Guidance Issued

Obama Announcement for Transition Relief

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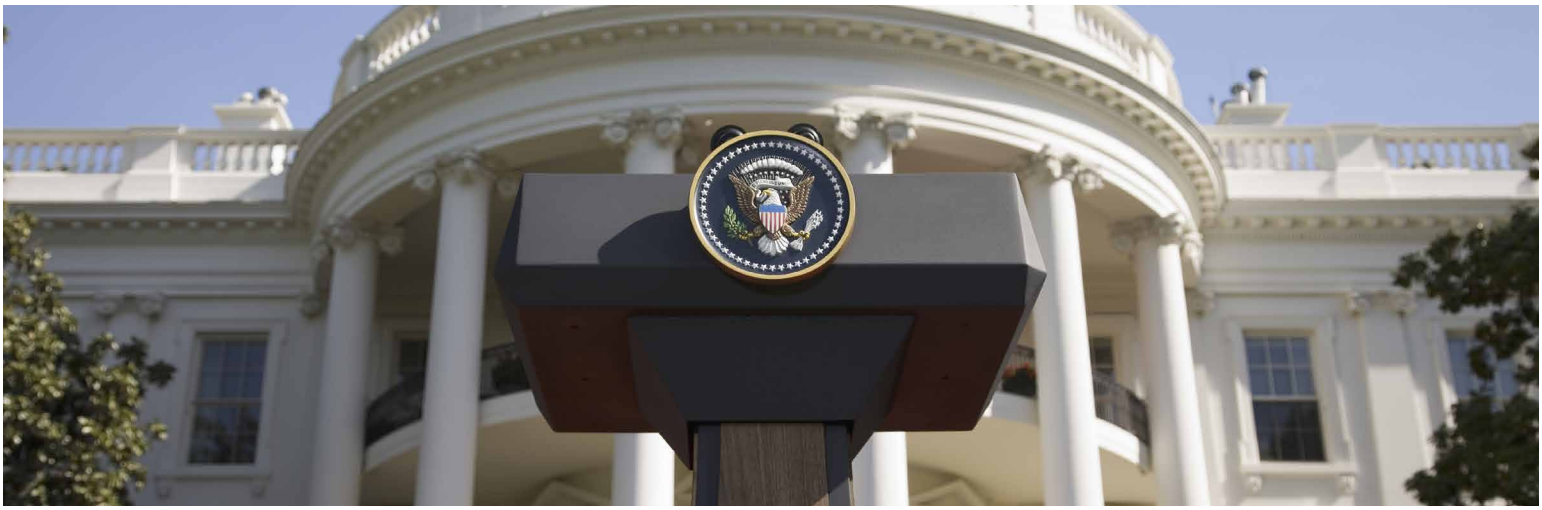

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As you know, in some cases, health insurance carriers are terminating or cancelling coverage because it would not comply with certain market reforms that are scheduled to take effect for plan or policy years starting on or after January 1, 2014, such as the new modified community rating and essential health benefits package standards. In a news conference yesterday President Obama announced that transitional relief would be offered for individuals. Following the news conference, the Obama administration released guidance on the transitional delay. It is important to note that the guidance indicates that the transitional relief is applicable to individual policies and non grandfathered, **small market group health plans**. A "small" employer is an employer that employed an average of not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. For plan years beginning before January 1, 2016, a state may elect to substitute "50" for "100." This transitional relief does not apply to large employer-sponsored plans and self-insured plans. Additional guidance is needed to fully understand all implications of this transitional relief.

The transitional relief permits, with the approval of both a State's insurance commissioner and the insurance carrier, the continuation of plans, subject to certain restrictions, that would not have otherwise complied with certain mandated benefit requirements for plan year years beginning in 2014. Such plans will not be considered to be out of compliance with the market reforms discussed below under the conditions specified. Importantly, if a State's insurance commissioner and applicable insurance carrier do not adopt this transitional relief, individuals and small employers will be required to adopt plans that are compliant with the mandated benefit requirements, for plan years beginning in 2014. Currently it does not appear that State insurance commissioners will be receptive to adopting this relief. Just hours after the President spoke, the insurance commissioner for the state of Washington announced that he would not allow the extension of such policies in his state. It is likely many other state insurance commissioners will follow suit, in the near future. Additionally, the President for the National Association of Insurance Commissioners (NAIC) and Insurance Commissioner for Louisiana stated yesterday:

> *"[I]t is unclear how, as a practical matter, the changes proposed today by the President can be put into effect. In many states, cancellation notices have already gone out to policyholders and rates and plans have already been approved for 2014. Changing the rules through administrative action at this late date creates uncertainty and may not address the underlying issues. We look forward to learning more details of this policy change and about how the administration proposes that regulators and insurers make this work for all consumers."*

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To the extent a state insurance commissioner AND insurance carrier want to allow coverage that would otherwise be terminated or cancelled to continue, they may do so provided:

1. The policy year begins between January 1, 2014 and October 1, 2014.

2. The coverage was in effect as of October 1, 2013. This means individuals and small employers that obtained coverage after this date would not be allowed to renew under the transition rule.

3. To the extent coverage is permitted to renew, the health insurance provider must send a notice to individuals and small businesses that indicates:

   a. any changes in the options that are available to them;

   b. which of the specified market reforms would not be reflected in any coverage that continues;

   c. their potential right to enroll in a qualified health plan offered through a Health Insurance Marketplace and possibly qualify for financial assistance;

   d. how to access such coverage through a Marketplace; and

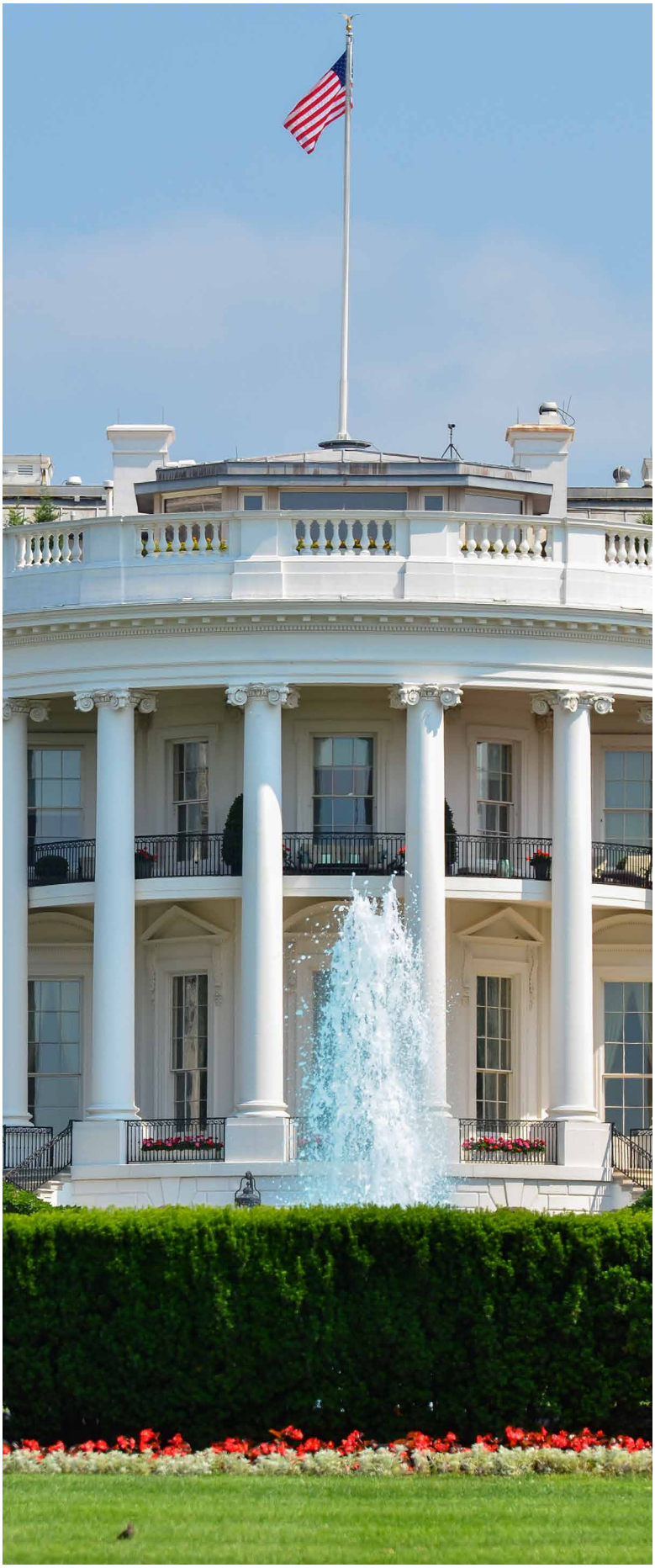
   e. their right to enroll in health insurance coverage outside of a Marketplace that complies with the specified market reforms.

If an individual or small employer has already received a cancellation or termination notice, the issuer must send the notice as soon as reasonably possible (or if the cancellation notice hasn't been sent out, then the above notice must be sent by the time the cancellation or termination notice is sent).

To the extent an individual policy or small group plan is permitted to renew for 2014 under this transition rule, the following ACA mandated benefit requirement provisions would not apply:

1. Section 2701 (relating to fair health insurance premiums);

2. Section 2702 (relating to guaranteed availability of coverage);



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3. Section 2703 (relating to guaranteed renewability of coverage);

4. Section 2704 (relating to the prohibition of pre-existing condition exclusions or other discrimination based on health status), with respect to adults, except with respect to group coverage;

5. Section 2705 (relating to the prohibition of discrimination against individual participants and beneficiaries based on health status), except with respect to group coverage;

6. Section 2706 (relating to non-discrimination in health care);

7. Section 2707 (relating to comprehensive health insurance coverage); and

8. Section 2709, (relating to coverage for individuals participating in approved clinical trials).

The ability to delay compliance with Section 2707 is highly important to the benefit plan designs and associated plan costs that employers in the small group market may offer. Most small, insured, non-grandfathered plans have been or will be impacted by the requirement of Section 2707. Section 2707 requires certain mandated coverage requirements effective for plan years beginning on or after January 1, 2014, for small, insured, non-grandfathered group health plans as follows:

- Group health plans must limit out-of-pocket cost sharing (tied to HSA qualified plan limits - maximum of $6,350 self-only/$12,700 family in 2014).

- Small, insured group health plans must offer essential benefits, limit deductibles (cannot exceed $2,000/individual, $4,000/family), and provide a bronze level of coverage.

- Insurance carriers will be subject to new underwriting rules with respect to small, insured groups. Instead of using experience rating, carriers will use community rating. Rating variations will be restricted to (a) benefit coverage elected (plan and tier), (b) geographic area, (c) age, limited to a ratio of 3 to 1 for adults, and (d) tobacco use, limited to a ratio of 1.5 to 1.

Please note that much additional guidance is needed to fully understand the impact of this transitional relief. Insurers will not be able to make formal decisions regarding transitional relief until decisions are made by the state insurance commissioner.

In the near future, as additional guidance is issued, small employers who have received cancellation notices from their insurers should reach out to those insurers to determine whether the coverage that was planned for cancellation would be permitted to renew under these rules. We are continuing to follow this issue as it develops and will provide additional information to our small employer groups, as the information becomes available.

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