

Biden Signs Order to Increase Access to Comprehensive Health Coverage

Federal agencies to reconsider rules and policies allowing ACA alternatives

By Stephen Miller, CEBS

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President Joe Biden signed an executive order (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicaid-and-the-affordable-care-act/>) on Jan. 28 that directs federal agencies to reconsider rules and other policies that limit Americans' access to comprehensive health care, such as by allowing coverage under alternatives to Affordable Care Act (ACA)-compliant plans, and to consider actions that will protect and strengthen access to comprehensive health care coverage.

According to a White House fact sheet, federal agencies, including the Department of Health and Human Services (HHS), were directed to re-examine (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/28/fact-sheet-president-biden-to-sign-executive-orders-strengthening-americans-access-to-quality-affordable-health-care/>):

- Policies that undermine protections for people with pre-existing conditions, including complications related to COVID-19.
- Demonstrations and waivers under Medicaid and the ACA that may reduce coverage or undermine the programs, including existing work requirements.
- Policies that undermine the ACA's federal health insurance marketplace or other markets for health insurance.
- Policies that make it more difficult to enroll in Medicaid and the ACA.
- Policies that reduce affordability of coverage or financial assistance, including for dependents.

As part of these reviews, agencies will consider whether to take additional actions to strengthen and protect access to health care.

Rules Under Fire

Several health care regulations proposed or finalized during the Trump administration are being reviewed by the Biden administration (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/biden-administration-to-review-rules-for-employee-health-and-retirement-plans.aspx). Prominent among these are rules that allow employers to reimburse employees for health coverage less comprehensive than what the ACA requires, such as the plans discussed below.

ASSOCIATION HEALTH PLANS

Biden has nominated California Attorney General Xavier Becerra to serve as his HHS Secretary. Becerra joined a coalition of 12 attorneys general who sued to block a 2018 Department of Labor (DOL) final rule that, if implemented, would allow small businesses to band together through association health plans (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/judge-blocks-association-health-plan-rule.aspx) to provide large-group market health insurance to their employees, thereby avoiding some of the regulatory requirements that individual states and the ACA impose on small-group market plans. The rule is still being litigated.

Becerra called association health plans "junk health plans" (<https://oag.ca.gov/news/press-releases/attorney-general-becerra-joins-coalition-12-attorneys-general-seeking-block-0>) and said if the regulation is allowed to take effect, it would allow insurers to discriminate based on health status, age or gender and would increase the risk of fraud by insurers.

In a statement Jan. 27, however, the U.S. Chamber of Commerce urged the Biden administration (<https://www.uschamber.com/series/above-the-fold/strengthening-esi-should-be-top-of-mind-congress-2021>) to allow the proposed rule on association health plans to move forward. "This will help ensure small businesses can provide their employees with savings and high-quality benefits that meet their needs by allowing access to the same benefits received by large employers," said Katie Mahoney, the chamber's vice president for health policy.

In 2019, the U.S. Chamber of Commerce and the Society for Human Resource Management (SHRM) joined an amicus brief (www.shrm.org/hr-today/public-policy/hr-public-policy-issues/Documents/2018.11.6.%20Docketed%20Motion%20for%20Leave%20to%20File%20Amicus%20Brief%20and%20Attached%20Amicus%20Brief.pdf) in support of association health plans. "Association health plans could provide an option for small employers to offer competitive and affordable health benefits to their employees, thereby increasing the number of Americans who receive coverage through their employer," said Chatrane Birbal, SHRM's vice president for public policy.

SHORT-TERM PLANS

Becerra also opposes a 2018 final rule allowing insurers to sell short-term, limited-duration health plans (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/judge-dismisses-challenge-to-expanding-short-term-health-plans.aspx) that provide coverage for up to three years. These plans don't cover all services and treatments required by the ACA and cost less than ACA-compliant plans.

Some see the use of plans with limited coverage as a less-expensive COBRA alternative for departing employees, and a less-expensive alternative to ACA marketplace plans for people who have been unemployed for a long period of time or workers who lack employer-sponsored coverage and are not eligible for Medicare or Medicaid.

In a July 2019 ruling upholding these plans, U.S. District Court Judge Richard Leon in Washington, D.C., wrote that the ACA exempted many types of health insurance from its reforms and rejected plaintiffs' argument that short-term, limited-duration insurance was irreconcilable with the ACA. He wrote that short-term plans were part of "a category of individual health insurance that Congress expressly exempted from individual market regulations (<https://casetext.com/case/assn-for-cmty-affiliated-plans-v-us-dept-of-treasury>)" in the Health Insurance Portability and Accountability Act of 1996 and did not address further in the 2010 ACA.

Becerra has been critical of short-term plans and charged that the Trump administration's regulation "would flood the market with stripped-down, junk health insurance plans (<https://oag.ca.gov/news/press-releases/attorney-general-becerra-fights-protect-californians%E2%80%99-out-pocket-healthcare>) that don't provide the reliable, comprehensive coverage families need when an emergency occurs, leading to bankruptcy."

HEALTH CARE SHARING MINISTRIES

The Biden administration could also decide not to go forward with a proposed IRS rule that would allow employers to reimburse employees for fees paid to health care sharing ministries (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/irs-proposes-letting-hras-pay-for-direct-primary-care-and-health-ministry-expenses.aspx), in which a group of people with common ethical or religious beliefs share health care costs, often absent the coverage guarantees of ACA plans.

Becerra charged last August that "health care sharing ministries are not full coverage health insurance, should not be treated as such (<https://oag.ca.gov/news/press-releases/attorney-general-becerra-leads-coalition-attorneys-general-opposition-irs>), and will only cause confusion and harm as families desperately seek to get covered." He urged the Treasury and the IRS to withdraw the proposed rule.

Christopher Jin, president of United Health Share Ministries, called the coverage that health care sharing ministries offer "another choice for people seeking an alternative to traditional health care insurance or the Affordable Care Act

(<https://www.healthcarebusinesstoday.com/sharing-is-caring-5-common-misconceptions-about-healthcare-sharing-ministries/>).

[SHRM resource spotlight: Affordable Care Act (www.shrm.org/ResourcesAndTools/Pages/Affordable-Care-Act.aspx)]

Other Actions

Biden's executive order also directs HHS to reopen the ACA's HealthCare.gov marketplace exchange for a "special enrollment period," (<https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency>) from Feb. 15 through May 15, 2021. "This Special Enrollment Period will give Americans that need health care coverage during this global pandemic the opportunity to sign up," according to the White House.

Biden signed a separate executive order the same day directing HHS to review a Trump administration rule blocking health care providers in the federally funded Title X family planning program from referring patients for abortions and related services.

Related SHRM Articles:

(www.shrm.org/ResourcesAndTools/Pages/Affordable-Care-Act.aspx)What Democratic Control of Government Means for Health Care Policy (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/what-democratic-control-of-government-means-for-health-care.aspx), *SHRM Online*, January 2021

Biden Proposes Temporary Subsidies for COBRA Coverage (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/biden-to-seek-temporary-subsidies-for-cobra-coverage.aspx), *SHRM Online*, January 2021

Biden Administration to Review Rules for Employee Health and Retirement Plans (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/biden-administration-to-review-rules-for-employee-health-and-retirement-plans.aspx), *SHRM Online*, January 2021

What's Ahead for Health Care Under Biden? (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/whats-ahead-for-health-care-under-biden.aspx), *SHRM Online*, November 2020

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