Compliance Corner Webinar:

Individual Market Stabilization and Benefit and Payment Parameters

April 20, 2017

Q: Is this only for premium due the SAME CARRIER for prior year?
A: Yes, with the new tightening of rules for the Individual Market, a carrier can apply premium to past due premium when a consumer enrolls in a new plan for the upcoming year (assuming, the consumer is applying with the same carrier for the upcoming year).

Q: Any way to have pre-view of plans/rates before 11/1 for OE?
A: We hope to have 2018 plan designs and rates released by 10/15/17.

Q: Will there be subsidies and cost reductions available for the individual market?
A: The new rule for stabilization of the Individual Market does not address the cost sharing reductions/subsidies.

Q: When is the 3 month STM ruling going to be reversed?
A: The new rule for stabilization of the Individual Market does not address temporary short term medical policies, which are currently limited to a maximum of three months per policy.

Q: Is there a requirement about the turnaround time for the exchange to review the documentation for SEP? If someone's enrollment (and healthcare) is pended until they've reviewed it, and they can take 30-60 days, this could really hurt someone's health.
A: The rule does not provide a timeline turnaround requirement for reviewing documentation once submitted by a consumer, however, if the documentation is received and validated, coverage will go into effect retro-actively to the date originally selected for the plan.

Q: Can they downgrade the metal level during an SEP?
A: The rule prohibits upgrading of a plan's metal level during a SEP, however, it does not address downgrading a plan.

Q: Let's clarify that slide about marriage & SEPs - shouldn't it be that the person had minimum essential coverage & lived in the US. Or a territory?
A: The rule requires that at least one partner in a marriage to have had MEC prior to the marriage in order to enroll the partner in the plan. The exception to this requirement is for someone who was not residing within the United States or a United States' territory for 1 or more days during the 60 days prior to the marriage.

Q: Where can we find if our State has authority to determine network adequacy?
A: The first place to look to see if States have the authority to determine network adequacy would be with the State's Department of Insurance.

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Q: Can you tell me if all of these rules are now in effect or when they are effective?
A: The Benefit and Payment Parameters rules took effect on 1/17/17. Some of the individual market stabilization rules take effect on 7/1/17.

Q: Would the carrier determinations be made available to brokers prior to 6/21/17?
A: We are hopeful that plan designs and rates become available by 10/15/17 for 2018 plans. After the 6/21/17 submission deadline for insurance carriers, some States open up "comment periods" to the public based on the submissions. To determine if your State has these comment periods, please check with your State's Department of Insurance. Unfortunately, agents and brokers often learn of new plans and rates at the same time as the general public.

Q: When do new SEP rules go into effect?
A: 7/1/17 (from the Individual Market Stabilization rule)

Q: With the administration meeting with the insurers last week and CSR payments seemingly being a major stumbling block moving forward for the insurers to participate for the 2018 plan year, is possible for CMS/HHS to just drop CSR plans altogether so there are no further subsidies that need to be paid to the insurers? This would eliminate the confusion and added administration burden of these CSR plans and still allow people to qualify for highly subsidized Silver level plans which are still very god benefit plans overall.
A: CSRs were not addressed in this final rule, however, CSRs continue to be discussed within new pieces of legislation related to repeal and replace.

Q: With many carriers threatening not to participate in the exchanges in 2018, has there been further discussion about allowing subsidies to be used outside of the exchanges?
A: NAHU has suggested allowing tax credits to be available for both on and off exchange individual policies, however, this final rule does not address allowing for tax credits outside of exchanges. Although the AHCA did allow credits outside the exchange marketplace, we have heard no further discussion of it.

Q: Does the child rating change affect the small group markets?
A: This change is from the Benefit and Payment Parameters Rule, and it does change both individual and small group markets, however, states still have determination of small group size.

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Q: What is the purpose of having the SHOP waiting period at a max of 60 days when the ACA indicates no more than 90?
A: SHOP intends to not only offer options for employers, but also to protect the employees of these small employers. See page 94135 of the Final Rule:

However, if the first day of the first month following the expiration of the waiting period for this employee would be outside the limits under § 147.116, the SHOP would be required under paragraph (g)(2) to ensure that coverage takes effect within the required timeframe. To avoid this scenario and the operational complications it would cause for SHOPs, we proposed to specify in a new paragraph (g)(3) that waiting periods in a SHOP may not exceed 60 days in length.

That is the reasoning behind the limit on the waiting period.

Q: Agents/brokers using Marketplace on websites. Does this include Web Entities cannot use Marketplace?
A: There can be links to healthcare.gov, however, agents/brokers and web entities cannot use the world "marketplace" within the domain name/address.

Q: Does the SHOP waiting period max of 60 days apply to state-based exchanges?
A: The rule applies to the FFM and states utilizing the federal platform.

Q: If I understand correctly, if someone's policy terms for non-payment in June of this year and they want to go back to that same carrier in Jan they would have to pay 6 months of retro premium?
A: If the policy terms for non-pay, the carrier can go back for back due premium. If the consumer terminates a plan, other than for non-payment of premium, the carrier cannot go back. Here is the wording from the final rule relative to

this question: *Third, we are revising our interpretation of the Federal guaranteed availability requirement to allow issuers, subject to applicable State law, to apply a premium payment to an individual's past debt owed for coverage from the same issuer or a different issuer in the same controlled group within the prior 12 months before applying the payment toward a new enrollment.*

Q: Do all these rules go into effect immediately?
A: These rules are effective for plan years starting 1-1-2018 except for the tightening of SEPs which is effective 7-1-2017.

Q: Do we get commissions on the back payments to carriers?
A: If a consumer owes back due premium, and then enrolls in a plan for the upcoming year with the same carrier, and that carrier collects the back due premium, those months should still be commissionable if they were commissionable in the first place (at the same rate, for example, per member per month, flat fee, or percentage of premium).

Q: In reference to grace period premiums, is it only just previous year or any prior year? Enrolled in carrier A and did not pay December 2015 rate. Enrolled in carrier A for 2018, again, have to pay 2015 premium before effectuation?
A: It is just for back to back years (for example, late on 2017 premium and applying for 2018 plan).

Q: Is NAHU still trying to get agent commission out of MLR in addition to the Grandmothering issue, composite rate issue and marriage SEP issue that went unaddressed
A: Yes, NAHU advocacy efforts continue on these issues both from a legislative standpoint and a regulatory standpoint.

Q: Won't the shorter open enrollment period actually lead to more adverse selection rather than less? The later enrollees are often younger and healthier applicants. People with medical problems are often the ones that are proactive with their enrollments.
A: It is possible that with a shorter enrollment period, fewer consumers might enroll, and this could lead to additional adverse selection.

Q: Any talk about addressing the situation where a rural insured resides in a county in one state but goes to a hospital and or doctor in another state out of necessity. Currently most of the carriers' networks are only for the state in which the insured resides so these insured's essentially only have coverage in case of a life threatening emergency unless they use a new doctor or hospital.
A: Emergencies are covered as "in network" provided a consumer utilizes their closest facility.

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Q: Consumers that lose or have a reduction in APTC, whom cannot make their premium payment for that month, how will they be affected with the non-payment rules?
A: Unless a consumer experiences an income change, they are not exempt from the new rule allowing an insurance carrier to collect back due premium.

Q: Is there any discussion about increased agent compensation? I can't afford to sell in this market at the current comp.
A: NAHU efforts continue to have agent compensation removed from MLR.

Q: If we can't use the word Marketplace on our website how would you suggest we guide the consumer to the link to the Marketplace?
A: It is permissible to have a link to www.healthcare.gov on a website. You may not use the world "marketplace" in the domain name for a website.

Q: My state released a brief yesterday and said that the new SEP rules are in effect June 1...is that incorrect or is it July as you stated
A: State-based Exchanges can implement the new rules early if they choose to do so.

Q: Please repeat the SEP for moving to new area, what proof will be required?
A: Yes, proof of the prior residence, the new residence, and MEC will all be required.

Q: Is voluntary withdrawal from cobra count as qualifying event?
A: No, when COBRA is fully exhausted, there is a SEP for loss of coverage. Prior to selecting COBRA, there is a SEP for the loss of the employer based plan. There is not a SEP if someone voluntarily ends COBRA before it is exhausted.

Q: How would the auto renewal process vs. submission of a new application impact the retroactive payment challenges when renewing w/ the same or new Carrier- if at all.
A: This does not impact the rule. If a consumer automatically renews or actively selects a new plan with the same carrier, the rule applies equally.

Q: Will members be notified if plan is Part D creditable cover if they renew their Marketplace Policy after turning 65?
A: No, the Marketplace does not determine creditable coverage or not.

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Q: Have you heard anything about the special enrollment period for groups between Nov. 15th and Dec. 15th? Will it continue to be available to groups?
A: The removal of participation requirements for groups during this open enrollment window was not addressed in the Individual Market Stabilization Rule nor the Benefit and Payment Parameters Rule for 2018. This window has not changed.

Q: Any word on requirements to have commission paid on SEP events as well, not just open enrollment?
A: These rules did not address commission, but efforts at NAHU continue to have commission removed from MLR calculations on a legislative front. Agencies, such as HHS, do not address commission.

Q: Any discussion about changing OEP to one's birthday rather than all at the November timeframe?
A: There were many comments requesting a change of the timing of OEP to address resource and access concerns for consumers, however, there was a strong desire from HHS to keep the OEP aligned with, and similar to, employee experience in employer group plans.

Q: If a consumer terminated their individual plan midyear 2017 and then reenrolls for 2018 - do they have to pay back premiums to the date they term before the new policy is effective?
A: If the consumer terminated the plan (vs. lapsed for non-payment of premium), they are not subjected to the rule about paying back premium.

Q: Can you use open enrollment to discontinue Cobra?
A: During open enrollment, a consumer could enroll in an individual plan for the upcoming year, and voluntarily discontinue COBRA.

Q: How do nonpayment rules apply to state run exchanges? I.e., if a client has coverage directly with a carrier and then moves to Covered CA, do the nonpayment rules follow them?
Follow-up: You interpreted the question correctly. Individual had coverage directly with a carrier, off X and then moves to an exchange plan, do nonpayment rules follow them?
A: This final rule applies to all on and off exchange plans.

Q: Will carriers be required to release 2018 plan information/rates sooner than 11/01st with the reduced OEP period?
A: We are hopeful that carriers will release 2018 plan designs and rates by 10/15/17.

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Q: Would consumer have to pay back if their plans are terminated for non submission of verification documents (i.e. proof of income, proof of citizenship etc)?
A: No, in this example, the consumer is not terminated for a non-payment of premiums. Non-payment of premiums is the scenario addressed in the rule.

Q: If a person is satisfied with their current plan and carrier will these people just be auto renewed or is there a requirement that these applications somehow be "touched" by the either the insured or the agent/broker?
A: The rule does not address the auto-renewal process. Currently, plans are automatically renewed if the carrier is still active in the Marketplace for the upcoming year. This is referred to as “passive renewal.”

Q: Will CMS require carriers to honor commission payments once they have been announced or to pay commission in general?
A: The rule does not address commission payments.

Q: Do the changes in AV levels and child age ratings affect small group?
A: Yes, individual and small group are affected.