

NO ESCAPE: Joe Torella of Hub International said employers will always have to deal with compliance, but now health care reform adds a new layer to that. Benefit brokers provide guidance to help manage and navigate those new requirements.

Always on My Mind

Employers turn to benefit brokers for help navigating the complexities of upcoming employee benefit compliance requirements.

by Lori Chordas

Key Points

- ▶ **The Situation:** Employers face a growing number of regulatory and compliance requirements when it comes to employee benefits.
- ▶ **The Cure:** Benefit brokers and consultants are helping employers gear up for upcoming changes.
- ▶ **Looking Ahead:** In 2014, employers will have to deal with health exchanges and the new employer mandate.

Kim Bjorheim for Best's Review

Compliance is a word that can conjure up trepidation for employers.

That uneasiness isn't going away anytime soon as the amount of new compliance and regulatory requirements around employee benefits continues to grow.

But employers don't have to go it alone. Benefit brokers and consultants are stepping in to help iron out details of upcoming requirements, prepare employers for those changes and alleviate their uncertainties.

Employers now face everything from recent changes to the Mental Health Parity and Addiction Equity Act, COBRA rules and the Genetic Information Nondiscrimination Act to new privacy regulations.

"But health care reform remains the No. 1 issue employers are dealing with when it comes to employee benefits," said Amy Donovan, assistant general counsel for independent insurance broker Keenan and Associates.

This year marks the start of several pivotal requirements under the Patient Protection and Affordable Care Act, leaving employers scrambling to get all their ducks in a row to comply with the new law, signed in March 2010. But that's only the beginning. Employers will face additional mammoth requirements under the new rule over the next several years.

Conquering Concerns

Employers' biggest task now is figuring out new reform requirements and options for their benefit packages, said Keenan and Associates General Counsel Norm Gritsch.

"With thousands of pages of laws and regulations coming out, many employers are coming to us to help them understand new legal requirements for their plans," he said.

Some of those changes include new testing rules for fully insured


Health Care Reform: What's Ahead for Employers	
Issue	Change
IRS W-2 Requirement	Aggregate cost of employer-sponsored health coverage to be reported on IRS Form W-2 (effective Jan. 1, 2011 on a voluntary basis and mandatory effective Jan. 1, 2012)
Uniform Summary of Benefits	Plan sponsors of self-insured plans and health insurance issuers must provide a uniform summary of benefits and coverage to all employees and new enrollees no later than March 23, 2012
Health Reimbursement Plans	Maximum health flexible spending account contribution is capped at \$2,500 (effective Jan. 1, 2013)
Individual Income Tax	Individual income tax of 3.8% imposed on unearned income above certain thresholds (effective Jan. 1, 2013)
Payroll Tax	Payroll tax increase from 1.45% to 2.35% imposed on wages above certain thresholds (effective Jan. 1, 2013)
Notice of Exchanges, Subsidies	Plan sponsors must provide employees information about exchanges and availability of federal subsidies (effective no later than March 1, 2013)
Individual Mandate	Individuals required to maintain "minimum essential health coverage" or pay a penalty (effective Jan. 1, 2014)
Employer Mandate	Large employers subject to penalty if employees with household income below 400% of federal poverty level purchase health insurance on the California Exchange and receive a federal subsidy (effective Jan. 1, 2014)
IRS Reporting by Employers	New IRS reporting by employers regarding health plans and penalties (effective Jan. 1, 2014)
Coverage for Children	Coverage for children, including adult non-dependent children, must be offered even if eligible for coverage at another employer (effective for plan years beginning on or after Jan. 1, 2014)

Source: Keenan and Associates' *Health Care Reform Timeline*

medical plans. "For years, only self-funded employer plans had to perform nondiscrimination testing; however, that changed with reform," said J.D. Piro, principal and head of health management legal consulting for Aon Hewitt. Effective for plan years beginning on or after Sept. 23, 2010, the Affordable Care Act requires fully insured group health plans to comply with nondiscrimination testing rules similar to those for self-insured plans, including rules that the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate. Fully insured "grandfathered" health plans are exempt from the rule.

"While testing was supposed to begin this year, the IRS recognized that would be a Herculean task for employers," Piro said. "At the end of 2010, it postponed implementation of those rules until actual guidance is issued—something we don't anticipate will occur until 2012 or 2013."

Consultants and benefit brokers also are helping employers navigate the new claims and appeals process under reform, he noted,



For more information on employers' employee benefit compliance concerns, watch an interview with Ed Fensholt of Lockton Benefit Group at www.bestreview.com/video. Digital readers: Hold cursor over icon for content.



“For grandfathered plans operating under their old design, it’s not a question of whether they will lose their grandfathered status but when.”

—*J.D. Piro,*
Aon Hewitt

which applies to plans that lose grandfathered status.

Patients now can challenge adverse benefit decisions by selecting an external review or independent review not affiliated with a carrier. And, for the first time, the external review requirement will apply to companies that are self-funded.

One of the biggest questions brokers and consultants are hearing from their employer-clients is “whether their plan is grandfathered and what they need to do to maintain that status,” Gritsch said. “That’s usually followed up with a cost-benefit analysis to determine if restrictions required for maintenance of grandfathered status are worth the benefits they have to provide.”

Added Piro, “For grandfathered plans operating under their old design, it’s not a question of whether they will lose their grandfathered status but when.”

The government anticipates that by 2014 nearly 85% of plans in existence on March 23, 2010, will lose their grandfathered status, he said.

Several other key provisions of the health reform act slated for this year include an over-the-counter drug limitation, medical loss ratio standards and small-business grants to provide wellness programs. The law creates a grant program to assist “eligible employers” (those with fewer than 100 employees who work 25 hours or more per week) to provide workplace wellness programs, said Joe Torella, president of employee benefits for Hub International.

The program, which has reserved \$200 million from 2011 through 2014, calls for a comprehensive workplace wellness program to be made available to all employees and include health awareness initiatives, efforts to maximize employee engagement, initiatives to change unhealthy behaviors and lifestyle choices and supportive environmental efforts.

Several other key provisions of the health reform act slated for this year include an over-the-counter drug limitation, medical loss ratio standards and small-business grants to provide wellness programs.

Beginning in 2014, individuals and small employers with an average of 100 or fewer employees in the prior calendar year will be able to purchase insurance from state-run exchanges (or small employers with an average of 50 or fewer employees in the previous calendar year if the state so permits until 2016).

Also in 2014, the employer mandate will kick in, requiring employers with an average of at least 50 employees during 121 days or more in the preceding calendar year to offer “minimum essential coverage” to full-time employees and their dependents. Employers with more than 50 full-time employees that do not offer

coverage, or that offer coverage that doesn’t qualify as “minimum essential coverage,” must pay an “assessment” of \$2,000 multiplied by the number of full-time employees if at least one full-time employee receives government-subsidized coverage through an insurance exchange.

Employers also are concerned about the ramifications of not meeting reform requirements, said Piro. If they’re not in compliance, employers may face various excise taxes, fees and penalties, depending on the situation.

“That’s why education is key,” Piro noted. While most employers are aware of the health care reform debate and what the changes involve, he said “the magnitude and immediacy of those changes caused some to scramble to put things in place at the end of last year, including many administrative issues involved in doing that.

“These compliance issues will become a fact of life for employers over the next few years,” Piro added. “They’re not going away anytime soon.”

Gearing Up

What are the next steps for employers?

“First, many plans have to be amended,” said Gritsch. New disclosure and notice requirements and procedures are required to be adopted.

For example, the expanded coverage for adult children mandate means that “any rules previously in place describing conditions for dependent coverage must now be replaced with the requirements of the new law.”

Similarly, many plan provisions such as lifetime limits, pre-existing conditions, annual limits and other coverage terms also have to be amended, Gritsch added.

“Perhaps the biggest overall challenge employers now face is the fact that guidance has been

Health/Employee Benefits

issued so quickly because the government recognizes it has to get it out there,” said Piro. “There are questions that continue to arise and interpretation will always be problematic for employers. Sometimes [employers] just have to make a reasonable estimate of what needs to be done.”

Employers also need to focus on transparency and “on the value proposition—what we say we do and execute it to ensure clients understand what the expectation is,” added Torella. “We set the expectation appropriately that we execute against and disclose to clients what the cost of those services are to ensure we’re meeting their needs.”

As for the financial toll companies may endure, “we estimate that health reform will cause 1% to 3% increases in the cost of health care, which will vary from employer to employer,” said Piro. “Even if employers do nothing other than just implement what reform requires them to do, they’ll see cost increases of 60% over the next five years. So if employers were planning to have reform come along and reduce their costs, it’s time for Plan B because that’s not going to happen.”

Brokers also are helping companies handle increased costs from expanded coverage. “Either employers will have to figure out a way to pay those increased costs or share them with their employees,” noted Gritsch.

Keenan is working with its employer-clients “by analyzing all the new laws and regulations and issuing briefings and training sessions for consultants, clients and customers about changes that will take effect,” he said. It’s also hosted webinars and Q&A sessions and posted detailed information on topics such as nondiscrimination and a timeline of upcoming reform changes and dates on its website.



“Any rules previously in place describing conditions for dependent coverage must now be replaced with the requirements of the new law.”

—Norm Gritsch,
Keenan and Associates

Hub International is also taking to the Web to educate clients and consumers about health care reform. Its website includes an “Ask the Experts” section, on-demand webinars and a health care reform blog.

In a recent post, bloggers talk about employers paying the price for choosing to grandfather or not, and the importance of disclosing and maintaining that status and keeping records of the plans as of March 23, 2010, so that “frozen” programs can be compared to any plan changes.

Partnering Together

There’s safety in numbers when it comes to compliance.

“Employers will have their plates full over the next few years, and it will only get busier as time goes on,” said Aon Hewitt’s Piro. “That’s why it’s important that we help employers keep abreast of new developments and act quickly when regulations are released.”

Take for example, the IRS W-2 reporting requirement and nondiscrimination testing under reform, noted Gritsch.

“Both were announced as having Jan. 1 effective dates but have been delayed until new regulations come out. We play an important role in notifying employers about those changes and helping them gear up for what’s to come.”

That includes any twists and turns reform legislation may take along the way. On Jan. 19, the U.S. House of Representatives voted 245 to 189 to repeal reform. Senate Democrats, however, opposed

allowing a floor vote on the bill.

“By the time we get to 2013, we’re talking about what has to happen with the exchanges and the employer mandate,” said Piro. “Employers will need guidance of who’s covered by the mandate and who counts toward the penalty. As we get closer to that date, that’s when guidance from the government and, if necessary, from the state will be important for employers. By then, questions have to be answered and implementation has to begin.”

“We’re always going to have to deal with compliance, and now with reform there are many new layers to that,” said Torella. “But there’s also the impact on the carrier side. Carrier interpretation and policymaking will vary from carrier to carrier. We can’t mistake one for the other and must ensure employers know the position they should be taking—not necessarily the one advocated by an insurer—for due diligence from a trusted adviser like their broker or consultant.

“We know what we have at our front door,” he added, “but we just don’t realize that there are three other things sitting at the back door that we must be doing too.”

While health care reform continues to get much attention, Torella said it’s also important “not to let other issues be overshadowed.” For instance, employers also are saddled with altered notification responsibilities such as HIPAA special enrollment notices and initial notices of COBRA rights, he said.

BR