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HEALTH POLICY

GOP Health Bill Jeopardizes Out-of-Pocket Caps in Employer Plans

Last-minute amendment would allow states to obtain waivers from certain Affordable Care Act requirements

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Many people who obtain health insurance through their employers—about half of the country—could be at risk of losing protections that limit out-of-pocket costs for catastrophic illnesses, due to a little-noticed provision of the [House Republican health-care bill](#), health-policy experts say.

The provision, part of a last-minute amendment, lets states obtain waivers from certain Affordable Care Act insurance regulations. Insurers in states that obtain the waivers could be freed from a regulation mandating that they cover 10 particular types of health services, among them maternity care, prescription drugs, mental health treatment and hospitalization.

That could also affect plans offered by large employers, health analysts said.

The ACA prevents employer plans from putting annual limits on the amount of care they will cover, and it bars lifetime limits on the 10 essential benefits. But in 2011, the Obama administration issued guidance stating that employers aren't bound by the benefits mandated by their state and can pick from another state's list of required benefits. That guidance was mostly meaningless because the ACA established a national set of essential benefits.

Under the House bill, large employers could choose the benefit requirements from any state—including those that are allowed to lower their benchmarks under a waiver, health analysts said. By choosing a waiver state, employers

looking to lower their costs could impose lifetime limits and eliminate the out-of-pocket cost cap from their plans under the GOP legislation.

A company wouldn't have to do business in a state to choose that state's benefits level, analysts said. The company could just choose a state to match no matter where it is based.

The measure would give employers added flexibility to take steps that could lower costs by limiting more expensive coverage areas. And it would lessen the federal regulation of insurers, a goal of GOP lawmakers who believe the ACA is an example of government overreach.

The impact on employer plans expands the scope of the health bill to affect, potentially, everyone not insured by Medicare or small-business plans, since the bill also includes cuts to Medicaid and changes to the individual market. Employer health plans are the single largest source of health insurance in the country, with about 159 million Americans receiving coverage through their jobs.

"It's huge," said Andy Slavitt, former acting administrator of the Centers for Medicare and Medicaid Services under President Barack Obama. "They're creating a backdoor way to gut employer plans, too."

But some experts say the impact could be less.

"The real question is, would employers do this? Many wouldn't," said Larry Levitt, a senior vice president at the Kaiser Family Foundation. "Many employers offer quality benefits to attract employees. But employers are always looking for ways to lower costs."

Fifty-nine percent of covered employees who were in an employer plan had a lifetime limit on how much their insurance plans would cover before the ACA, Mr. Levitt said.

The potential impact on large-employer plans was picked up on by health analysts including Matthew Fiedler, a fellow at the Brookings Institution. It is possible the Trump administration could minimize the impact by barring

employers from picking plans across state lines, he said, but there is no sign that that would occur.

“The core goal of insurance is to ensure that people are protected if the worst happens, and these protections are crucial to achieving that goal,” Mr. Fiedler said.

A House GOP spokesman echoed that point, saying the bill didn’t intend to touch employer plans and any unintended consequences could be addressed by Health and Human Services Secretary Tom Price.

The waivers that let insurers roll back mandated benefits apply to plans sold in the individual market and small-business market, said Alleigh Marre, a spokeswoman for Health and Human Services. The amendment gives states flexibility to specify the essential health benefits for health coverage offered in the small group and individual markets.

“Should the AHCA become law, the Department of Health and Human Services will administer it in line with both the explicit text of the bill and its intent,” she said. “HHS is continuing its comprehensive review of all regulations and guidance released by the previous administration.”

Mr. Fiedler at Brookings said that while the proposed waivers do apply to individual or small group markets, large employers could be impacted because currently regulatory language lets them pick benefit plans in any state. How lifetime limits and caps on out-of-pocket costs apply to large employers essential health benefits is up to HHS, and he said they have so far taken the approach that any state benefit apply. The question is whether the Trump administration would change the guidance they have been using, he said.

Potentially, the new provision could play out this way: If a state did away with a requirement to provide mental health and substance abuse services, employer plans using that benchmark could impose lifetime caps on the amount of mental health coverage they are willing to pay for.

One trade group representing employers said the amendment's effects on people with employer-sponsored health coverage would be minimal. Most large employers didn't impose annual or lifetime limits before the ACA was implemented, according to James Gelfand, senior vice president of health policy at the Erisa Industry Committee.

"Even if self-insured health plans are no longer banned from imposing annual or lifetime limits, they're unlikely to attempt to squeeze the toothpaste back into the tube," he said. "The benefits of reimposing limits are questionable."

Employers have already been increasingly shifting health-care costs to employees as costs rise. For the first time, more than half of workers—51%—have a deductible of more than \$1,000 for a plan covering a single person, compared with 46% last year, according a 2016 study by Kaiser/HRET.

"You've seen a decisive trend toward employers shifting cost," said Topher Spiro, vice president for health policy at the left-leaning Center for American Progress. "Why would they not do this?"

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Corrections & Amplifications

Topher Spiro is vice president for health policy at the Center for American Progress. An earlier version of this article incorrectly stated his last name. (May 4, 2017)