Health Care Reform- A Renewal Season Survival Guide

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The first wave of health care reforms is set to take effect as many employers are making their annual plan renewal decisions. Employers need to consider how the reforms affect their plans when making choices for their next plan year. Failure to take the new reforms into consideration could result in unintended consequences that could affect employers and their plans for the foreseeable future.

Current State of Health Care Reform

Despite numerous questions, health care reform continues to move forward. Some twenty states are currently involved in litigation with the federal government over the legality of various portions of the reforms. Although interim final regulations have been released regarding grandfathering, extension of dependent coverage, pre-existing conditions, removal of lifetime and annual limits, and the new external review/appeals process, further guidance is still needed to answer a host of questions. In the meantime, employers are allowed to proceed in good faith compliance with existing guidance.

Survival Tip #1- Keep Your Options Open

One of the quickest ways to paint yourself into a corner is to ignore the implications of grandfathering on your plan. While the Reconciliation Bill applies a number of reforms to grandfathered plans, grandfathering still offers value to plans. A number of the consequences of losing grandfathered status will not affect plans until 2014 and later.

Grandfathered plans <u>do not</u> need to comply with:

- coverage of dependent children to age 26 who have access to their own employer plan (until 2014)
- coverage for the essential Health Benefits Package for small groups (under 100 employees) as of 2014
- annual limitations on cost-sharing and deductibles for 2014 and later
- requirement to cover preventive care without cost sharing provisions
- application of §105h non-discrimination rules to fully-insured plans
- external review/appeal requirements

Employers must take into consideration what they may lose if they decide to make a change that causes their plan to lose its grandfathered status. "Large" plans (over 100 total employees) face fewer restrictions than "small" plans. Self-funded plans face fewer reforms than fully-insured plans. Small, fully-insured plans face more restrictions if they lose grandfathering than large plans or self-funded plans. Employers should compare the benefits of remaining grandfathered with the costs of not making changes to determine whether the financial savings of making plan design or cost sharing changes outweigh the benefits. Grandfathered plans have more options and employers should consider all their options before waiving grandfathered plan status.

Survival Tip #2- Manage Your Dependent Population

Although plans that offer dependent coverage will be required to cover dependents under the age of 26, employers still have an opportunity to manage their dependent population. Nothing in health care reform requires employers to offer dependent coverage at all. Depending on an employer's workforce demographics, offering single-only coverage may be a viable alternative. Grandfathered plans are allowed to deny coverage to dependent children under age 26 who have access to their own employer plan until 2014. Employers should verify whether dependents are eligible for employer-sponsored coverage, either separately or as part of an overall plan eligibility audit. While the regulations prohibit charging higher premiums for dependent children under age 26, employers are allowed to restructure contributions to a “per head” /per dependent basis.

Survival Tip #3- Restructure Limits

Lifetime limits are going away and annual maximums are restricted until 2014, when they will also disappear. The loss of annual limits can be offset by implementing day- or number of treatment-based limitations that are not prohibited by the current reforms. Employers can also use Restricted Annual Limits to offset the loss of lifetime maximums until 2014. Once guidance is available that describes in more detail which benefits are considered “essential”, employers may wish to limit non-essential benefits until 2014.

Survival Tip #4- Sweat the Small Stuff

Health care reform is removing a number of options, so it is more important than ever for employers to use the tools still at their disposal. Things that were previously “small stuff” now take on greater significance. Conduct an eligibility audit to verify that the persons receiving benefits actually meet plan eligibility guidelines. Incorporate mandatory disease management compliance language into plan documents. Focus on the long-term benefits of comprehensive accountability-based wellness programs to keep people from migrating from low or medium risk to high risk health categories. Implement short-term cost containment programs and carve out programs whereby a plan can pre-negotiate costs and steer employees into centers of excellence. Pursue risk mitigation that comes with buying no-laser guarantees and/or transplant carve-out policies for self-funded plans.

Survival Tip #5- Follow the Paper Trail

Verify with carriers and TPAs that your plan documents and SPDs are updated to reflect the changes under health care reform. This includes amending medical flexible spending account (FSA) plans to reflect that over-the-counter medications cannot be reimbursed through the FSA without a prescription. The FSA change takes effect 1/1/2011, even if the FSA does not use a January-December plan year. This especially impacts FSA plans using the post-plan year grace period, as participants will not be able to spend left-over 2010 dollars in 2011. The reform regulations also require both a notice and special enrollment period be provided to dependents under the age of 26 if they are not already on the plan and to persons who may have been dropped from the plan due to hitting a lifetime benefit maximum. Employers are also required to inform participates if they believe that their plan is subject to grandfathering.