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The Response to Short-Term and Association Health Plans

Following recent actions by the Trump Administration making short-term, limited duration health insurance (STLD) and Association Health Plans (AHPs) more available, some states and coalitions are acting to limit them.

On September 14, 2018, a coalition of consumer advocates and safety net health plans sued the Departments of Treasury, Labor, and Health & Human Services over a rule regarding STLD coverage. The suit was filed by the Association for Community Affiliated Plans, the National Alliance on Mental Illness, Mental Health America, the American Psychiatric Association, AIDS United, the National Partnership for Women and Families, and the Little Lobbyists.

The plaintiffs' lawsuit is directly related to the fact that short-term plans do not have to comply with the ACA's market reforms.¹ Short-term insurers can charge higher premiums based on health status, exclude coverage for preexisting conditions, impose annual or lifetime limits, opt not to cover entire categories of benefits (such as substance use disorder treatment or prescription drugs), or rescind coverage altogether. Given these limitations—and the fact that short-term coverage is generally only available to consumers who can pass medical underwriting—short-term coverage is much less expensive than ACA-compliant coverage and enrollment tends to skew younger and healthier.

The sale of these plans will result in adverse selection against the ACA individual market, said Katie Keith of *Health Affairs*, because healthier consumers may exit the ACA market to enroll in short-term coverage. This will raise premiums for those with health needs or who otherwise need or want access to comprehensive coverage and remain in the ACA-compliant market.

The plaintiffs argue that the sale of short-term plans will particularly hurt those they represent or serve through higher premiums and deductibles, fewer benefits, higher out-of-pocket costs,



and no premium tax credits. Those harmed include individuals with mental health issues or substance use disorders, individuals living with HIV, women, families with children who have complex medical needs and disabilities, and safety net health insurance plans.

Meanwhile, a coalition of 12 Democratic state attorneys general have challenged the Trump Administration new rule on AHPs that do not meet insurance plan standards outlined by the ACA.² The group argues the Trump administration's rule violates the ACA's aim of establishing minimum insurance protections and will leave small employers and individuals more vulnerable to fraud and abuse.

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In Pennsylvania, Insurance Commissioner Jessica Altman sent a letter to the U.S. Departments of Labor and Health & Human Services stating the department's requirements for AHPs. The standards require an association to have been active for at least two years to offer a plan and specify that businesses with just one employee are not eligible for AHPs.³ The standards also require AHPs organized in other jurisdictions to adhere to Pennsylvania's regulations.

The Commonwealth of Pennsylvania submitted comments in March in response to the proposed rule. The comments raised concerns about the fact that AHPs would not have to meet coverage requirements under the ACA and warned that the policy could destabilize the market. "I remain concerned that this rule will allow for substandard coverage that will limit consumers' access to comprehensive health care, and I am committed to ensuring that our laws will continue to provide necessary protections to consumers," said Altman.⁴

The National Federation of Independent Business, a long-time advocate of AHPs, is declining to establish an AHP because the rule falls short of what the NFIB felt was needed to establish such plans. Describing the

new Trump rules as unworkable, the organization objects to requirements that customers in an AHP must be in the same industry or reside in the same state under the new rule.⁵

Several state insurance regulators have voiced concern about consumer protections for AHPs while others say they are uncertain about where their responsibilities begin and end with respect to the plans. Several state insurance regulators have issued insurer bulletins to affirm existing state regulations and ACA requirements, such as providing essential health benefits. In addition, some states are looking to use their existing regulatory frameworks, or are taking new action, to restrict new AHP activity and avoid disruption in the market.⁶

1. "Two New Lawsuits Challenge Trump Administration Actions on Health Reform"; Health Affairs Blog, September 17, 2018.
2. "How 5 Lawsuits Could Change U.S. Healthcare Industry"; Becker's Hospital Review; September 4, 2018.
3. "Pennsylvania Insurance Commissioner Outlines Position on Implementing Association Health Plans Rule"; Pennsylvania Business Report, August 6, 2018.
4. Ibid.
5. "Buyer Beware of Association Health Plans"; The Hill; July 25, 2018.
6. "Association Health Plans Are Drawing a Lot of Attention, Including Some Pushback"; JDSupra; September 6, 2018.

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