INSURANCE SPECIALISTS

Insurance Specialists Newsletter

August 2011

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Deal Could Endanger Health Care Law

The debt ceiling agreement could jeopardize millions of dollars, and perhaps billions, in initiatives from President Barack Obama's health care reform law if the super committee can't come up with required spending cuts.

Many of the pots of money in the law—one of the Democrats' most prized pieces of legislation—could get trimmed by the debt deal's sequestration, or triggered cuts. The funds for prevention programs and community health centers, grants to help states set up insurance exchanges and co-ops, and money to help states review insurance rates could be slashed across the board if the panel can't find enough cuts this fall.

Funding for the temporary high-risk pools for pre-existing conditions could be sliced, too, as well as grants to improve maternal and child health. And as previously reported by Politico, the law's cost-sharing subsidies—which are supposed to help low-income people pay their out-of-pocket expenses—could face the ax, too.

The prospect of reductions to the health law's programs—which would undermine the law's attempts to expand access and improve health quality—could provide an added incentive to Democrats to avoid the triggered cuts. The reductions will happen if the new committee can't find at least $1.2 trillion in savings over the next 10 years. "There are at least 15 provisions of the Obama health care law that will find themselves subject to this trigger if the committee is not able to come up with other cuts," said Sen. John Barrasso (R.Wyo.). "When I look at these, I think it gives a huge incentive to the Democrats to find cuts. What would be triggered if we can't find other cuts would cut right into the Obama health care law.

Senate Republican leadership aides identified the potential funding cuts shortly after the law passed and are talking with the Congressional Budget Office to determine what parts of the law would be subject to sequestration.

The fact that the programs are vulnerable at all means Obama and congressional Democrats did not succeed in their attempts to shield the health reform law from the debt-deal trigger.

Obama had resisted efforts by congressional Republicans to make the law's individual mandate a part of the trigger during earlier debt-limit negotiations. But while the final deal doesn't directly target the health care law, the cuts to specific programs could still happen because of the way the law is written.

The debt ceiling law exempts several programs for the poor and those with low incomes, as defined by the 2010 Balanced Budget and Emergency Deficit Control Act called PAYGO. The law exempts Medicaid, Social Security and the Children's Health Insurance Program, among other programs.

But it doesn't protect the health law's provisions because the definitions became law a month before the health law was passed.

"If you're not on the list, you wouldn't be protected," said Edwin Park, vice-president for health policy at the Center on Budget and Policy Priorities.

The Office of Management and Budget confirmed to Politico that some of the health law's funding could be subject to cuts.

Parks said he believes PAYGO would have included at least some of the health law, had it been written after the legislation passed. "I certainly think people would argue many of the elements target low-income people," Park stated.

Some parts of the law are likely to be protected. The tax credits to help the low and middle class pay their health insurance premiums—a separate

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EEOC Warns Employers About Combining Health Records

A U.S. Employer that retains an employee's personal and occupational health information in a single electronic record runs the risk of violating federal disabilities bias law, federal genetic discrimination law, or both, according to an opinion letter issued by the U.S. Equal Employment Opportunity Commission (EEOC).

The opinion letter, dated May 31, 2011, and signed by EEOC Legal Counsel Peggy R. Mastrioanni, informs an unidentified writer soliciting an opinion that U.S. employers and some health providers have legitimate rights to access personal health information under certain circumstances, a combined electronic medical record (EMR) could lead to violations of the Americans with Disabilities Act (ADA) and the Genetic Information Non Discrimination Act (GINA).

"An employer's right to access personal health information about applicants and employees and to allow access to occupational health information by individuals providing health services unrelated to employment is strictly limited under both the ADA and GINA," wrote Mastroianni. Therefore, maintaining personal health information and occupational health information in a single EMR, particularly one that allows someone with access to the EMR to view any information contained therein, presents a real possibility that the ADA, GINA or both will be violated."The letter says it assumes that the employer that contacted the EEOC is using the term "personal health information" to refer to "information obtained in the course of diagnosis and treatment" and that the term "occupational health information" refers to "medical information concerning an employee's ability o work (e.g., medical information gathered after a job offer has been made, or information concerning an injured employee's ability to return to work)."

The letter comes at a time when the Obama administration is urging greater use of electronic medical records to make health care more efficient and less costly. It underscores the complex task that HR professionals must face in managing health benefits, leave and other functions that rely upon private information of employees and job applicants.

The EEOC letter noted that the ADA limits an employer's right to make disability-related inquiries and conduct medical exams of employees and job applicants. And it said that the EEOC "has not explicitly addressed whether accessing personal health information stored in some EMR as occupational health information would constitute a disability-related inquiry." But the letter continued: "There seems to be no basis for distinguishing between this situation and others that the EEOC clearly has said would be disability-related inquiries," and therefore subject to legal restrictions.

And the opinion letter noted that the genetic bias law, with some exceptions, "prohibits employers from requesting, requiring or purchasing genetic information…about job applicants and employees or their family members at any time, including during the post offer stage of employment."

Mastroianni stated that "neither the ADA nor GINA specifically addresses the need for encryption, password authorization, and other security safeguards for electronic records maintained by employers. However, we do not interpret neither statute's confidentiality provisions as applying only to paper records. Therefore, if an employer maintains medical information and genetic information electronically, it must ensure that it is kept confidential, and disclosed only to the extend permitted by the ADA and GINA."

The letter suggested that if an employer asks to see an employee's or job applicant's medical records, it should include a warning that if it acquires genetic information in the process, that acquisition is inadvertent.

Source: Steve Bates, SHRM

Court Strikes Down Obama Health Insurance Mandate

August 12, 2011

A federal appeals court has struck down the requirement in President Barack Obama's health care overhaul package that virtually all Americans must carry health insurance or face penalties.

A divided three-judge panel of the 11th Circuit court of Appeals struck down the so-called individual mandate, siding with 26 states that had sued to block the law. But the decision didn't go as far as a lower court that had invalidated the entire overhaul as unconstitutional.

The states and other critics say the law violates people's rights. The Justice Dept. counters that the legislative branch was exercising a "quintessential" power.

An appeals court and three federal judges have upheld the law, and two have invalidated it. Experts say the debate ultimately will be decided by the U.S. Supreme Court.

Source: USA Today

No More Co-pay for Birth Control

HHS Expands Women's Wellness: Many Preventive Services Will Be Free

Health care reform requires new insurance plans to fully cover women's preventive care, which now will include free birth control, yearly wellness visits, breastfeeding counseling and equipment, and screening for gestational diabetes, domestic abuse, HPV, sexually transmitted infections (STIs) and HIV.

Health and Human Services Secretary Kathleen Sebelius announced on August 1st the expanded definition of women's preventive care. The ruling closely follows the advice of an Institute of Medicine, expert panel, released July 20, 2011.

"As part of the Affordable Care Act, we are announcing historic new guidelines that will help women get the care they need to stay healthy," Sebelius said. "We are accepting the recommendations of the Institute of medicine, so no woman in America needs to choose between paying a grocery bill and paying for the key care that can save her life."

The new requirement does not affect health plans in effect before 3/23/10. These "grandfathered" health plans include many employer sponsored plans. However, the majority of employer plans already cover contraception.

Starting August 2012, new health plans will have to offer the expanded wellness coverage without requiring a co-payment. Insurers may "use reasonable medical management to help define the nature of the covered service," according to the Depart. of Health and Human Services (HHS).

Howard Koh, MD, HHS assistant secretary for health, estimated that by 2013, **34 million U.S. women ages 18 to 64 will receive the benefits** spelled out in the new ruling. While preventive care saves money by avoiding or delaying more costly chronic disease care, Koh said the new benefits would mean a "small" increase in premium costs.

The new definition of women's wellness includes access to all FDA approved forms of birth control. The so-called abortion pill RU-486 and similar drugs are not covered.

Religious institutions that offer health insurance to their employees may choose not to offer birth control, according to an amendment to the prevention regulation proposed by the Obama administration. The HHS says it "welcomes comment on the policy."

Source: WebMD Health News

Employers: Higher Wellness Incentive is Reform's 'Most Beneficial' Element

The eventual increase in allowable employee wellness incentives was viewed as the most beneficial element of the Patient Protection and Affordable Care Act (PPACA), according to a 2011 survey of U.S. employers by Lockton Benefit Group, a provider of insurance, benefits and risk management services.

Under the PPACA, in 2014 employers will be able to offer an incentive of up to 30 percent of an employee's total health care premium if the employee is doing everything asked to improve his or her health and reduce medical costs. This is an increase from the 20 percent incentive currently permitted.

Employers "like the opportunity to reward employees that make healthy lifestyle choices," said Dr. Ian Chuang, Lockton's medical director and a member of the firm's health reform advisory practice. "The difference in cost for health insurance for an employee with this incentive can be thousands of dollars annually, depending on the total premium cost. So for the employer, this is a true benefit of the health reform law."

Savvy employers realize that ultimately they will reduce their health insurance costs by addressing the risks leading to illnesses and claims, Chuang noted. In addition, studies have tied improved employee health to increased productivity.

However, "The incentive program has to be designed to promote health and prevent disease," Chuang advised. "Incentives like this are often key components in overall health risk management strategies."

"We expect to see further guidance under health reform that could allow employers to raise the incentive to 50% in special circumstances, added Edward Fensholt, director of Lockton's compliance services division and a member of the firm's health reform advisory practice.

Source: SHRM

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program from the cost-sharing subsidies—would most likely be preserved under previous definitions of refundable income tax credits, according to congressional aides and other budget experts.

If it wanted to change the definitions, Congress would have to pass a new law defining what constitutes a low-income program. But House Republicans are unlikely to let any new definition pass if it exempted the law's funding.

It's unclear exactly how much money is at stake until Congress votes on an agreement. But Congress controls about $115 billion over 10 years to cover the cost of the agencies implementing the law, as well as funding programs and grants within it, according to CBO.

The amount of the triggered cuts would depend on how close the super committee is able to come to the $1.2 trillion savings target. The panel could find all of it, avoiding the sequestration. Or it could find just some of it, leaving the triggered cuts to make up the difference.

Senate Republican aides said they've been in discussion with CBO to get a list of what pieces of the health law would be subject to the trigger. The aides said the CBO has not made any determinations. The agency, as well as OMB, would have to determine where the law draws the lines if the sequestration is enacted.

The cuts would take place between 2013 and 2021. During that time, the Prevention and Public Health Fund is expected to pay out $16.75 billion. There is more than $5 billion available for community health centers between 2013 and 2015. And the co-ops fund has $3.8 billion available, though some of the funding could be paid out prior to the sequestration.

Democrats have strongly resisted efforts to slice any or all funding from the law, especially the public health fund, arguing that it is one of the strongest tools toward building a healthier nation.

But the health law's funding could be slashed even if the committee is able to avoid the triggered cuts. The committee can pull funding from almost any piece of the law. It's expansive funding was already tapped last year to help stop a nearly 30% cut payments to Medicare doctors.

The law requires the super committee of 12 lawmakers to report legislation by Thanksgiving. The plan would have to pass Congress by December 23, 2011.

Source: POLITICO

Jennifer Haberkorn

Compliance Corner

Question: Is an employer required to offer COBRA to domestic partners?

Answer:

There are currently two interpretations that should be considered when determining whether to offer COBRA to employees' domestic partners. The first interpretation is that when an employee terminates employment, domestic partners are not offered COBRA. This is because only qualified beneficiaries are offered COBRA, and a domestic partner would not meet the definition of a qualified beneficiary under COBRA regulations. A qualified beneficiary under COBRA regulations is defined as the employee, the employee's spouse of the dependent child of the employee. A domestic partner generally does not meet this definition.

The second interpretation is that a plan should permit an domestic partner if the domestic partner was covered on the day before the qualifying event. This is in line with the requirement that the employee be allowed to continue the identical coverage they had before termination.

Generally then, a plan is not required to provide COBRA to domestic partners. However, a plan may choose, with carrier approval, to offer COBRA coverage to them anyway. A plan sponsor should always consult with legal counsel concerning the decision of whether to offer COBRA or not. Additionally, there may be state laws to consider. Keep in mind that this does not take into account state continuation or states that have implemented same-sex marriage.

Source: National Financial Partners

Most U.S. Employers Opt for 'Passive' Open Enrollment

A large majority (71%) of U.S. employers conduct passive rather than active benefit enrollment practices, enabling employees to renew most of their plans automatically, according to a 2011 survey by HighRoads, a provider of benefit communication services.

Respondents ranged in size from U.S. organizations with fewer than 5,000 employees to those with more than 100,000.

"On the face of it, passive enrollments is easier for both employees and employers, since employees can just 'roll over their current elections—except for flexible spending accounts, " said Kim Buckey, SPD Lead at HighRoads. "But that can be a risky practice," she added. If participants can renew their coverage without examining their elections, they may end up with coverage that doesn't truly meet their needs or that will cost them more than they can truly afford. It also becomes more critical that more critical that enrollment materials accurately describe benefits and any changes to them—and that SPDs are updated promptly to reflect that information.

"It is critical that employees carefully review their plan open enrollment materials each year, particularly in the light of health care reform and changes their employers are making to be in compliance." said Mary Andersen, founder of ERISA Diagnostics inc., a benefits consulting firm. "Those changes might be additional coverage possibilities, such as covering children up to age 26, or it could be new limits in coverage related to spending accounts. Either way, employees need to understand their options and take responsibility for their own benefit choices."

Source: SHRM