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Insurance Regulation

Lawmakers Eye Faster, Longer Obamacare Waivers

Governors would be permitted to request fast-track waivers of Obamacare insurance regulations under a bipartisan proposal meant to bolster the nation's individual health insurance markets.

The proposal unveiled by Sens. Lamar Alexander (R-Tenn.) and Patty Murray (D-Wash.) looks to cut in half states' waiting time by streamlining the federal approval process and creating fast-track approvals for emergency situations and for states wanting to mimic waivers already in place in other states, according to an outline provided to Bloomberg Law by a Republican aide. It also would drop the Affordable Care Act's requirement that waivers be approved by state legislatures.

The proposal would also make it harder to the federal government to revoke waivers and would permit some waivers to last as long as six years without re-approval.

Republican backers of the proposal say the changes will make it easier for states to adjust the ACA's insurance regulations within their borders to make plans cheaper and expand coverage. Alexander told reporters the proposal would also give federal officials more leeway in judging whether a waiver application keeps plans affordable.

"The single biggest objective for Republicans is to move these decisions out of Washington and back to the states," Alexander said Oct. 18.

The proposal is part of a bipartisan deal announced Oct. 17 that would fund cost-sharing reduction payments for two years and make several other changes to the ACA.

A Democratic aide familiar with the proposal's details told Bloomberg Law that Murray inserted language to protect certain vulnerable populations, namely those with serious health conditions, from waiver changes that could make their insurance too expensive. The proposal specifically says out-of-pocket costs can't become excessive for vulnerable people.

Faster waiver approvals might minimize or eliminate public input into the process, Tim Jost, a professor emeritus at the Washington and Lee University School of Law, told Bloomberg Law. A concern also exists that faster approvals will mean federal authorities won't have enough time to fully determine their potential ramifications.

An Iowa for Everyone The changes aren't likely to affect insurance plans in 2018, because most plan rates have already been filed with state insurance boards, Rosemarie Day, a health policy consultant who has worked with state insurance groups, told Bloomberg Law Oct. 17.

However, states could use the new waivers to alter how ACA subsidies are distributed, such as what Iowa has proposed, or to create reinsurance programs like the one in Alaska, Day said.

Iowa proposed earlier this year to alter how ACA subsidies are distributed by giving everyone on the individual market there a fixed, per-person per-month subsidy as opposed to the ACA's standard, capped tax credits that increase if premiums increase.

The HHS hasn't approved Iowa's waiver, and some have questions whether the ACA permits this kind of waiver. Such a change, supporters said, could bring more middle-class Americans into the individual health markets. Critics have said it would mean less assistance for low-income people on the market.

The Alexander-Murray proposal could make it easier for states to make similar trade-offs, Larry Levitt, senior vice president for special initiatives at the Kaiser Family Foundation, told Bloomberg Law Oct. 17. Much of it depends on how the Department of Health and Human Services translates the change into policy, he said.

"What comparably affordable really means in practice will depend on how HHS interprets it," Levitt said.

Faster approvals would be welcomed by states seeking waivers, Jost said, but they might come at the expense of oversight of them.

Currently, waivers must go through a 30-day public comment period and be approved by state legislatures. Then, the HHS has up to six months to approve a final product. The entire process often takes up to a year to complete.

It might be hard for HHS to speed up its approval process, Jost said, because the agency must produce an actuarial analysis of each waiver process and determine its impact. Speeding up the approvals may mean cutting down the public comment period, he said.

"It's hard to say what HHS could do faster," Jost said.

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