



What's next for health care reform?

BY DANNY MILLER

The Supreme Court decision on the Obama health care reform legislation has come and gone, and employers are now wondering: What do we do now? There are a few issues that need to be addressed in 2012: employees need to be provided with the new “summary of benefits and coverage” during the open enrollment period for the upcoming plan year.

Furthermore, unless your health care plan is a “grandfathered” plan or you (as an employer) are entitled to a religious employer exemption or special temporary enforcement safe harbor, your plan must cover contraceptive services without deductibles, co-pays or cost-sharing; and if you provide your employees with a flexible spending account, the limit on annual contributions to that account cannot exceed \$2,500 beginning with the 2013 plan year. (The cost of health care coverage is also required to be included on employee W-2s for the 2012 tax year).

However, under transition relief, small employers (employers that filed fewer than 250 Forms W-2 for the preceding calendar year) and churches and church-related employers are exempt from this requirement. This transition relief could change in the future.

Looking ahead

But what about 2014? What should employers be doing now to prepare for the new world of health insurance exchanges, premium assistance tax credits and employer “pay or play” excise taxes, which all become effective in 2014? The difficulty with planning for 2014 is that the information that is needed for an employer to decide whether to continue to provide its own health care plan in 2014 and following years is not now available.

Pricing of and a description of benefits provided under health care exchange plans will not be available until the spring of 2013, and an employer will not be able to compare benefits provided under its plan with those provided by exchange plans until next year. That said, a couple of points about what will happen beginning in 2014 can be made now.

First, it's important to remember that the employer “pay or play” excise tax (i.e., the penalty an employer will pay if it does not provide a health care plan or provides a plan that is not “affordable” or does not provide “minimum value”) does not apply to any employer with fewer than 50 “full-time equivalent employees.” (For purposes of this determination, part-time employees—those working fewer than 30 hours per week—are turned into a number of FTEEs by dividing the aggregate number of monthly hours of service for all part-time employees by 120.)

For purposes of the pay or play penalty, coverage is not “affordable” if its cost requires an employee to pay more than 9.5 percent of the employee's W-2 income. (The ability of an employer to use W-2 income instead of “household income” for purposes of the “affordability” test is contained in a proposed rule.) A health care plan does not provide “minimum value” unless the employer pays for 60 percent or more of its total cost.

Making choices

The point: If an employer employs fewer than 50 FTEEs, it is free to make its decisions about whether to have a plan or the level and cost of coverage it will provide without having to be concerned that its decision will cause it to have to pay the excise tax/penalty.

Even if an employer does have 50 or more FTEEs, it still will not have to pay the penalty if it has 30 or fewer full-time employees because of the way the penalties are calculated – and, even if it is subject to the penalty, the economic analysis that will have to be done in the future may still demonstrate that it will be less costly to

pay the employer penalty and send its employees to the exchanges for health care coverage. (If you participate in a denominational health care plan, note that efforts are underway to secure premium assistance tax credits for pastors and lay workers without having to go to the state exchanges.)

Tax credits

The premium assistance tax credits can be significant. These tax credits are only available to individuals whose household income is between 100 percent and 400 percent of the Federal Poverty Level. (In 2012, 400 percent of the FPL for a family of four is \$92,200 – and clergy housing allowance reduces household income for purposes of determining premium assistance tax credit availability.

Those credits will thus be available to some degree for individuals who are considered to have high compensation in the church community.) For example, based on calculations made on a calculator available on the Kaiser Family Foundation’s website, a family of four living in a high-cost health care area whose household income is \$45,000 could expect to pay \$14,556 per year for “silver” level health care coverage in 2014.

However, if the family purchases such “silver” level coverage on an exchange, its out-of-pocket premium cost would only be \$2,672 per year – its premium assistance tax credit would be \$11,885.

Doing the math

So, once the exchange plan information becomes available, get out your calculators, sharpen your pencils and get ready to “do the math.” Doing that math can be daunting, but some enterprising soul will no doubt develop software to use in making the necessary calculations. And one final thought: There is much to be

done, both by states and the federal government, before the exchanges can officially come online.

If the current 2014 effective date holds – and most seem to think it will – then you may want to keep your current coverage in 2014 and give the new exchange world a chance to settle down a bit before making

a decision on what to do about your workers’ health care coverage.

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