Health Care Reform -
An Update From USI Affinity

While the uproar and excitement over health care reform has died down somewhat from its peak in the Spring and Summer of 2010, the potential effects for employers and employees still loom large. Back in March of 2010, the Patient Protection and Affordable Care Act (PPACA) was signed into law, followed closely by the Health Care and Education Reconciliation Act, which made some changes and modified some of PPACA’s health reform provisions. More than 2,500 pages of groundbreaking yet incredibly contentious legislation followed, creating new laws that can be difficult to get a handle on, even for health insurance professionals.

Stretching over an eight-year phase-in and implementation period, health care reform changes began in 2010, with several new provisions going into effect at different times during the year, and continue in 2011. Those provisions having the most immediate impact, which are either in effect or about to be implemented, are the ones we focus on in this brief article, brought to you by USI Affinity, NYSBA’s endorsed insurance broker.

As a preliminary sidebar to the whole issue of health care reform and its timeline for implemented changes, one needs to consider the overreaching aspect of “Grandfathered Plans” — so named because they are exempt in most cases from being materially affected by changes in health care. Grandfathered Plans actually refer to health plans in existence on or before the PPACA date.

Among the many provisions which are already in effect, certain ones are more relevant than others to a wider swath of Americans. Provisions for Small Business Tax Credits, for example, which can provide up to a 35% discount are at the top of the list, along with getting a break on your taxes for any health care premiums paid for a child under age 27.

All group health plans are no longer able to set annual maximums on essential benefits, and parents who have struggled with finding affordable health insurance for their dependent children are able to include them up to age 26. Right now, all group health plans are prohibited from denying coverage for pre-existing conditions to individuals under age 19. As of 2014, all pre-existing conditions will be covered. And unless you’re enrolled in a grandfathered plan, you can count on preventive care coverage of 100% if you stay in your health provider network.

There are provisions that address the issue of patient protections, as well. As long as you’re not enrolled in a grandfathered plan, you’ll have the freedom to choose any available Primary Care Physician (PCP) in your network. Extending that patients’ protection provision is another new rule that aims to enhance and accelerate claims, appeals and the often-lengthy external review process.

Coverage rescissions, sometimes used by insurers to avoid payment of claims, are also no longer permissible except in cases of fraud or intentional misrepresentation of material fact.

Beginning this year, medical loss ratios of 85% are mandated now for large group health plans and 80% for small plans. Flexible Spending Accounts have lost some of their flexibility since over-the-counter (OTC) medicines and drugs will no longer be reimbursed unless prescribed by a doctor.

A Health Savings Account (HSA) will have to pay a 20% penalty tax to distributions not made for qualified medical purposes.

**Proposed Safe Harbor on Affordability May Offer Relief to Employers**

There is potential good news regarding a provision that was causing concern for employers. As part of the health care reform bill, employers with 50 or more full-time-equivalent employees will be required to offer their full-time employees affordable “minimum essential coverage” health benefits starting in 2014, or may be liable to pay a penalty for not doing so.
Under the law, coverage is considered unaffordable if the employee’s required contribution exceeds 9.5% of the employee’s household income for the tax year. Because affordability is determined by household income, and because household income is determined by variables that are generally unknown to an employer (i.e., the modified adjusted gross income of the employee and the employee’s spouse and dependents), employers may find it difficult to assess whether the coverage they are offering is affordable to certain employees.

But the good news is that the Treasury and Internal Revenue Service (IRS) are proposing a safe harbor that will make it much easier for employers to determine whether health plan coverage is “affordable” for purposes of avoiding a penalty in 2014.

The proposed safe harbor suggests that employers may use W-2 wages for the employee (which the employer knows) instead of the employee’s total household income (which employers generally would not know) when determining affordability of coverage. This is a welcome development for employers, and should help simplify the plan design considerations. It is important to note that this safe harbor does not affect eligibility for subsidies under the Exchanges. Those will still be determined by reference to the employee’s household income. Employers will, however, be able to design benefits and coverage models that avoid penalties, based on information on hand. The safe harbor is in proposed format and is not finalized.

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