AIMS Insurance Program Managers, Inc.

A Small/Mid-Size Business Rx For ObamaCare

Three key provisions of the Affordable Care Act [ACA] will likely drive up the cost of traditional health insurance by at least 25% in 2014 – more in the out years. Additional fees will likely add as much as another 9-10% of premium as the law kicks in over the next few years. Thus, a plan that cost $100 in 2013 will likely cost $130 in 2014 and as much as $140 3-5 years down the road. This increase is before any additional adjustments due to increases in medical care costs. You can avoid all but two relatively minor segments of the ObamaCare increases by switching from a traditional insured plan to an ERISA-qualified plan that is exempt from the three key provisions of ObamaCare, from two out of four fees, and from arbitrary rulemaking by the Department of Health and Human Services [HHS][1].

A. The three key ObamaCare provisions are those covering:

- Modified Community Rating
- The Maximum Plan Calendar Year Deductible
- The elimination of underwriting discretion

1. The Modified Community Rating

Under these rules, small group health plans will no longer be able to consider health status, industry, or gender when setting rates. Two essential underwriting/pricing criteria are either eliminated or severely restricted:

a) Elimination of a group's health status in setting rates.

Historically, a given group has been classified according to its overall health status and risk profile. The historical rate spread from the best [call it a "1"] to the worst [call it a "3"] has been 1-to-3. That is, the least desirable group paid premiums 3x those of the most desirable group. Under ObamaCare's rules for traditional plans, as of 2014 the distinction among groups will be eliminated, effectively making all groups into "2s". Premiums for the best groups will go up, while premiums for the less desirable groups will go down, but overall total costs will go up because cost control measures that effectively limited some of the costs associated of the less desirable groups will no longer be effective.

b) The compression of age-related rates.

The historical spread of age-related rates has been 1-to-7. As of 2014, traditional plans will have to compress this spread to 1-to-3. Thus a young group's rates will go up as much as 50% [or more], while an old group's rates will go down.

The combined effect of both provisions will be to drive healthier, younger groups into ERISA-qualified plans where these provisions do not apply, while less-healthy, older groups remain in fully-insured plans. Thus, over a few years, fully-insured plan rates will trend sharply upwards as their participants' average age increases and average health declines.

[1] ERISA plans are by definition regulated under the 1974 Employee Retirement Income Security Act, which cannot be changed without Congressional action and for the most part are exempt from HHS regulatory control.

2. Maximum Plan Deductible

The allowable maximum plan deductible in a traditional plan will be $2000. Thus, plans with higher deductibles will see their costs go up as the lower deductible is imposed. ERISA-qualified plans will be able to maintain deductibles as high as $6250, making them much more attractive for consumer driven plans and much more compatible with Health Savings Accounts and Health Reimbursement Accounts.

3. Elimination of Underwriting

Since pre-existing conditions and other underwriting criteria will no longer be allowable, fully-insured plan rates will have go up to absorb the resulting increased costs.

B. Other Fees and Taxes

Four fees or taxes will also contribute to the increased cost of traditional plans:

1. The Patient centered Outcomes Research Institute Fee

An annual fee of $1 per covered person applies for the current year, and will increase to $2 per covered person for the period 10/1/2013-2014. Thereafter, the charge will increase in proportion to the increase in healthcare costs. This fee applies to ERISA-qualified plans as well as traditional plans.

2. Health Insurance Industry Fee

This fee will raise traditional plan premiums by 2% or more in 2014, and by as much as 3.7% by 2023[2]. It does NOT apply to ERISA-qualified plans.

3. Reinsurance Assessment Fee

This fee amounts to $63 per covered person per year in 2014 and can be expected to increase annually thereafter. It applies to both traditional and ERISA-qualified plans.

4. Federally Facilitated Exchange User Fee

This fee is tentatively set at 3.5% of traditional plan premium for 2014. It does NOT apply to ERISA-qualified plans.

All four fees apply to traditional plans. Numbers “2” and “4” do NOT apply to ERISA-qualified plans. Thus, traditional plans will cost as much as 7.2% more than ERISA-qualified plans just on the basis of the two additional fees they will be required to support. Traditional plans can thus be expected to cost more than 30% more than comparable ERISA-qualified plans.

C. Other Reasons to Move to ERISA-Qualified Plans

There are numerous other provisions of ObamaCare that apply to traditional plans but that do NOT apply to some or all ERISA-qualified plans.

1. Essential Health Benefits

Traditional plans will be required to provide “essential health benefits” – a series of 10 general categories[3] of coverage that all traditional plans must have. Does NOT apply to ERISA-qualified plans.

[2] Oliver Wyman, 10/31/2011. “Estimated Premium Impact of Annual Fees Assessed on Health Insurance Plans”

2. Actuarial Value Requirements

Plans must meet a minimum 60% actuarial value. Applies to traditional plans and ERISA-qualified plans with more than 50 employees, but not to smaller plans.

3. Medical Loss Ratio

ObamaCare requires traditional plans to spend 80% [plans under 50] or 85% [larger plans] of premium on claims and quality improvement activities or rebate the difference to insureds. Does NOT apply to ERISA-qualified plans.

4. Rate Increase Review

Beginning 4/1/13, all rate increases must be reported to HHS, and presumably approved by it. Does NOT apply to ERISA-qualified plans.

5. Risk Adjustment

Plans with better-than-average risk profiles will be assessed to subsidize plans with worse-than-average risk profiles. Does NOT apply to ERISA-qualified plans.

6. Risk Corridor

Insurers selling traditional insurance on the Exchanges will be required to subsidize one another from 2014-2016 to limit the gains and losses of those plans, and thus remove any incentive from participating in the exchanges.

D. Summary

While ERISA-qualified plans do not avoid all of the mandates built into ObamaCare, they certainly avoid the major drivers of ObamaCare's cost increases and many of the other onerous provisions of the Act. For employers with relatively healthy and youthful groups there is every reason to move to a properly designed ERISA-qualified plan, and no downside. Older-than-average and/or less-healthy-than-average groups might find that they are better off remaining in traditional plans, even with their increased costs and more onerous regulations, but they, too, should explore the ERISA-qualified world to be sure they are making the right decision.

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[3] Ambulatory patient services; Emergency services; Hospitalization; Maternity and newborn care; Mental health and substance use disorder services, including behavioral health treatment; Prescription drugs; Rehabilitative and habilitative services and devices; Laboratory services; Preventive and wellness services and chronic disease management; Pediatric services, including oral and vision care.