Helping Ohioans with Healthcare Benefit Choices

OAHU

Federal Legislative Update

By Barb Gerken, OAHU Legislative Chair

1/15/2019

- A new rules package was adopted by a vote of 234-197. Measures include:
  - Allowing Congress to intervene in the Texas ACA case
  - Legislation pertaining to the rules committee will now be required to have a hearing and markup before going to the floor
    - Will also require 72 hours prior to vote on the floor to provide lawmakers time to read the legislation.
    - Removed CUTGO budgetary process and replaced it with PAYGO

- House, led by new speaker Nancy Pelosi, asked Judge Reed O'Connor in a federal court in Texas to allow the House of Representatives to defend the ACA.

- House voted 235-192 to approve a resolution supporting a plan for the chamber's council to intervene in the Texas ACA case.

- 5th U.S Circuit Court of Appeals granted a stay in the proceedings in the Texas vs. USA case due to the government shutdown.

- NAHU lost several champions of our priority legislation, including:
  - HIT repeal sponsor Heidi Heitkamp (D-ND),
  - Cadillac Tax repeal sponsor Dean Heller (R-NV), although House HIT repeal sponsor Kyrsten Sinema (D-AZ) was elected to the Senate and could be a new champion in that chamber.

- CAP con talking points:
  - Our formal talking points aren't ready yet – waiting to see if we get any surprise healthcare packages after the shutdown is resolved, but yes we will be focusing on delays/repeals of the ACA taxes, protections for preexisting conditions in light of what is going on in the courts, preserving the employer exclusion, and improvements for employer reporting. For any new members of Congress the tailored talking points will focus on kind of a "health insurance 101", what they need to know about the industry, the role and value of an agent, and the resources we can provide for their offices.

- Hospital pricing:
  - CMS Medicare rule requiring hospitals to post patient pricing in a machine-readable format in an online tool.
  - Effective 1/1/2019
  - https://wexnermedical.osu.edu/patient-and-visitor-guide/patient-pricing-lists
    - 17 ALPHAHYDROXYPROGEST 250MG 170.00
    - 17 ALPHAHYDROXYPROGESTERONE CAP 26.00
    - 3D RADIOTHERAPY PLAN W/ DOSE VOLUME HISTOGRAMS 6,419.00
    - 3D RENDERING POST-PROCESSING W/ INDEPENDENT WORKSTATION COMPUTERIZED TOMOGRAPHY (CT SCAN) 580.00
    - 3D RENDERING POST-PROCESSING W/ INDEPENDENT WORKSTATION DIAGNOSTIC RADIOLOGY 580.00

- HRA – comment letter sent from NAHU on December 28, 2018. The letter was 26 pages long and outlined the concerns the association has with the plans to be effective 1/1/2020.
  - Strongly support the decision to limit these plans to being the only plan choice for a class of employees and prohibiting employers from providing them in competition with other comprehensive group coverage.
  - Recommended establishing a safe harbor for employers to rely on to refer their employees to independent licensed advisors and other individual coverage resources without veering into group health plan territory.
  - Recommended simplifying the employer verification requirements, developing more guidance and resources for employers, and creating more explicit rules and safe harbors.
  - Asked the Departments to consider adopting a requirement for issuers similar to the creditable coverage letter requirement that was in place after the enactment of HIPAA and eliminated after the implementation of ACA market requirements in 2014.
  - Recommended the Departments reconsider the policy that provides employers flexibility to create combinations of classes concerning the scope of the coverage offering, and instead provide a concrete list of categories of employees that must be used to determine the scope of an HRA-IHIC offering.
  - Specify that an employer may choose to provide HRA-IHIC offerings to all of its employees or for any reasonable category of employees, provided it does so in a uniform and consistent basis for all employees in a class.
  - Recommended that the final rule contain one set of clear definitions of these terms for employers to adopt for "full-time employee," "part-time employee" and "seasonal employee."
  - Expressed concerns that timing of an opt-out coupled with exchange-based individual coverage enrollment could pose challenges for individuals who do not understand their opt-out or special enrollment rights or might not be informed of them adequately.
  - Suggested potential for discrimination concerns with new HRA offerings to be made to some, but not necessarily all, former employees, as well as how this proposed option would work with Medicare-eligible former employees.

- Related concerns and questions about the various safe harbors proposed to help applicable large employers demonstrate that potential HRA-IHICs meet the "affordability" and "minimum value" tests.
- Expressed concern about participation requirement conflicts if an employer elects to offer an HRA-IHIC to one or more classes of employees and a traditional group health plan to one or more other classes.
- Requested clarification on the impact of the rule on individual-market risk pools and the potential for discrimination based on health status.
- Noted that the rule could lead to a downgrade in the scope of employer-sponsored coverage offerings in specific industries as certain employers may make de minimis contributions to HRA-IHICs to meet their IRC §4980(h) obligation to offer MEC.
- Opposed the ability for these plans to reimburse individuals for the purchase of short-term limited duration insurance coverage (STLDI).
- Requested clarification about the appropriate treatment of Medicare-eligible employees who are part of an employment class eligible for an HRA-IHIC, and the intersection of the HRA-IHIC provisions of the proposed rule and the Medicare secondary payer and nondiscrimination rules, both for traditional Medicare beneficiaries and those with Medicare eligibility due to a disability or end-stage renal disease.
- Supported the expanded flexibility on the selection and use of EHB benchmark plans but requested additional guidance on its parameters for self-funded group health plans.

- As of January 1st, hospitals are required to post prices online, however most are using codes and abbreviations that most consumers will be unable to decipher. It would also be left to the consumer to figure out how to bundle services.