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The Trump Administration Continues Incremental Efforts to Overhaul U.S. Healthcare

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).[1] 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.[2] Both of these actions, consistent with the President's campaign promises, were implemented with little fanfare, but will have a potentially substantial impact on American consumers.

Along with the 2019 final rule, CMS published several guidance letters to clarify many of the provisions contained within the extensive text.[3] 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.[4] 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.[5] Perhaps most significant, the rule expanded the criteria related to "*Hardship Exemptions*" that were originally imposed under the *Individual Mandate* of the ACA. The expanded criteria allowing consumers to opt out of purchasing health insurance will account for those consumers who:

(1) Live in an area where no *qualified health plan* (QHP) is offered through the federal *Health Exchanges*;
(2) Live in an area where there is only one insurer offering coverage through the *Exchanges*;
(3) Only have access to QHPs that provide coverage for abortion services, contrary to one's beliefs; or,
(4) Have other demonstrable "*personal circumstances that create hardship in obtaining health insurance coverage under a QHP*."[6]

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.[7]

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 has (as of yet) failed to repeal.[8] However, while couched as tools with which to "*mitigate the harmful impacts of Obamacare*" (e.g., "*skyrocketing premiums*") and increase flexibility; affordability; integrity; and, stability of marketplace insurance options,[9] 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.[10] Additionally, the new changes are not expected to offset the *Congressional Budget Office's* (CBO) estimated 34% increase in premiums for 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 October 12, 2017 decision to stop funding cost-sharing reductions under the ACA.[11] However, note that the deficit would have been an estimated $297 billion more from 2018 to 2027 if the Individual Mandate was still in effect over that time frame.[12]

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 (i.e., "*welfare*") programs.[13] This action builds upon the recent guidance by CMS, which permits states to acquire a Section 1115 Medicaid waiver for the purpose of imposing work requirements as a condition of Medicaid eligibility.[14] 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.[15] The Executive Order, which seeks to address "*the economic stagnation and social harm that can result from long-term Government dependence*," targets any federal

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assistance program for "*people, households, or families that have low incomes…the unemployed, or those out of the labor force*,"[16] which notably includes not just cash assistance programs, but several safety net programs, e.g., the *Supplemental Nutrition Assistance Program*, f/k/a food stamps, and Medicaid.[17]

In contrast to the arguably more publicized political stalemate that has plagued Republican congressional efforts to "*repeal and replace*" the ACA since 2010,[18] within the past few weeks, the current Administration has clearly illustrated its willingness and capability in making 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, i.e., "*loosening the reins*" of federal healthcare regulation. However, with a federal budget threatening to break deficit records,[19] it remains to be seen whether the Administration's tactics will be effective at achieving its long term overall goals.

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6 "RE: Guidance on Hardship Exemptions from the Individual Shared Responsibility Provision for Persons Experiencing Limited Issuer Options or Other Circumstances" Centers for Medicare & Medicaid Services, April 9, 2018, https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2018-Hardship-Exemption-Guidance.pdf (Accessed 4/11/18), p. 1.

7 "Tax Cuts and Jobs Act" H.R. 1, § 11081 (January 3, 2017), p. 39.

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11 "The Budget and Economic Outlook: 2018 to 2028" Congressional Budget Office, April 2018, https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53651-outlook.pdf (Accessed 4/17/18), p. 51; "RE: Payments to Issuers for Cost-Sharing Reductions (CSRs)" By Eric Hargan, Acting Secretary, Letter to Seema Verma, Centers for Medicare & Medicaid Services, October 12, 2017, https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf (Accessed 4/11/18). The $33 billion increase in the federal deficit was calculated by subtracting $91 billion by $58 billion.

12 Congressional Budget Office, April 2018, p. 98.

13 The White House, April 10, 2018.

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