

Guaranteed Issue/Renewal

Beginning January 1, 2014 (September 23, 2010 for children), the Patient Protection and Affordable Care Act (PPACA), for the first time, sets a national standard that all individual and group health plans must issue policies to all applicants, regardless of health status.¹ The plan must also guarantee renewal of those policies, if the individual or employer wishes to remain enrolled.²

Background

PPACA applies new federal health insurance standards to group and individual health plans designed to prevent discrimination against individuals and groups based on their health status. Central to these reforms are the “guaranteed issue” and “guaranteed renewal” requirements in the bill, which will be in effect beginning January 1, 2014.

Current Law

In most states, health plans can refuse to issue policies to individuals who apply for coverage if they have a costly health condition, such as cancer.³ And many plans can and do deny coverage to individuals with even minor health issues such as acne, or seasonal allergies^{4, 5}

Example: Obtaining coverage in the individual market today

Greg is a 36-year-old freelance writer. He doesn't smoke, jogs daily, and plays tennis once a week. He's also HIV-positive and needs combination drug therapy, as well as regular check ups with an infectious disease specialist. Greg lives in Austin, Texas, which does not require guaranteed issue of health policies in the individual market. He applies for coverage to 6 plans and is rejected by them all.

¹ PPACA § 1201, adding new Public Health Service Act (PHSA) § 2702.

² Ibid., adding PHSA § 2703.

³ Six states require guaranteed issue in the individual insurance market. See Kaiser Family Foundation's State Health Facts, prepared by Georgetown University Health Policy Institute at <http://www.statehealthfacts.org> (updated Jan. 2010).

⁴ See, e.g., Consumer Watchdog release of internal insurance industry underwriting guidelines, available at <http://www.consumerwatchdog.org/patients/articles/?storyId=29526> (Sept. 18, 2009). Conditions generally considered “uninsurable” by insurance industry underwriters include: HIV/AIDS, anorexia nervosa, arthritis, brain or spinal cord injury, cancer (recently diagnosed or treated), chemical dependency, coronary heart disease, cystic fibrosis, diabetes, epilepsy, hemophilia, hepatitis C, kidney disease, Lou Gehrig's disease, lupus, multiple sclerosis, muscular dystrophy, organ transplant, osteoporosis, paraplegia or quadriplegia, Parkinson's disease, and stroke. Pregnancy is also grounds for denial by many carriers.

⁵ A small number of consumers seeking coverage in the individual market have the right to guaranteed issue under federal law. HIPAA requires insurers to see a policy without coverage limits to consumers who have had at least 18 months of continuous coverage and are moving from a group policy. These individuals must have exhausted COBRA coverage, not be eligible for any other group or public plan coverage, and apply for coverage within 63 days. But in a significant percentage of states, these individuals can still be turned down by private insurers and are only guaranteed the right to buy coverage from their state high risk pool.

For small employers, the federal Health Insurance Portability and Accountability Act (HIPAA) requires all plans to be sold on a guaranteed issue basis. This means a small business cannot be turned down for coverage based on the health status of their employees. But the company could be turned down for other reasons. For example, health plans might require that the company contribute a minimum percentage of the premium payment on behalf of their employees, or that a minimum percentage of the company's employees participate in the plan. And, until enactment of PPACA, federal law did not limit the amount a plan can charge a small business based on age and health status, so for many small businesses with older or sicker workers, health insurance is extremely expensive.

HIPAA also does not require guaranteed issue for the self-employed (i.e., sole proprietors with no other employees). However, many states do apply some guaranteed issue requirements to these individuals.⁶

Individual Mandate

PPACA's "guaranteed issue" requirements for health plans are inextricably linked to its requirement that individuals purchase health insurance. The new law imposes a tax penalty on individuals who remain uninsured, unless their coverage consumes 8 percent or more of their income.⁷ The "individual mandate" to purchase coverage is designed to ensure that healthy people buy into the insurance market, helping to spread the costs of health care among a broader pool of people.

The individual mandate is essential to the success of the market reforms in PPACA. In states that have enacted guaranteed issue requirements without an individual mandate, premiums have spiked, because most new enrollees were those who had health conditions and needed care. Those states are now among the most expensive places to buy health insurance.⁸ Recent models have shown that if PPACA was enacted with guaranteed issue and other market reforms, but without the individual mandate, only about 10 million additional people would obtain coverage (as opposed to the current estimate of 32 million) and the average individual premium in the exchange would rise by about 40 percent.⁹ The guaranteed issue requirement is designed to ensure that coverage is available to people who need it. But without the mandate that healthy individuals buy into the market, that coverage could quickly become unaffordable.

Conclusion

PPACA's requirements that health plans issue and renew policies for all eligible applicants is an essential component of a reformed insurance market. It will help ensure that coverage is available to all, regardless of their health status. To help keep premiums down, PPACA couples the guaranteed issue requirement and other market reforms with a mandate that all individuals

⁶ Twelve states require some form of guarantee issue for sole proprietors (groups of one). See Kaiser Family Foundation's State Health Facts at <http://www.statehealthfacts.org> (updated Jan. 2010).

⁷ § 1501, adding new Internal Revenue Code § 5000A.

⁸ Gruber, J. "Why we Need an Individual Mandate", Apr. 8, 2010, available at http://www.americanprogress.org/issues/2010/04/pdf/individual_mandate.pdf.

⁹ *Ibid.*

buy health insurance. This ensures that there will be a sufficient number of healthy individuals in the market to spread the risk and share the cost of coverage.

Example: Obtaining insurance in reformed system with guaranteed issue requirements

Greg applies for health insurance coverage through his state's exchange web portal. He compares health plan options and finds two that include top infectious disease experts within their networks and that are within his price range, based on premiums and estimated out-of-pocket costs. He chooses the one that has the higher quality rating, fills out an online form, and enrolls.

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