ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- Idaho is allowing carriers to sell non-Exchange health plans in the state that don't comply with certain ACA rules.
- Under this guidance, carriers may impose pre-existing condition exclusions in some circumstances.
- It is likely that this move will be challenged in court, due to questions surrounding its legality.

IMPORTANT DATES

January 24, 2018
The Idaho DOI issued a bulletin allowing carriers to sell non-ACA compliant plans in the state.

Provided By:
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Idaho Regulations Relax ACA Rules for Health Plans

OVERVIEW

On Jan. 24, 2018, the Idaho Department of Insurance (DOI) issued Bulletin No. 18-01 to allow carriers in the state to sell "state-based health plans" outside of the Exchanges that do not comply with some Affordable Care Act (ACA) requirements. Most notably, this bulletin allows insurers in the state to:

- ✓ Impose pre-existing condition exclusions for individuals who do not have continuous prior coverage;
- ✓ Vary premium rates based on health status; and
- ✓ Establish an overall annual dollar limit of up to $1 million per individual.

The bulletin also establishes its own set of minimum required benefits in place of the ACA's essential health benefits (EHB).

PRACTICAL IMPACT

The Idaho regulations are in direct conflict with federal law. As a result of this conflict, court challenges are expected. Also, insurance carriers could face significant federal penalties under the ACA if they issue noncompliant policies. Therefore, the practical impact of this move remains to be seen.

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Overview

On Jan. 5, 2018, Gov. C.L. "Butch" Otter (R) signed Executive Order No. 2018-02 in an effort to change certain ACA rules as they apply to Idaho. Citing the powers reserved to the states under the 10th Amendment to the U.S. Constitution, the executive order:

- ✓ Generally directs the Idaho DOI to implement creative options for insurance carriers to offer health plans in the state that expand access and meet consumers' needs at a lower cost—even if those plans do not meet all ACA requirements;
- ✓ Requires insurance carriers taking advantage of these new options to also offer an Exchange-certified alternative in Idaho; and
- ✓ Authorizes the DOI to seek a waiver from the U.S. Department of Health and Human Services if appropriate or necessary.

According to Gov. Otter, the state is taking these actions in an effort to address problems with the current health care system and implement workable, realistic solutions to enhance access to affordable health care for its residents.

DOI Bulletin

In response to this executive order, the Idaho DOI issued Bulletin No. 18-01 to outline the required provisions for new state-based health benefit plans to comply with state law. However, as a condition to offering a state-based health plan, a carrier must offer an Exchange-certified health plan in the individual market. In addition, state-based health plans must be guaranteed issue and renewable, and must be available to dependents under age 26.

Pre-existing Condition Exclusions

The ACA generally prohibits group or individual health insurance coverage from imposing any pre-existing condition exclusion. A pre-existing condition exclusion is a limitation or exclusion of benefits related to a condition based on the fact that the condition was present before the coverage enrollment date, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that date.

Under the new Idaho requirements, carriers are prohibited from applying a pre-existing condition exclusion period, provided there is continuous prior coverage. Carriers must waive any pre-existing condition exclusion for any applicant with evidence of qualifying previous coverage within 63 days of when the new state-based plan coverage takes effect. However, carriers generally can impose a pre-existing condition exclusion with respect to state-based health plans for any individuals who do not have continuous prior coverage.

EHB Requirement

The ACA requires non-grandfathered health insurance plans in the individual and small group markets to offer comprehensive health coverage, known as the EHB package. Under the EHB package, a health insurance plan

is required to cover a core set of items and services—known as EHB—which must reflect the scope of benefits covered by a typical employer and cover at least the following **10 general categories of items and services**:

1. Ambulatory patient services (outpatient care)
2. Emergency services
3. Hospitalization
4. Maternity and newborn care
5. Mental health and substance use disorder benefits, including behavioral health treatment
6. Prescription drugs
7. Rehabilitative and habilitative services and devices
8. Laboratory services
9. Preventive and wellness services and chronic disease management
10. Pediatric services, including oral and vision care

Under Idaho's new requirements, state-based health plans must include coverage for outpatient/ambulatory care, emergency care, hospitalization, maternity and newborn care, mental health and substance use disorder services, prescription drugs, rehabilitation treatment, laboratory services and preventive care. **However, they are not required to cover pediatric services, including oral and vision care.**

Carriers of state-based health plans may choose to offer benefits beyond the minimum, either as part of the base contract or as an optional rider.

Premium Rates

Under the ACA, issuers may vary the premium rate charged to a non-grandfathered plan in the individual or small group market from the rate established for that particular plan only based on age (within a ratio of 3:1 for adults), geography (rating area), family size (individual or family), or tobacco use (within a ratio of 1.5:1).

However, the Idaho DOI intends to enforce separate state law rating restrictions on premium rates. Most notably, the bulletin allows carriers to consider certain health factors in determining premium rates (such as an individual's personal or family medical history).

Annual Limits

The ACA generally prohibits health plans from imposing annual limits on the dollar value of EHB. However, in Idaho, the DOI will consider approving health plans with an overall annual dollar benefit limit of no less than $1 million per individual. Any individual reaching $1 million in annual paid benefits must be assisted by the carrier in transitioning without a break in coverage to one of the carrier's Exchange-certified health plans.

Disclosure

A carrier that elects to offer a state-based plan in Idaho that is not fully compliant with the ACA's health insurance requirements must disclose on the face page of the policy that:

- ✓ The policy is not fully compliant with federal health insurance requirements; and
- ✓ Any pre-existing condition is covered, provided there is qualifying prior coverage.

Practical Impact

Many experts have asserted that these new regulations are illegal under the Supremacy Clause of the U.S. Constitution. Generally, the Supremacy Clause requires states to comply with federal law, and provides that federal law will take priority over any state laws or regulations that conflict with federal law.

However, citing the 10th Amendment of the U.S. Constitution, Gov. Otter has asserted that the state retains the right to regulate insurance in its state, since that is not a power afforded to the federal government under the U.S. Constitution. Under the 10th Amendment, the federal government only possesses the powers delegated to it by the U.S. Constitution, and all other powers are reserved for the states.

As a result of this conflict, many experts are predicting that a lawsuit will be filed challenging these new requirements in Idaho. In addition, insurance carriers could face federal penalties of up to $100 per day, per enrollee under the ACA for violating the law's requirements. Therefore, the practical impact of this move remains to be seen.