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Employee Benefits | Life Insurance | Risk Management

TO: Clients of Sitzmann Morris & Lavis Insurance Agency

RE: Insurance Market Reform Proposed Rules

Background:

The Affordable Care Act (ACA) includes provisions that prohibit discrimination by health plans against people with pre-existing conditions and provide certain protections for consumers. Effective for plan years beginning on or after Jan. 1, 2014, ACA extends guaranteed issue protections for individuals and employers, prohibits the use of health and other factors to set premium rates, limits age rating and prohibits insurers from dividing up insurance pools.

On November 26th proposed regulations by the Departments of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) were entered into the Federal Register. These regulations address health insurance market reforms and amendments to the existing rate review program.

Key Provisions:

Guaranteed availability of coverage. ACA requires health insurance issuers that offer health insurance coverage in a state's individual or group market to accept every individual and employer in the state that applies for coverage, subject to certain exceptions. These exceptions allow issuers to limit enrollment:

- To certain open and special enrollment periods;
- To an employer's eligible individuals who live, work, or reside in the service area of a network plan; and
- In certain situations involving network capacity and financial capacity.

This rule is intended to prohibit health insurance issuers from denying coverage to people because of a pre-existing condition or any other factor. It is based on the HIPAA provision for guaranteed availability in the small group market, but expands guaranteed availability to include the individual and large group markets as well. The proposed rule would apply to all non-grandfathered health insurance coverage in an applicable state market.

The proposed rule would require issuers offering coverage in the group market to maintain a year-round open enrollment period for employers to purchase coverage. Issuers offering individual coverage would offer plans during open enrollment periods consistent with those required by the Exchanges. The regulations requested comments on other ways to discourage abuses of guaranteed availability rights.

Guaranteed renewability of coverage. The ACA and the proposed rule would also reaffirm existing protections that individuals and employers have with respect to coverage renewal. For example, these protections would prohibit issuers from refusing to renew coverage because an individual or employee becomes sick or has a pre-existing condition.

Specifically, the proposed rule would require health insurance issuers offering coverage in the individual or group market for non-grandfathered plans to renew or continue in force coverage at the option of the plan sponsor or individual, with certain exceptions. These are:

- Nonpayment of premiums;
- Fraud or intentional misrepresentation of material fact under the terms of coverage;
- For group coverage, the plan sponsor's failure to comply with employer contribution or group participation rules under state law;
- The issuer ceasing to offer coverage of this type, acting uniformly without regard to claims experience or health status-related factor (an issuer may also modify the health insurance coverage for a plan offered to a group health plan at renewal);
- For network plans, there no longer being any enrollee who lives, resides, or works in the service area of the issuer or where the issuer is authorized to do business (in the case of the small group market, the issuer could limit the employers that may apply for coverage to those with eligible individuals who live, work, or reside in the service area for the network plan; and

- For coverage provided through a bona fide association, if the employer's membership in the association ceases, but only if the coverage terminated uniformly without regard to any health status-related factor relating to any covered individual.

In addition, the proposed rule would set requirements for issuers closing blocks of business. In any case where an issuer decides to discontinue offering a particular plan offered in the group or individual market, that plan may be discontinued by the issuer in accordance with applicable state law in the particular market under certain circumstances.

The proposed rule imposes a waiting period on issuers who wish to re-enter a market after discontinuing coverage in that market. An issuer that elects to discontinue offering all health insurance coverage in a market (or markets) in a state may not issue coverage in the state's market (or markets) involved for a period of five years.

Fair Health Insurance Premiums. ACA and the proposed rule limit the factors that could vary premium rates in small group and individual markets for non-grandfathered plans. Specifically, health insurance issuers would only be allowed to vary premiums based on:

- Age (within a 3:1 ratio for adults);
- Tobacco use (within a 1.5:1 ratio, subject to wellness program requirements in the small group market);
- Family size; and
- Geography.

All other rating factors are prohibited. This means that several factors frequently used to set premium, such as health status, claims history, duration of coverage, gender, occupation, small employer size and industry, can no longer be used. Use of other factors that might be considered, such as tax credit eligibility, prior source of coverage and creditworthiness, is also prohibited. The practice of "re-underwriting," or increasing premiums for existing customers because they incurred claims or experienced worsening health during a policy year, is prohibited as well.

The rule proposes to standardize rating methodologies when the market reforms go into effect in 2014. The proposed rules allows flexibility for states and issuers in rating methodology for certain aspects of family, tobacco, age, geography and small group rating.

These limitations represent minimum standards, which means that states can choose to enact stronger consumer protections. In addition, starting in 2017, states have the option of allowing large employers to purchase coverage through the Exchanges. For states that choose this option, these rating rules would also apply to all large group health insurance coverage.

Single risk pool. ACA and the proposed rule would require health insurance issuers to maintain a single statewide risk pool for non-grandfathered plans for each of their individual and small employer markets, unless a state chooses to merge the individual and small group pools into one pool. Premiums and annual rate changes would be based on the health risk of the entire pool. This requirement applies to health plans both inside and outside of an Exchange for both markets.

This requirement is intended to prevent insurers from using separate insurance pools within markets to get around the market reforms, or to charge people with greater health problems higher premiums by increasing their premiums at higher rates than other, healthier risk pools. The rule does not apply to excepted benefit and short-term limited duration policies or to health plans with fewer than two participants who are current employees, such as retiree-only plans.

Catastrophic Plans. The proposed rule also includes provisions for enrollment in catastrophic plans. Catastrophic plans have lower premiums, protect against high out-of-pocket costs and cover recommended preventive services without cost sharing. The following individuals will be permitted to enroll in catastrophic plans:

- Individuals who are under 30 years of age before the beginning of the plan year (if the individual reaches age 30 during a plan year, he or she will be permitted to remain enrolled in the catastrophic plan for the remainder of the plan year); and
- Individuals who have been certified as exempt from the individual responsibility payment because they cannot afford minimum essential coverage or who are eligible for a hardship exemption.

Amendments to the rate review program. ACA establishes an annual rate review process that requires health insurance issuers to submit justifications for unreasonable premium increases prior to the implementation of those increases. These rates would be reviewed by the state in

states with effective rate review programs, and by CMS in states without effective rate review programs.

Under the current program, all proposed rate increases above a defined threshold in the individual and small group markets would be reviewed to determine whether or not they are unreasonable. However, in certain circumstances, a state will be permitted to set a state-specific threshold for future calendar years.

In preparation for the market changes in 2014 and to streamline data collection for insurers and states, the rule proposes the following amendments to the rate review program:

- States seeking state-specific thresholds will be required to submit proposals to CMS for those thresholds by Aug. 1 of each year. If approved, a state-specific threshold would be effective Jan. 1 of the following year.
- Health insurance issuers will be required to submit data relating to proposed rate increases that are filed in a state on or after April 1, 2013 (or effective on or after Jan. 1, 2014, in a state that does not require the rate increases to be filed). HHS will specify a standardized format for these submissions.
- Additional criteria and factors will be imposed for a state to have an effective rate review program.

Effective dates:

These health insurance market reforms would go into effect beginning in 2014. Because the regulations are not in final form, they do not provide definitive guidance at this point. However, they are an indicator of how HHS will apply ACA's health insurance market reforms. Comments on the proposed rule are due by Dec. 26, 2012.

What's Next:

Sitzmann Morris & Lavis Insurance Agency will continue to monitor progress of the health care reform law and its implementation and will keep you informed of important developments. As always, contact your SML Account team if you have any questions.