes	Yes	Yes
Essential health benefits	Yes	Yes	No
Rating rules	Yes	Yes	No
Single risk pool	Yes	Yes	No
Risk-adjustment program	Yes	Yes	No
Medical loss ratio	80%	80%	85%

*Applies to fully insured products. The small group market is defined in most states to be groups of up to 50 employees, with large group defined as groups with 51 or more employees.

provide individuals with lower-cost plan options, while critics note that they are likely to drive premiums up for individuals remaining in the ACA-compliant market.

A key area of uncertainty is the extent to which associations and individuals respond to the new rules, and the extent to which newly formed AHPs will market to self-employed individuals. Furthermore, other policy decisions, such as repeal of the ACA's individual mandate penalty and the expansion of short-term limited duration insurance may also influence the response to the new rules and the impact on the individual market.

Our analysis suggests that the positions of both AHP critics and proponents have merit. Younger, healthier individuals who are not eligible for the ACA's premium subsidies, who receive less generous subsidies due to higher income, or who are currently without coverage altogether, are likely to find less expensive plan options through AHPs. We estimate that between 5 and 8 percent of enrollees in the individual market will gravitate to lower-cost AHPs. However, this will result in lower

enrollment and higher morbidity in the ACA-compliant individual market, which we estimate will lead to a 2 to 3 percent increase in premiums. These changes will ultimately result in higher premiums for individuals remaining in the ACA-compliant market. ■



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ENDNOTES

- 1 29 CFR Part 2510. <https://www.dol.gov/sites/default/files/ebsa/temporary-postings/association-health-plans-final-rule.pdf>
- 2 Corlette, Sabrina, Josh Hammerquist, and Pete Nakahata. 2018. New Rules to Expand Association Health Plans: How will they affect the individual market? May 2018. *The Actuary*, <http://www.theactuarymagazine.org/new-rules-to-expand-association-health-plans/>