

Publications

Health Care Alert: HHS Releases Final Rule on ACA Marketplace Stabilization

CLIENT ALERT | 4.14.2017

On April 13, 2017, the Department of Health and Human Services (HHS) finalized a **regulation** intended to stabilize the Affordable Care Act (ACA) marketplaces by creating policies beneficial to the insurance industry.

One of the main provisions of the final rule is the authority for insurers to sell less-generous policies that will feature lower premiums, but higher deductibles. Under this new provision, insurers can now sell policies that are four percentage points below ACA standards, compared with two percentage points under current regulations. Another provision, aimed at creating a more stable pool of enrollees, will reduce the current open enrollment period in half. The new open enrollment period will run from Nov. 1 to Dec. 15. HHS also permits insurer networks to include fewer “essential community providers” (ECPs) that serve primarily low-income and underserved populations. The final rule would reduce the percentage of ECPs in an insurer’s service area from the current requirement of 30% to 20%. The final rule also allows states or accrediting agencies to determine whether ACA insurers are offering adequate networks of doctors and hospitals.

Proponents believe these changes incentivize insurers to remain in ACA marketplaces, which have been experiencing declining participation. However, critics of the final rule have expressed their belief that the changes will be counterproductive, and reduce the number of enrollees and create narrower networks and coverage benefits. Additionally, critics are concerned that the rule does not address whether Congress will continue to make cost sharing reduction (CSR) payments. These payments reduce out-of-pocket costs for low-income ACA enrollees, but Congressional Republicans sued the Obama administration, arguing that these expenditures were not authorized under the ACA. Supporters of continued CSR payments have expressed worry that the failure to continue CSR funding will reduce coverage for financially vulnerable Americans.