

Health Care Reform has passed, now what?

Bob Marcantonio, Cammack LaRhette Consulting

Now that health care reform legislation has passed we thought we'd visit specific near-term provisions of the bill and assess the impact on employer health plans. This will be the first in a series of articles that will address single provisions within the Act.

Making it law, does not make it so.

In the 1956 movie, *The Ten Commandments*, Ramses II, played by Yul Brynner decrees "so let it be written, so let it be done." While health care reform is written, it is not yet done and will likely undergo many changes. The Act directs other federal agencies, like Health and Human Services, to promulgate the various regulations contained within it. In some cases, interim rules will be published in the Federal Register and public comments solicited. Once public comment periods close, the final regulations are issued, usually including deadlines for implementation. Even so, as we have seen time and time again, Health and Human Services can come forth and announce that implementation will be delayed.

Near term requirements

Given this backdrop, it is difficult to predict with certainty how all provisions in the Act will be implemented. Nevertheless, employers should prepare now, as the Act defines specific requirements that will affect employer plans, beginning within six months of enactment. (For practical purposes that date will be on or after October 1, 2010 while the actual date from "within six months of enactment" would be September 23, 2010.)

Coverage of Dependents to Age 26

All plans that renew on or after October 1st 2010 must cover dependents to age 26, married or not. Current plans will not have to cover dependents if they are eligible for their own employer's plan. New plans beginning on or after January 1, 2014, will, however, be required to offer coverage of dependents to age 26, whether or not the dependent is eligible for their own employer's plan. The Act also amends the IRS Code, so that imputed income calculations are no longer necessary, and effectively removes all student verification procedures, since being a student is no longer a condition of eligibility.

Effect on other laws

Given that plans are not allowed to discriminate between students and non-students, other legacy regulations tied to student status that modified plan eligibility are likely no longer necessary. For example, Michelle's Law no longer seems relevant. It requires coverage of a dependent for up to one year after the loss of student status, due to a disability, however under the new law a dependent up to the age of 26 is covered no matter what their status is, be it student, disabled etc..



Two Rector Street • 23rd Floor • New York, NY 10006 • Tel 212.227.7770
65 William Street • Suite 100 • Wellesley, MA 02481 • Tel 781.237.2291

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Various states have enacted dependent eligibility rules, and in general those state rules will be pre-empted by the federal rule where the federal rule improves or expands coverage over the state rule. In cases where the state rule improves or expands coverage above the federal rule, the state rule would apply.

Practical examples include Massachusetts and New York. The Massachusetts rule requires unmarried dependents under age 26 to be covered for two years past the last year the dependent qualified as a dependent on the employee tax return. The federal rule would essentially dismantle the Massachusetts rule, as the federal rule does not allow for the conditions of coverage that the state rule spells out.

The federal rule interacts differently with New York's rule because New York's rule remains mostly unchanged. New York requires dependents to be covered to age 29. The rule gives employers a choice of how to offer the coverage. Dependents can be enrolled as a member of an employee's family, or dual membership on the health plan, or covered as an individual member.

If the dependent is covered as an individual, the dependent or employee pays 100% of the premium for "single coverage". This is termed the "COBRA-like" option - as it is similar to paying for coverage under COBRA.

If the dependent is enrolled as a member of an employee's family or dual plan, the employee pays the normal payroll cost share associated with a family or dual membership.

New York employers will be required to cover dependents under the terms of the federal law (only to age 26) as stated previously, and then at age 26, to offer one of two choices of coverage to age 29. It is important to note the employer has the choice of how the coverage is offered. Most employers opt for the "COBRA-like" option for obvious reasons.

Effect on plan costs

The effect on a plan's cost is hard to predict. Claims may or may not increase due to the presence of a dependent. We can surmise, however, a change in the current flow of enrollment in and out of employer plans. When faced with a choice of remaining on a parent's plan, or purchasing a plan through an exchange, or enrolling in their employer's plan (after 2014 for new plans), the dependent will probably choose the less costly option of remaining on a parent's plan. This selection has the potential of depleting employers' health plan populations of young adults on single memberships, while swelling the ranks and membership of family contracts.

Costs may increase, as employers will maintain more expensive family contracts with greater numbers of members for longer periods of time; previously dependents aged off, reducing the number of family contracts and/or the total members on their plan.



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Costs may also increase as those very same employers who hire young adults under age 26 won't collect any premiums on them. Those young employees will refuse the employers' plans, opting to remain on their parent's plan. Plans need premiums from this so called "young invincible" demographic, who don't generally incur claims, to offset claims of the older population on the plan.

Lastly, there will be administrative burdens. The employer whose plans are in place prior to 2014 will want to determine if the dependent is employed or not, and seek some kind of verification. While the burden of student verification seems to be eliminated, it is replaced by a potentially more difficult task, of determining whether or not an employee's child has obtained a job.

Effect on other plans

Given the Act amends the IRS Code to allow what generally were previously not tax qualified individuals, to be given favorable tax status within a medical plan, questions remain if this favorable status will be granted in other health and welfare benefit plans. Specifically, section 125 Flexible Spending Account Plans (FSAs) and Health Care Reimbursement or Savings Accounts (HRAs or HSAs) create new benefits. All three types of account now allow tax-free income to be used to pay for or reimburse qualified medical expenses for employees, a tax qualified spouse and tax qualified dependents. Prior to the Act, medical expenses from dependents who were allowed on employer plans past the time frame they qualified as a tax dependent of the employee, could not be reimbursed through FSAs, HRAs, or HSAs. It is not yet known whether this will change, nor is it clear whether favorable dependent tax status will be extended to other health plans like vision and dental.

Summary

Covering dependents to age 26 will create new conditions and change the mechanisms of costs within health plans. Fully insured carriers must determine how to underwrite these new conditions, and costs will likely increase as carriers must cover the inherent risk. Self funded plans will have to engage in similar underwriting, as they too must predict how shifts in enrollment flows in and out of their plans will affect costs.

In subsequent issues, we will again address individual provisions of the Act and their impact on employers. As more details become available we will revisit this and any other provisions that may have changed.



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