



September 3, 2010

IN THIS ISSUE

- ★ New Resource on PPACA's Nondiscrimination Provisions
- ★ Federal Agencies to Sponsor Webcast Guidance Series on PPACA Rules
- ★ Few Small Businesses to Take Advantage of Health Insurance Tax Credit
- ★ HHS Approves Nearly 2,000 Employers for Early Retiree Reinsurance Program
- ★ Benefits Attorneys Offer Tips to Limit Costs Associated with PPACA Requirements
- ★ Federal Government Proposes Expansion of Calorie Counts/Menu Labeling
- ★ NAHU Office Closed for Labor Day

TOOLS

- ★ E-mail the Editor
- ★ Visit the NAHU Website
- ★ Printer Friendly Version
- ★ RSS Feed

Benefits Attorneys Offer Tips to Limit Costs Associated with PPACA Requirements

Benefits attorneys suggested Tuesday during a BNA webinar that there are several ways to moderate health plan costs that are expected to increase as a result of provisions under the Patient Protection and Affordable Care Act of 2010.

Johann Lee, an associate with Alston & Bird in Washington, DC, said that one provision that may raise health benefit plan costs is the requirement to provide coverage for all dependents under the age of 26, which is effective for plan years beginning on or after September 23. However, grandfathered plans are permitted to exclude adult children who have access to other coverage, Lee said.

Grandfathered plans are those that were in effect and provided coverage as of March 23, when PPACA was enacted.

Interim final rules published by the Departments of Labor, Treasury, and Health and Human Services that require plans to provide first dollar coverage for preventive care services may also increase plan costs. The list of preventive care services under PPACA is "very long and very extensive," Lee said. Grandfathered plans are also exempt from the preventive care provisions.

Also, for plan years beginning on or after September 23, plans will be unable to impose lifetime limits on coverage, and annual limits on essential benefits are subject to specific restrictions until 2014, Lee said. All plans are subject to the lifetime limit/annual limit requirements.

Employers will "need to think about what impact" these changes will have on their plans, Lee said. For example, employers may want to consider purchasing stop loss insurance. Employers that already have stop loss should determine if they have enough, he added.

The decision to maintain grandfathered status is not simply whether to do so, but for how long, said David Godofsky, also a partner with Alston & Bird. The constraints on grandfathered plans are very tight, he said. For example, sponsors are prohibited from eliminating any benefits, even those that are shown not to be effective.

Sponsors of insured plans also are prohibited from changing policies or insurers, even where the change would be more beneficial to plan participants, Godofsky said.

The penalties for not providing health benefit coverage may be extremely

costly to employers, Godofsky said.

Under PPACA, if an employer fails to offer minimum essential coverage to even one full-time employee, and that employee obtains coverage through a state health care exchange and receives a tax credit, the employer will be subject to a penalty assessed on nearly all of its employees.

Godofsky said the penalty under PPACA is \$2,000 times the number of full-time employees (FTEs), minus 30 employees, which he dubbed the "sledgehammer penalty." If an employer of 300,000 employees offered coverage to all but one employee, the potential penalty would be approximately \$600 million.

PPACA also includes a smaller penalty, which Godofsky called the "tackhammer penalty." Under this scenario, an employer offers coverage to all FTEs. A penalty is incurred if the cost to the employee exceeds 9.5% of household income or the employer subsidy is less than 60% of the cost of coverage, and the FTE enrolls in an exchange and receives a tax subsidy.

In this case, the penalty to the employer is \$3,000 per year only for that particular employee, rather than for the entire population of eligible employees, Godofsky said.

In addition, the employer will not be penalized for an employee if the individual's household income is greater than four times the poverty level, the employee chooses not to purchase coverage on the exchange, or the employee has other coverage (e.g., Medicare or through a spouse's plan).

One penalty that employers will not have to worry about is the so-called Cadillac tax on high-value health plans, which will not be effective until 2018. Godofsky said this excise tax "will never happen" because no politician would risk allowing the tax to be imposed.

Why Offer Health Benefit Coverage?

Godofsky offered several reasons why firms may want to continue providing employer-sponsored insurance, including:

- avoiding unionization
- maintaining a high-value workforce
- keeping higher productivity by maintaining a healthy workforce
- easing public relations and government relations
- avoiding penalty provisions that can reduce the amount of money available for wages
- keeping tax advantages under the Federal Insurance Contributions Act and income tax exclusions.

Additionally, health insurance coverage is a complex purchasing decision that many individuals are not fully capable of evaluating, Godofsky said.

Some employees may also be willing to trade wages for insurance, Godofsky said, with some employees willing to trade more than one dollar of wages for one dollar of coverage.

However, other employees—especially the younger employees and those in good health—will place little or no value on health insurance and therefore will not accept lower wages in exchange for insurance,

Godofsky said.

"The net effect" of the two camps of employees on plan costs is probably somewhere in between, but will definitely be above zero, he said.

One of the strategies to deal with expected higher plan costs that Godofsky and Lee suggested is to shift away from family coverage to an incremental charge for each dependent on an employee's coverage. Coverage would be offered on an employee-only basis, or employee-plus-one, employee-plus-two and so on, they said.

In addition, the attorneys suggested that employers institute a monthly dependent recertification. The recertification could be automated through e-mail, with employees required to click on a "yes" or "no" button answering whether the individual's dependents are still eligible for plan coverage. This strategy would help employers avoid fraudulent claims of "non-notification" and other intentional employee misrepresentations, Godofsky and Lee said.

Offering no coverage at all will very rarely be the optimal solution due to PPACA's penalty provisions, Godofsky said. Instead, employers should offer coverage to all FTEs, but be careful about worker classification. For example, employees who work 30 or more hours per week are considered FTEs, not part-time employees.

If an employer chooses to exclude part-time employees, it should make sure that the employer's definition of a part-time employee matches PPACA's definition, Godofsky said.

Another classification issue that needs to be watched closely is whether an individual is an employee or contractor, the attorneys said.

 View Comments ★★★★★ (1) Rate This Article



< [Previous Article](#) | [Next Article](#) >

2000 N 14th St. Suite 450 Arlington, VA 22201
Ph. 703.276.0220 Fax 703.841.7797 www.nahu.org

**National Association of
Health Underwriters**

