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LEGAL UPDATE

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Final Rule Imposes New Restrictions on ACA Marketplace Enrollment

On June 25, 2025, the U.S. Department of Health and Human Services (HHS) published a final rule to implement new standards for the Affordable Care Act's (ACA) Marketplaces (or Exchanges). According to HHS, improper Exchange enrollments, enabled by weakened verification processes and expanded premium subsidies, have triggered "widespread fraud." The final rule's changes are intended to address these problems with the goal of improving health care affordability and access while maintaining fiscal responsibility.

Key Changes

Many of the final rule's changes are effective 60 days after its publication date, or Aug. 25, 2025, although some provisions have a later effective date. Also, some changes are temporary measures that sunset at the end of the 2026 plan year. Key changes include the following:

- Ending the availability of the **monthly special enrollment period** for individuals with household incomes below 150% of the federal poverty level (sunsets at the end of the 2026 plan year);
- Standardizing the **annual open enrollment period** (OEP) for all individual market coverage. Beginning with the OEP for the 2027 plan year, each OEP must start no later than Nov. 1 and end no later than Dec. 31 and cannot exceed nine calendar weeks. For Exchanges on the federal platform, the OEP will run from Nov. 1 through Dec. 15 preceding the coverage year, beginning with the OEP for plan year 2027;
- Eliminating eligibility for **Deferred Action for Childhood Arrivals (DACA)** recipients;
- Requiring Exchanges to determine an individual ineligible for the advance premium tax credit (APTC) if they failed to file their federal income tax return and reconcile APTC for **one year** (effective for 2026 only);
- Allowing insurers to require payment of **past-due premiums** before effectuating new coverage, to the extent permitted by state law;
- Requiring individuals who are automatically renewed in coverage through a federal platform Exchange with no premium (i.e., consumers who are eligible for APTC that fully cover their premiums) to pay **$5 per month** until they confirm their eligibility information (effective for 2026 only); and
- Prohibiting issuers of non-grandfathered individual and small group market plans from covering specified **sex-trait modification procedures** as an "essential health benefit" (effective beginning with the 2026 plan year).

Impact on Employers

Although these changes do not affect employers directly, they may make it more difficult for employees to enroll in Exchange coverage. Employers that offer individual coverage health reimbursement arrangements (ICHRAs) may find this problematic, while employers subject to the ACA's employer shared responsibility penalties ("pay-or-play" penalties) may reduce their penalty risk if fewer employees enroll in Exchange coverage.

HIGHLIGHTS

- HHS has finalized a rule that revises many standards for Marketplace eligibility and enrollment.
- According to HHS, the temporary expansion of ACA premium subsidies resulted in conditions that allowed individuals to improperly gain access to fully subsidized coverage.
- The final rule's changes are intended to improve health care affordability and access by stabilizing the risk pool, lowering premiums and reducing improper enrollments.