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Health Care Reform

Immediate and Long-Term Deadlines Face Both Employers, Health Plans Under Reform

Many employers and health plans will need to hustle to meet immediate compliance deadlines established by the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148), Steve Raetzman, an Arlington, Va.-based senior consultant with the consulting firm Towers Watson, said April 8.

Several health care benefit mandates and consumer protection provisions under the new law are effective Oct. 1, 2010, or plan years beginning six months after the March 23 enactment date of the law. The early effective date gives many plans only weeks to prepare, since plans designs are typically completed in June or July in time for plan administrators to prepare for open season, Raetzman said at a meeting of the Washington, D.C.-Metro chapter of the WEB Network.

For example, plans must cover adult children up to the age of 26 if they choose coverage. The Health Care and Education Reconciliation Act (Pub. L. No. 111-152), which amended PPACA, changed PPACA's definition of adult children to include both married and unmarried adult children. However, Raetzman said, plans are not required to provide coverage for an adult dependent child's spouse or children. The law also provides flexibility for plans to determine whether an adult dependent child should be provided coverage until their 26th birthday, or through the end of their 26th year, he said.

Plans are only required to provide coverage for an adult child if the child does not have access to other employer insurance coverage, Raetzman said. Adult children who are attending college and have access to the school's health insurance plan would still be eligible for their parent's employer coverage, he added.

Employers may want to examine how much they and their employees contribute to the health plan because of the expanded dependent care coverage requirement, Raetzman said. Presumably, the majority of older adult dependent children who opt to be covered under an employer's plan are those who are more in need of coverage, unlike their healthier peers, he said.

Employers have several options to offset the costs of providing coverage for older children, among them raising the dependent-care premium amount for all dependents and raising the premium amount for families, he said.

Effective Oct. 1, 2010, plans also will be prohibited from imposing pre-existing condition exclusions for children under age 19, Raetzman said.

Reporting Provisions, Insurance Caps. For taxable years beginning after Dec. 31, 2010, employers must report on their employees' W-2 forms the full premium value of their employee health coverage, Raetzman said.

However, it is unclear whether employers should also include the value of employees' dental and vision coverage, especially where coverage for dental and vision is covered under a separate plan.

Terry Connerton, of counsel to Baker Hostetler, Washington, D.C., said reporting questions would at least be clarified in the instructions to the W-2 forms.

The law also prohibits plans from setting lifetime dollar limits, and allows only restricted annual dollar limits, Raetzman said. The secretary of the Department of Health and Human Services is charged with determining the annual minimum limits that plans may impose for essential health benefit services and should announce those limits this summer, he said.

Several participants at the meeting raised the question of preemption, asking if HHS sets a cap of $75,000 for a particular benefit, but a state sets a cap higher than that, whether the plan is required to comply with the federal or state requirement. Linda Rosenzweig, senior benefits counsel at Keightley & Ashner, LLC, Washington, D.C., and president of the WEB Network's Washington, D.C.-Metro chapter, said insured plans would probably have to comply with state requirements, while self-insured plans would have to comply

with federal requirements. Only where the federal law carves out exceptions for state laws that are more restrictive, such as under the Health Insurance Portability and Accountability Act, are self-insured plans required to comply with state law, she said.

Grandfather Provisions. Although employers have many amendments to make to their plans in the immediate future, active plans that are grandfathered under the law have some more time, Raetzman said. Generally, a plan is grandfathered if it provided coverage to participants on the date of PPACA's enactment. Among the requirements from which grandfathered plans are exempt for now are:

- covering preventive health services without cost sharing;
- prohibiting differences between in- and out-of-network emergency room cost sharing;
- new internal and external grievance and appeals procedures;
- health plan disclosure and reporting requirements (including W-2 reporting); and
- wellness reporting.

An important question to be resolved by regulations from HHS is what amount of change, if any, a plan can make before it is no longer grandfathered, Raetzman said. It is unclear whether a plan could make a slight adjustment in co-pay or coinsurance amounts without losing its grandfathered status, or whether to maintain the grandfathered status the plan would be required to remain exactly the same from one plan year to the next, he said.

Retiree Plan Issues. Employers should take a closer look at their retiree health plans because of changes made under PPACA, Raetzman said. Some of those changes are on the immediate horizon, while others will not be felt for a while.

Among the immediate changes, PPACA establishes a temporary reinsurance program to reimburse employers for part of their pre-65 retiree health expenses, providing 80 percent of the cost per enrollee in excess of $15,000 and below $90,000.

But beginning in 2013, the law eliminates the 28 percent deduction business deduction that employers take if they provide the Medicare Part D drug subsidy, Raetzman said.

In the immediate term, PPACA stipulates that a future stream of income from the retiree drug subsidy will be considered a taxable asset, creating an accounting issue that may have significant profit-and-loss impact on an employer's books, Raetzman said.

Employers also should examine their retiree health plans because the coverage gap, or doughnut hole, under Medicare Part D will gradually be narrowed beginning in 2011, until by 2018 participants in the Medicare drug program will be responsible for 25 percent cost-sharing throughout the plan, Raetzman said.

By Sean Forbes

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