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FEATURES

U.S. Healthcare Overhaul

With little fanfare, the Trump administration continues to make incremental changes that could have substantial impact on American consumers **By Todd A. Zigrang, MBA, MHA, and Jessica L. Bailey-Wheaton, Esq.**

THE TRUMP administration has shown itself willing, and able, to make numerous policy and regulation modifications throughout its incumbency thus far. U.S. healthcare has been no exception, with a continuing stream of alterations to existing policy and practice in April 2018.

On April 9, 2018, the Centers for Medicare and Medicaid Services (CMS) released its final 2019 payment notice rule, a lengthy document that makes substantive changes to numerous provisions contained within the Patient Protection and Affordable Care Act (ACA). In addition, on April 10, 2018, President Trump signed an executive order entitled "Reducing Poverty in America by Promoting Opportunity and Economic Mobility," which imposes work requirements on U.S. beneficiaries of low-income federal aid programs. Both of these actions, consistent with the president's campaign promises, were implemented with little fanfare, but they will have a potentially substantial impact on American consumers.

Essential Health Benefits

Along with the 2019 final rule, CMS published several guidance letters to clarify many of the provisions contained within the extensive text. Those with the most potential to directly impact consumers include the lifting of several restrictions related to the Essential Health Benefits (EHB) requirement of the ACA; under the new rules, states will no longer be limited to the existing ten (10) EHB options, but will have the flexibility to utilize any of the 50 state EHB plans used in 2017, or select their own unique set of EHB requirements, so long as they fall within the scope of federal guidance.

Medical Loss Ratio

In addition, the Medical Loss Ratio (MLR) requirements of the ACA, which stated that insurance issuers were required to spend at least 80% of their annual earned premium on Quality Improvement Activities (QIA) for the benefit of consumers, were relaxed to make it easier for payors to request a downward adjustment of the standard 80% MLR.

Hardship Exemptions

Perhaps most significant, the rule has expanded the criteria related to the "Hardship Exemptions" that were originally imposed under the individual

Medicare Part E for All Proposed

A NEW MEDICARE program has been proposed but passage remains uncertain. Since the fall of 2017, the Trump Administration has used its executive and regulatory authority to roll back coverage requirements for Affordable Care Act health plans and expand access to association health plans that would be offered outside of ACA's exchanges to small businesses and self-employed individuals. In response to the administration's efforts, Congressional Democrats recently released *The Choose Medicare Act,* a legislative proposal that would permit, but not require, non-Medicare age individuals and businesses to opt into health insurance coverage offered under a new Medicare Part E program financed by premium payments just as private insurance is today. *The Choose Medicare Act,* which was released on April 18, would not replace ACA exchange plans. Instead, new Medicare Part E plans would be offered on the ACA exchanges alongside other private exchange plan options.

The Choose Medicare Act is intended to build on ACA's protections. Key features are:

- Make new Medicare Part E plans available to individuals of all ages in all 50 states.
- Open Medicare to allow all employers to purchase health coverage for employees without replacing employment-based health insurance.
- Provide employees an option to choose Medicare Part E over their employer offered coverage.
- Mandate coverage of essential health benefits plus all items and services covered by Medicare.
- Increase the generosity of premium tax credits and extend eligibility of these credits to middle-income earners.
- Allow Medicare to negotiate prices for prescription drugs (a proposal that enjoys bipartisan support as well as support from the Trump administration).

The Choose Medicare Act is the fifth Democratic proposal to support the ACA. Without action to ensure the long-term viability of the ACA's exchange plans or Trump administration initiatives to stabilize the exchange marketplace, the *Choose Medicare Act* aims to provide an alternative to the ACA.

mandate of the ACA. The expanded criteria allowing consumers to opt out of purchasing health insurance will account for those consumers who:

- Live in an area where no qualified health plan (QHP) is offered through the federal health exchanges.
- Live in an area where there is only one insurer offering coverage through the exchanges.
- Only have access to QHPs that provide coverage for abortion services, contrary to one's beliefs.
- Have other demonstrable "personal circumstances that create hardship in obtaining health insurance coverage under a QHP."

This guidance, effective immediately, will allow increased flexibility for U.S. healthcare consumers to avoid purchasing healthcare insurance until the repeal of the individual mandate becomes effective in 2019.

Lower Premiums, Fewer Benefits

The multitude of changes in the 2019 final rule are the latest efforts of the current administration to reduce or otherwise undercut the impact of the ACA, which Congress so far has failed to repeal. However, while couched as tools with which to "mitigate the harmful impacts of Obamacare" (skyrocketing premiums) and increase flexibility; affordability; integrity; and, stability of marketplace insurance options, the proposed changes may not have the intended effect. For example, with more leniency regarding EHB requirements, insurers may be able to provide decreased premiums, but at the cost of fewer consumer benefits.

Additionally, the new changes are not expected to offset the Congressional Budget Office's (CBO) estimated 34% premium increase of silver-level insurance plans in 2018 (and expected $33 billion increase in the federal deficit by 2028 related to health insurance subsidies) as a result of the administration's Oct. 12, 2017, decision to stop funding cost-sharing reductions under the ACA. However, it's important to note that the deficit would be an estimated $297 billion more from 2018 to 2027 if the individual mandate were still in effect during that time frame.

Medicaid Work Requirements

In a separate (but equally impactful) move, the April 10, 2018, executive order signed by President Trump essentially requires implementation of work restrictions for any individuals utilizing low-income assistance (welfare) programs. This action builds upon the recent guidance by the federal CMS, which permits states to acquire a Section 1115 Medicaid waiver for the purpose of imposing work requirements as a condition of Medicaid eligibility. As of April 9, 2018, ten states have been approved and/or are pending approval of a Section 1115 Medicaid waiver to implement work requirements.

The executive order, which seeks to address "the economic stagnation and social harm that can result from long-term government dependence," targets any federal assistance program for "people, households, or families that have low incomes...the unemployed, or those out of the labor force," which notably includes not just cash assistance programs, but several safety net programs, the Supplemental Nutrition Assistance Program, formerly known as food stamps, and Medicaid.

Less Regulation, Record Deficits

In contrast to the arguably more publicized political stalemate that has plagued Republican congressional efforts to "repeal and replace" the ACA since 2010, within the past few weeks, the current administration has clearly illustrated its willingness and capability to make rapid changes to policy and practice within the confines of the executive branch of U.S. government. The most recent examples of this—the 2019 final rule and the April 10 executive order—both demonstrate a principle that continues to underpin the trajectory of the Trump administration, for example, "loosening the reins" of federal healthcare regulation. However, with a federal budget threatening to break deficit records, it remains to be seen whether the administration's tactics will be effective at achieving its long-term overall goals.

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Working With the Bar

THE CHICAGO Medical Society and the American Bar Association have established a formal relationship to address medical-legal issues affecting CMS members and their practices. This legal section is sponsored by the Health Law Section of the American Bar Association.

For CMS members this means that you get monthly articles from legal experts who specialize in health law. The articles will focus on subjects of current interest to the medical profession as well as new laws and regulations as they are implemented. The authors will vary every month in order to bring you the best information possible from the attorney who specializes in the subject matter.

If you have a particular question or would like more information on a subject, please send us your suggestions. You can send an email to Elizabeth at *esidney@cmsdocs.org.*