Trump administration rolls out health plan rules that could weaken Obamacare

On January 4th, the Trump administration proposed new rules to let certain small businesses and trade groups band together to buy health care, in its latest move that could weaken Obamacare's insurance marketplaces.

The expansion of so-called association health plans is part of a broader effort to encourage the rise of cheaper coverage options that are exempt from certain Obamacare patient protections and benefit rules.

The proposed rules stem from an executive order President Donald Trump signed in October directing federal agencies to loosen restrictions on short-term health insurance and association health plans, in a bid to create more insurance competition and drive down premiums. The administration's move was praised by many business groups and conservative lawmakers, including Sen. Rand Paul (R-Ky.), who has long advocated for an expansion of such plans. "Conservative health care reform is alive and well, and I will keep working with President Trump to build on this progress," Paul said in a statement.

However, state insurance regulators and Obamacare advocates have warned that lax rules could open the door to a new wave of poorly regulated health plans that exclude coverage of key services required by the Affordable Care Act, such as hospitalizations and prescription drugs. "The Trump administration has declared open season for fraudsters selling junk insurance while those with pre-existing conditions will find health care further and further out of reach," said Sen. Ron Wyden (D-Ore.), the top Democrat on the Senate Finance Committee.

The association plans, however, aren't exempt from the popular Obamacare provision banning insurers from charging people more or denying coverage based on a pre-existing condition. The new Labor Department rules come shortly after Congress eliminated the individual mandate in its tax overhaul a move that will likely result in fewer people signing up for insurance — particularly the young and healthy. The rules specify that self-employed individuals, who can now purchase individual coverage through the Obamacare markets, would be able to join association plans. That, along with a looming Trump administration proposal to expand the availability of short-term insurance plans, could further erode enrollment in Obamacare's insurance marketplaces.

"Any one of those steps in isolation wouldn't necessarily destabilize the markets, but the combination of all these actions is likely to make insurers very nervous," said Larry Levitt, senior vice president for health reform at the Kaiser Family Foundation. "The ultimate risk is that more insurers decide that the market is too risky and they exit, leaving counties with no options at all."

Republicans continue to vow to repeal the federal health care law, although there is disagreement on whether there is the political will to take up the issue after several failed efforts last year and their already slim Senate majority narrowed after Alabama's special election. Enrollment in 2018 Obamacare health plans was surprisingly strong, despite repeal efforts and Trump's attacks on the health care law. About 8.7 million people signed up for coverage on HealthCare.gov, down slightly from the previous year, and enrollment is still taking place in some states running their own marketplaces. But individuals who make too much to qualify for insurance subsidies — which is roughly half of the overall individual insurance market — are facing sky-high premiums in many states after years of double-digit rate increases.

The administration is proposing to rewrite existing regulations under the federal ERISA law to let more groups qualify as associations that can purchase coverage outside the Obamacare markets. Specifically, it would loosen rules that limit such plans by geography and industry, potentially allowing business owners from different sectors or different states to more easily band together.

Trade groups and small business associations have argued that the newfound leeway would expand their purchasing power, increasing health care choices for small employers and franchise operators. The International Franchise Association, for example, said that it will look into the possibility of offering coverage to its members.

"I think that this just provides more flexible tools and options for employers to offer their employees," said Suzanne Beall, the group's vice president for government relations and public policy. "More tools and options is always a good thing." The ramifications of the proposed changes on the insurance markets will ultimately depend on how much interest there proves to be for association plans under the looser rules.

Dan Mendelson, president of consulting firm Avalere Health, believes that state regulators will still be allowed to impose their own rules on insurers offering association plans — perhaps blunting their spread in states that support Obamacare. “States still have the responsibility under state law to ensure that insurers are solvent and that risk pools are reasonable," Mendelson said. "This won’t change their mandate. It will make their job more complicated if association health plans become a significant part of the market.”

Chris Condeluci, a benefits expert who previously served as a top Republican staffer on the Senate Finance Committee, is optimistic that association plans will lead to lower premiums and more attractive options for small businesses that currently find it prohibitively expensive to offer coverage to their workers.

“I do think that there will be instances where small employers who are not offering coverage now may indeed choose to do so," Condeluci said. But Mendelson is more skeptical about whether the rule changes will push employers to begin offering coverage to workers. He points out that health insurance will still be a costly benefit, especially for industries with predominantly low-wage workers.