PUNCH LIST HELPS EMPLOYERS NAVIGATE NEW HEALTHCARE LAW: WHAT YOU NEED TO KNOW

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There has been so much political hyperbole associated with the new health care reform legislation (known formally as the Patient Protection and Affordable Care Act, or "ACA") that it's hard to separate fact from fiction. Equally challenging for entrepreneurs and their organizations, the glut of information and misinformation on ACA distorts and obfuscates answers to the immediate operational question concerning health care benefits — what do we need to do in 2010-11 to comply with ACA and properly position ourselves for the future?

Here's a short punch list of those things small and mid-sized employers who are not self-insured should pay attention to between now and your next healthcare insurance renewal to adjust to ACA:

1. Decide whether or not to keep your "grandfather" option open. Under ACA, employers have the option to keep the health plan they have (being "grandfathered") or adopt new ACA compliant health plans. But if you want to be grandfathered in the future, you need to continuously keep the plan you had on March 23, 2010 and not:

- Significantly cut benefits;
- Lower co-insurance levels;
- Raise co-payments;
- Raise deductibles;
- Lower employer premium contribution amounts; or
- Change insurance companies.

Whether or not it makes sense for you to be grandfathered depends on a number of factors unique to the situation in your organization. But keep in mind that once you change the plan that existed on March 23, 2010, the option to be grandfathered is forever lost. So do the cost/benefit analysis with your insurance broker and CFO before your next insurance renewal.

2. Pay attention to the new rules on HSAs and HRAs. There is plenty of hype over high profile ACA mandated benefit changes (and the costs therefore) like elimination of lifetime coverage limits, coverage for children until age 26, etc. But pay some attention to new rules and likely cost increases applicable to high deductible plans and their associated HSAs and HRAs. For example, funds held in these accounts (and in FSAs) can no longer be used to pay for over-the-counter drugs not prescribed by a physician. Funds wrongly paid out of these accounts (and FSAs) will result in much stiffer tax penalties. Further, most healthcare companies have come to the same conclusion most of us have — the high deductible plans have been great bargains and are underpriced. So expect meaningful premium increases for the high deductible plan options.

3. Make sure you take advantage of available tax incentives. The structure of ACA relies on a series of tax incentives and disincentives to reduce the number of uninsured Americans. The majority of these tax changes start arriving in 2014, but some start in 2011. For example, companies with 25 or fewer employees that meet average payroll ceiling requirements are eligible for tax credits related to offering employees healthcare coverage. Talk with your accountant to make sure you take advantage of available 2011 ACA tax incentives.

4. Shop your coverage. Insurance rates will go up in 2011 because healthcare provider costs are still rising and healthcare plans are adding expensive benefits mandated by ACA. But other factors push back against rate increases. For example:

- The recession has made the health insurance market increasingly price competitive;
- The federal government is subsidizing the efforts of state regulators to withhold approval for rate increases;
- Insurers with aggressive rate hike histories may be disqualified from participation in the insurance exchanges (and the millions of new insurance buyers on those exchanges) coming in 2014; and
- Many healthcare companies are aggressively cutting costs to meet ACA's mandates for medical loss ratio (i.e., the maximum amount of money per premium dollar that the healthcare companies can spend on administrative costs and profit).

So rates will go up in 2011, but absent bad experience or other unusual circumstances, not nearly as much as suggested in the press. If your current carrier is proposing a premium increase in excess of 6%, there's a good chance you can do better on rates with a competitor.

Ken Richman serves as general corporate counsel to privately held businesses and represents business owners and their families in a broad variety of personal and business planning matters. Ken also consults with healthcare providers and insurers on labor and employee relations, patient satisfaction, and customer service issues and initiatives. Ken can be reached at 312/840-7002 or krichman@burkelaw.com*.*