



HHS Put Guaranteed Renewability Option For States In Short-Term Plan Rulemaking

Ariel Cohen

August 14, 2018

While federal statute prevents HHS from allowing short-term plans to renew their policies without additional underwriting, the agency tucked a provision into the final rule that lets states allow issuers to sell a separate “renewability guarantee” that would cost only a percentage of a monthly premium and protect consumers from premium increases or coverage denials should they fall ill.

Insurers had offered such renewability guarantees prior to passage of the ACA and several states already allow for the sale of a renewability guarantee, but after passage of the ACA such guarantees became unnecessary due to the law's provision banning plans from denying coverage due to preexisting conditions and medical underwriting.

“The ability to purchase such instruments, which are essentially options to buy new policies in the future, is at present permitted under federal law, and this rule does nothing to forbid or permit such transactions,” HHS writes in the rule released July 31.

Michael Cannon, director of health policy for the Cato Institute, had encouraged HHS to include the separate renewability guarantee in the short-term plan rule. He has argued that the rule creates an escape hatch from the Affordable Care Act for people unable to afford comprehensive coverage and touted the benefits of a renewal guarantee during a Capitol Hill briefing on Wednesday (Aug. 8).

The renewability guarantee is not a health insurance contract as defined under federal statute, Cannon explained.

“Yes, it is insurances, but it ensures against a different risk than health insurance coverage does and it provides a different benefit,” Cannon said of renewal guarantees for short-term plans. “It ensures against not the risk that you’re going to need medical care but the risk that a change in your health status, like a cancer diagnosis, will cause your premiums to rise.”

HHS describes the renewal guarantees as generally permitting the consumer to pay an additional amount to secure the right to purchase another policy at a future date without additional underwriting.

In 2009, United Health Care had issued products that cost a percentage of an insurance premium in order to guarantee a consumer who passes medical underwriting the right to purchase a plan without underwriting at a later date. Consumers paid about 20 percent or less of a monthly premium for that protection. The plans were adopted in about 25 states at the time.

No states have yet announced that they want to make their short-term plans guaranteed renewable. Insurers can begin selling the plans on Oct. 1 and are in the process of crafting their plans.

The final rule says a renewability guarantee would not count toward the 36-month maximum duration for a short-term product. When a health insurance contract is renewed that period of health insurance coverage is counted towards the 36-month maximum duration, HHS says. In contrast, if a contract does not provide health insurance coverage, and instead consists of a separate transaction such as locking in premium rates without re-underwriting, this would not count towards the 36-month maximum duration.

“Through these mechanisms, it may be possible for a consumer to maintain coverage under short-term, limited-duration insurance policies for extended periods of time,” HHS writes.

HHS also says the federal government has no authority over whether states opt to let short-term plans offer guaranteed renewability and has no right to ban them.

“HHS is saying to states, ‘you can do this but we can’t ... I think a lot of red states will want to do it,’” Health law expert Chris Condeluci said of guaranteed renewability in short-term plans. “Insurers in this market like the idea of guaranteed renewability, but there are some people who will say that if an insurer wants to guarantee renewals they can but if they don’t they don’t have to.”

Another D.C.-based health policy expert said that HHS might be attempting to appease Republicans who were pushing for guaranteed renewability in the federal regulation.

“It may be that HHS recognizes that there is some sort of constituency out there who may be pushing for [guaranteed renewals] but since they lack the authority to do so it may be just that HHS is covering their bases here with that constituency,” the expert explained.

Several commenters, including lawmakers, pushed for guaranteed renewal or auto-renewal in their comments on the proposed version of the rule.

In both the House and Senate, Republican lawmakers have introduced legislation allowing for the guaranteed renewal of the plans on the federal level, and on Wednesday HHS told *IHP* that Secretary Alex Azar was interested in working with Congress to pass such legislation.