SMALL BUSINESS LEGISLATIVE COUNCIL

SBLC REPORT

November 18, 2013 Volume XIV Issue 28

COLUMN A

The President's solution for addressing the outcry about the fact insurance companies have been cancelling policies for individuals because they do not have the minimum benefit coverage required by the Patient Protection and Affordable Care Act, is a letter from a bureau chief in the Department of Health and Human Services to state insurance commissioners.

You have to look closely to find the authority for the action. Actually, you don't have to look closely because it isn't there. This is the only authority we can find in the letter: "Under the following transitional policy, health insurance issuers may choose to continue coverage that would otherwise be terminated or cancelled, and affected individuals and small businesses may choose to re-enroll in such coverage….The Department of Health and Human Services has conferred with the Departments of Labor and the Treasury with respect to those market reforms with respect to which there is shared jurisdiction. With respect to those market reforms, the Departments of Labor and the Treasury concur with the transitional relief afforded in this document."

COLUMN B

The House of Representatives has passed legislation, H.R 3550 to permit insurers to offer through 2014 the type of policies that were cancelled because they did not provide the minimum essential benefit coverage. Unlike the administrative "action," the bill "stays" the applicable portions of PPACA. The "wrinkle" is that the bill permits the "sale" of these policies, which means that the insurers could sell new policies for 2014, not just renew those they had cancelled. The holders of such policies would not be eligible for the federal subsidies that are available only for insurance obtained through the exchange.

The bill in its entirety:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short title.

This Act may be cited as the "Keep Your Health Plan Act of 2013."

SEC. 2. If you like your health care plan, you can keep it. (continues on next page. The bill is not that short☺)

COLUMN C

In the Senate, Senator Mary Landrieu (D-LA) has legislation, S. 1642, that "stays" the applicable parts of PPACA related to the minimum essential benefits. It applies to only those insureds that had policies in place this year but it allows the insureds to keep them indefinitely if the insurer continues to offer the plans. The holders of such policies would not be eligible for the federal subsidies that are available only for insurance obtained through the exchange.

The key section of the bill:

"Notwithstanding any other provision of law, an individual may elect to continue enrollment under the health insurance coverage (offered in the individual market) in which such individual was enrolled on December 31, 2013, if such individual meets such other eligibility requirements (such as payment of premiums) as are applied with respect to such coverage, unless such issuer cancels all coverage offered in such market and ceases operations as a health insurance issuer. Any such coverage shall be deemed to be a grandfathered health plan for purposes of the Patient Protection and Affordable Care Act (or an

COLUMN A CONTINUED

Here's the transition policy:

"Under this transitional policy, health insurance coverage in the individual or small group market that is renewed for a policy year starting between January 1, 2014, and October 1, 2014, and associated group health plans of small businesses, will not be considered to be out of compliance with the market reforms specified below under the conditions specified below."

Here are the market reforms that do not have to be met:

- Section 2701 (relating to fair health insurance premiums);
- Section 2702 (relating to guaranteed availability of coverage);
- Section 2703 (relating to guaranteed renewability of coverage);
- 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;
- Section 2705 (relating to the prohibition of discrimination against individual participants and beneficiaries based on health status), except with respect to group coverage;
- Section 2706 (relating to non-discrimination in health care);
- Section 2707 (relating to comprehensive health insurance coverage);
- Section 2709, as codified at 42 U.S.C. § 300gg-8 (relating to coverage for individuals participating in approved clinical trials).

COLUMN B CONTINUED

(a) In general.—Notwithstanding any provision of the Patient Protection and Affordable Care Act (including any amendment made by such Act or by the Health Care and Education Reconciliation Act of 2010), a health insurance issuer that has in effect health insurance coverage in the individual market as of January 1, 2013, may continue after such date to offer such coverage for sale during 2014 in such market outside of an Exchange established under section 1311 or 1321 of such Act (42 U.S.C. 18031, 18041).

(b) Treatment as grandfathered health plan in satisfaction of minimum essential coverage.—Health insurance coverage described in subsection (a) shall be treated as a grandfathered health plan for purposes of the amendment made by section 1501(b) of the Patient Protection and Affordable Care Act.

It appears this would apply to the individual market only not small group plans.

COLUMN C CONTINUED

amendment made by that Act). Coverage to which this section applies shall be deemed to be minimum essential coverage for purposes of section 5000A of the Internal Revenue Code of 1986."

There is a "transparency requirement" that a health insurance issuer that offers health insurance coverage in the individual market shall annually, at the time of enrollment and renewal, provide enrollees with a notice that states, if applicable, the reasons that such coverage does not meet the requirements of PPACA, that the enrollee has the right to continue to enroll in such coverage; and that the enrollee has the right to enroll in a qualified health plan offered through an Exchange and instruction on how to access such Exchange.

It appears this would apply to the individual market only not small group plans.

COLUMN A CONTINUED SOME MORE

The specified conditions are the following:

• The coverage was in effect on October 1, 2013;
• The health insurance issuer sends a notice to all individuals and small businesses that received a cancellation or termination notice with respect to the coverage, or sends a notice to all individuals and small businesses that would otherwise receive a cancellation or termination notice with respect to the coverage, that informs them of (1) any changes in the options that are available to them; (2) which of the specified market reforms would not be reflected in any coverage that continues; (3) their potential right to enroll in a qualified health plan offered through a Health Insurance Marketplace and possibly qualify for financial assistance; (4) how to access such coverage through a Marketplace; and (5) their right to enroll in health insurance coverage outside of a Marketplace that complies with the specified market reforms. Where individuals or small businesses have already received a cancellation or termination notice, the issuer must send this notice as soon as reasonably possible. Where individuals or small business would otherwise receive a cancellation or termination notice, the issuer must send this notice by the time that it would otherwise send the cancellation or termination notice."

Here's how it will be implemented:

"State agencies responsible for enforcing the specified market reforms are encouraged to adopt the same transitional policy with respect to this coverage." Sincerely, Gary Cohen, Director Center for Consumer Information and Insurance Oversight."

The holders of such policies would not be eligible for the federal subsidies that are available only for insurance obtained through the exchange.

Note this transition policy applies to small group market plans as well.