

AFFORDABLE CARE ACT UPDATE

Korey Harvey, J.D.
Deputy Commissioner – Health Insurance
La. Department of Insurance

Preemption

Provisions of PPACA can potentially preempt state laws

- Similar to HIPAA:

Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.

PPACA §1321(d)

- States can go beyond federal rules, but if a state's laws or regulations prevent a federal law from being implemented, then that law or reg is preempted
- Assumption is that the state will enforce federal rules

Statutory Structure

- In 1944, SCOTUS held that Congress could regulate insurance under the Commerce Clause. Within months, Congress ceded that authority to the states under the McCarran-Ferguson Act (15 USC §§1011-1015).
- In 1974, Congress passed the Employee Retirement Income Security Act (ERISA), which limited the authority of states in insurance regulation with respect to self-insured plans.
- In 1996, Congress passed the Health Insurance Portability and Accountability Act (HIPAA), which significantly affected the authority of state regulators with respect to health insurance. HIPAA set some minimum standards for health insurance.
- The HIPAA reforms are permanently codified within the Public Health Service Act (PHSA), contained within Title 42 of the United States Code. HIPAA created Title 27 of the PHSA.
- The Patient Protection and Affordable Care Act (PPACA), Pub. L. 111-148, 124 Stat. 119, amended by the Health Care and Education Reconciliation Act, Pub. L. 111-152., contained substantial revisions to Title 27 of the PHSA.
- PPACA and the Health Care and Education Reconciliation Act are often referred to together as the “Affordable Care Act” or “ACA”.

Healthcare Reform – So Far

- September 23, 2010 Immediate reforms:
 - No lifetime limits and restricted annual limits
 - Internal and external review standards (La. enacted the federal minimum standards in 2013 ACT 326)
 - Guarantee issue for children under age 19
 - Child coverage up to age 26 (La. enacted this change)
 - Coverage of preventive benefits (contraceptive issue)
- Temporary High-Risk Pools (enrollment suspended Feb 2013)
(La. is eliminating its high risk pool on 12/31/13 pursuant to 2013 ACT 325)
- Rate Review Standards (rate increases 10%+ reviewed)
- Medical Loss Ratios with Rebates

2014 Market Reforms

For Small Group and Non-Group Coverage Sold or Renewed on or after 1/1/2014:

- Guaranteed Issue
- No Pre-Existing Condition Exclusions
- Adjusted Community Rating & Single Risk Pool for Each Market
- Essential Health Benefits & Cost-Sharing Must Meet Actuarial Value Levels
- Limited Open Enrollment periods

These apply inside and outside of an Exchange

Rating Reforms

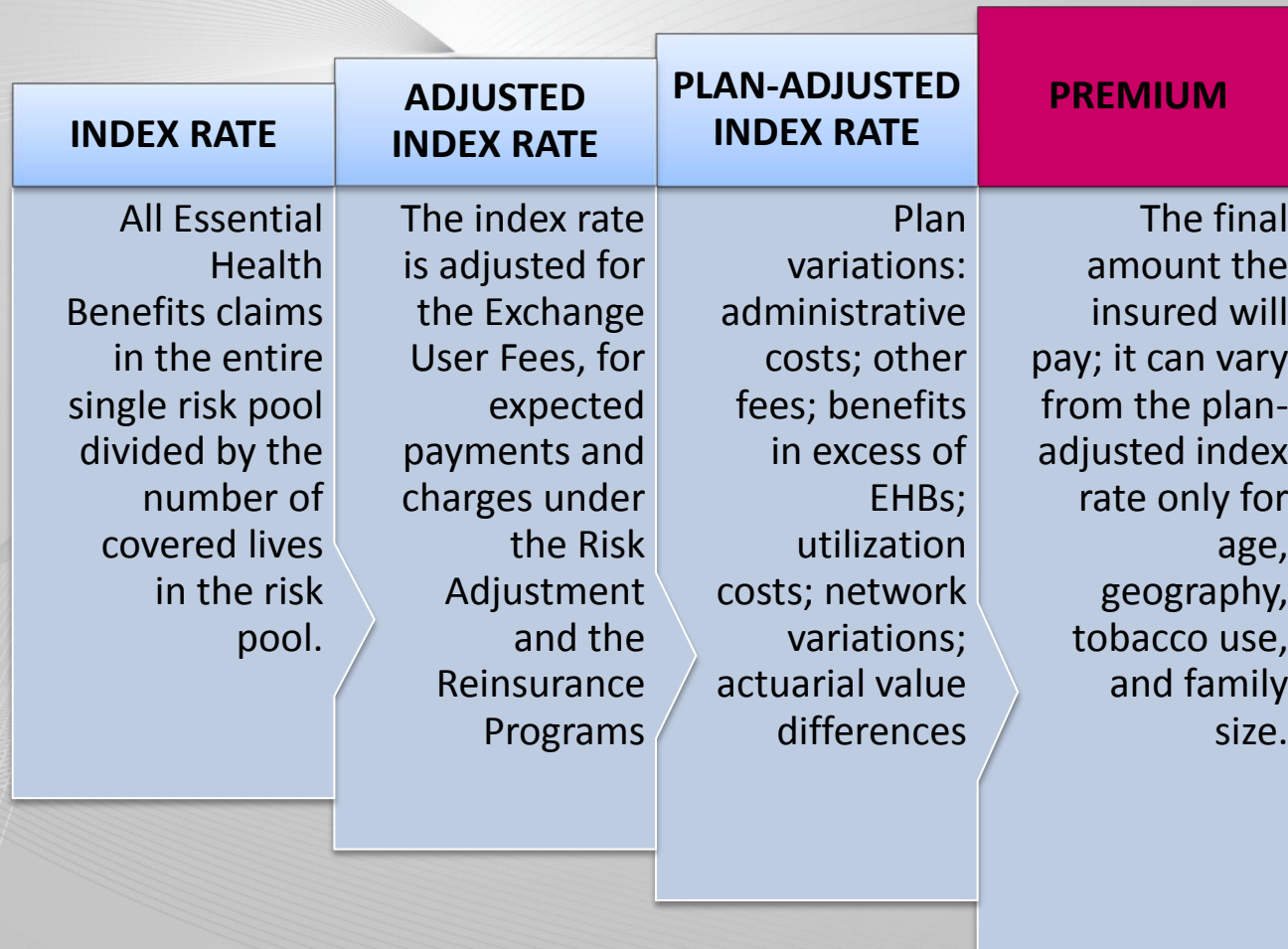
For the Small Group and Non-Group Markets:

- No rating based on health status
- Maximum age variation of 3:1 (ages 21 to 64)
- Maximum variation based on tobacco use of 1.5:1
- Actuarially justified variation based on geographic areas (state may set areas)
- Family rates built up based on age and tobacco use of each member

Plus, single risk pool in small group market and individual market (except for grandfathered plans)

This will significantly impact rates for younger/healthier enrollees in most states.

How Rates Are Set



Review of Rates

- Section 1003 of the ACA (2794 of PHSA) requires a review of rate increases of 10% or more, and a review of all rates for QHPs
- La. Dept. of Insurance will begin reviewing rates for 2015 plan year
- On 4/16/14, the department issued Directive 206 to all issuers on the requirements for rate filings
- ACT 718 of the 2014 session amends Louisiana's rating laws and establishes an effective rate review program in statute

ACT 718 (Rate Review)

- The act codifies in La. Law:
 - restrictions on premium variations
 - restrictions on frequency of rate increases
 - requirement that individual market policies be based on a calendar year starting in 2015
 - freezes the rating practices and other rules for grandfathered health plans
 - authorizes the Commissioner to grant transitional relief
 - the single risk pool requirement
 - the process for the review of rate increases and public comments on rate increases

Transitional Relief

- In November 2013, HHS implemented a transitional relief program for plans that would be canceled in both the individual and small group markets.
- Any plan that was not ACA-compliant, and had been entered into before October 2, 2013, could be continued with minor changes.
- The decision on transitional relief was left to insurance commissioners in each state.
- HHS extended transitional relief for the 2015 and 2016 plan years at the option of state insurance commissioners.
- Commissioner Donelon has authorized transitional relief for both the 2014 and 2015 plan years.
- BCBS is offering transitional relief in the individual market. Vantage, Humana, United, John Alden and Time Insurance are offering in the small group market for 2014.

Recent Regulatory Activity

Third Party Payment of Premiums

- Several issuers in Louisiana were refusing to accept third party premium payments, including payments made on behalf of persons with HIV
- These payments are made through the Ryan White HIV/AIDS grant program, which uses federal tax dollars
- In March 2014, HHS issued an interim emergency rule requiring QHP issuers to accept Ryan White funding, as well as other grant funding

Recent Regulatory Activity

Notice of Benefits and Payment Parameters (2015)

- The rule modifies the Transitional Reinsurance Program attachment point for the 2015 plan year by lowering the attachment point to \$70,000, with a coinsurance rate of 50%.
- For composite rates in the group market, the insurer should calculate a composite rate based on the characteristics of plan participants at the beginning of a plan year and apply that rate throughout the year despite the fact that plan members were being added and dropped.

Recent Regulatory Activity

Insurance Market Standards for 2015 and Beyond

- Fixed Indemnity & hospital indemnity: in individual market, policyholder must attest to maintaining MEC
- For composite rates in the group market, the insurer should calculate a composite rate based on the characteristics of plan participants at the beginning of a plan year and apply that rate throughout the year despite the fact that plan members were being added and dropped.

Recent Regulatory Activity

- HHS and the administration has announced that the Risk Corridor Program will be administered in a **budget neutral way.**
- Reinsurance per capita fee of \$44.
- To require Navigators and non- Navigator assistance personnel to obtain authorization before accessing a consumer's personally identifiable information and to prohibit them from charging consumers for their services.

Recent Regulatory Activity

- Align the start of annual employer election periods in all SHOPs for plan years beginning in 2015 with start of open enrollment period in corresponding individual market for 2015 benefit year.
- The annual employer and employee election periods would begin no sooner than November 15, 2014 with employers making selections first, followed by employees. The employer's annual election period will end when the employer makes relevant decisions about the coming year's participation.
- Congress repealed annual deductible limits in the small group market.

Navigators

- Exchanges must make grants to “**Navigators.**”
 - Trade, industry, and professional associations
 - Fishing, ranching, and farming organizations
 - Community and consumer-focused nonprofits
 - Chambers of commerce
 - Unions
 - Licensed agents and brokers (if they do not receive any compensation from carriers)
- Navigators Conduct public education and distribute information
- Navigators facilitate enrollment, but may not advise or enroll
- Navigators provide referrals to consumer assistance offices

Navigators (continued)

- HHS to develop standards to ensure that Navigators are qualified and trained
- Navigators may not be insurers or receive direct or indirect compensation from insurers for enrollment in a QHP
- States may not require a Navigator to be licensed as an agent or broker
- States should be careful to ensure that Navigators do not perform functions that would require a producer's license
- In the 2013 Regular Session, the Legislature through ACT 349, authorized the regulation of navigators. Subsequently, the La. Department of Insurance promulgated Regulation 101 (effective October 2013), which set regulatory standards for all navigators in the state.

Navigators (continued)

- In the 2014 legislative session, HB 764 (ACT 635) went beyond Reg. 101 and requires the licensing of navigators, which includes a background check.
- ACT 635 requires navigators to complete annual continuing education if HHS does not create and require continuing education.
- ACT 635 requires certified application counselors (CACs) to register with the Department of Insurance
- ACT 635 subjects navigators to the Unfair Trade Practices Act, and provides the Commissioner with the authority to suspend or revoke licenses on the same grounds that an agent/producer license can be suspended or revoked

Burwell v. Hobby Lobby

- The Court said that federal law (The Religious Freedom Restoration Act of 1993) gives for-profit businesses that are owned by a small group the right to refuse for religious reasons to provide birth control methods and services for their employees.
- The Court held that this ruling only applies to the contraceptive mandate in question rather than to all possible objections to the Affordable Care Act on religious grounds.
- The Court suggested that HHS use the approach that it designed for religious organizations: make the insurers pay for the cost of the contraception coverage.

Halbig v. Burwell

- Because more than 30 states refused to establish Exchanges under the ACA, HHS set up federally-facilitated Exchanges in those states.
- The ACA authorizes subsidies for enrollees on an Exchange in "an exchange established by the State."
- The challenge by Halbig is that the administration, through the IRS, is illegally handing out subsidies to enrollees in states where HHS, not "the State" has set up an Exchange.
- A ruling is expected any day.