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Healthcare Reform and Collective Bargaining Issues

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Healthcare Reform: Collective Bargaining Perspectives

- **Current CBAs/Contract Administration**
- **Preparing for Collective Bargaining Negotiations**

Healthcare Reform Compliance Time Line

All Plans

Benefit Mandates

- Age 26 dependent coverage
- Lifetime limits
- Annual limits
- Rescissions
- No preexisting condition exclusions (under age 19)

Notice and Disclosure Requirements

- Previously ineligible children under age 26
- Previously ineligible participants who maxed out

Additional Notice and Disclosure Requirements

- Uniform Explanation of coverage
- W-2 Reporting

Minimum Essential Coverage/Penalties State Exchanges

No Preexisting Condition Exclusions for Enrollees

Waiting Periods Limited to 90 Days

Cadillac Plan Tax

2011

2012

2014

2018

Non-Grandfathered Plans

Additional Benefit Mandates

- No cost sharing for immunization or preventive care
- Choice of primary care physician in-network, including OB/GYN and Pediatrician
- External review process
- Emergency services without pre-authorization treated as in-network
- Disclosure requirements

- Disclosure requirements

Limits on cost sharing/deductibles

Coverage for individuals in clinical trials

No discrimination against

- Healthcare providers within the scope of their license
- Health status except wellness program differentials

Current CBAs/Contract Administration: What Do I Need to Know?

1. Effective Dates/Plan “Grandfather” Status
2. Immediate Mandates for All Plans
3. Disclosure Requirements for All Plans
4. Maintaining Grandfather Status

Effective Dates/ Plan Grandfathered Status

- Exemption for health plans in which individuals were enrolled as of March 23, 2010
- Collectively bargained plans treated the same as non-bargained plans with one exception
 - Fully insured collectively bargained plans are grandfathered until termination of last CBA in effect on March 23, 2010, and if coverage remains same after termination, grandfather status continues per “non-bargained” rules
- Grandfather status determined on a benefit package level rather than plan-wide

Immediate Mandates

- Plans that cover full-time and part-time employees must:
 - Extend dependent coverage for adult children up to age 26
 - Eliminate lifetime limits on “essential health benefits”
 - Provide no less than restricted annual limits on “essential health benefits” until such limits are eliminated as of Jan. 1, 2014
 - Eliminate retroactive rescissions (except fraud or misrepresentation)
 - Eliminate preexisting condition exclusion for enrollees under 19 years old, and eliminate all exclusions as of Jan. 1, 2014

Immediate Mandates Extension of Dependent Coverage

- Applies to:
 - All group health plans (grandfathered plans can be limited to children not eligible for other employer-sponsored coverage)
 - All children under age 26 eligible for coverage without regard to support, marital status or student status
 - But, does not apply to in-law children or grandchildren
- Terms of plan, including amounts charged, may not vary based on age
- Must offer minimum 30-day open enrollment after written notice

Immediate Mandates Lifetime Maximums

- Lifetime Maximums
 - Prohibits plans from applying lifetime limits on essential health benefits
 - Plan must allow re-enrollment for individuals who previously reached lifetime limit
 - Must offer minimum 30-day open enrollment after written notice

Immediate Mandates Annual Maximums

- Only “restricted” Annual Maximums allowed for essential health benefits until 2014:
 - \$750,000 for plan years beginning on or after Sept. 23, 2010-2011
 - \$1,250,000 for plan years beginning on or after Sept. 23, 2011-2012
 - \$2,000,000 for plan years beginning on or after Sept. 23, 2012-Jan. 1, 2014
- Changes to Annual Maximums may affect grandfather status
- All Annual Maximums on essential benefits prohibited as of Jan. 1, 2014

Immediate Mandates

Waiver of Restricted Annual Maximums

- Secretary of HHS may waive restricted Annual Maximums requirement until 2014 if compliance would result in significant decrease in access to benefits or a significant increase in premiums
 - Plans will have to apply for waiver
 - Secretary to issue guidance regarding scope of waiver program and how to apply
 - Geared toward mini-med, or limited benefit, plans

Notice and Disclosure Requirements for All Plans

- 2011
 - Notices related to opportunity to enroll for previously ineligible children under the age 26 dependent coverage rule
 - Notice related to opportunity to enroll for individuals previously ineligible because of maxing-out lifetime limit
- 2012
 - Uniform explanation of coverage (March 2012)
 - W-2 reporting aggregate cost of all applicable employer-sponsored coverage (W-2 issued in Jan. 2012 for 2011 taxable year)

Maintaining Grandfather Status

What's the Big Deal?

- Put off implementation of grandfathered mandates that are otherwise effective in years 2011 and 2014
 - Delayed effective date provides opportunity to negotiate over additional mandates
- Put off meeting grandfathered disclosure requirements that are otherwise effective in 2011 and 2012
- Meet requirement of Minimum Essential Coverage (MEC)

Maintaining Grandfather Status

Additional Mandates for Non-Grandfathered Plans

2011:

- No cost sharing for preventive care, including care for children and women
- Choice of primary care physician, OB/GYN and pediatrician from available in network
- Emergency services without preauthorization and treated as in-network
- Revised internal appeals and external review process

2014:

- Cost sharing/deductible limits
- Coverage for individuals participating in clinical trial for life-threatening conditions
- Nondiscrimination in participating providers

Maintaining Grandfather Status

Disclosure Requirements for Non-Grandfathered Plans

Reporting Obligations to HHS:

- In 2011, information regarding enrollment, financial disclosure, and claims payment and denial
- In 2012, information regarding plan benefits and healthcare reimbursement structures with focus on improving healthcare outcomes

Maintaining Grandfather Status

What Will Cause a Plan to Lose Grandfather Status?

- Elimination of all or substantially all benefits to diagnose and treat a particular condition
- Any Increase in fixed percentage cost-sharing (coinsurance)
- Certain level of increase in deductible or out-of-pocket maximum
- Certain level of increase in co-payment
- Certain level of decrease in employer contribution rate
- New insurance policy, certificate or agreement
- Imposition of annual limits if no annual or lifetime limits in place on March 23, 2010
- Imposition of permitted annual limits that are lower than the dollar value of lifetime limits in place on March 23, 2010
- Decrease in dollar value of permitted annual limits in place March 23, 2010

Maintaining Grandfather Status

What Will Not Cause A Plan to Lose Grandfather Status?

- Changes that will not cause loss of grandfather status:
 - Enrollment of new employees (whether newly hired or newly enrolled) and family members
 - Changing TPAs
 - Changes to premiums
 - Changes to comply with federal or state legal requirements, including changes to comply with Affordable Care Act
- To maintain grandfather status, plan must:
 - Provide participants with statement that plan believes it is grandfathered, and
 - Maintain and make available records documenting the terms of the plan as of March 23, 2010

Current CBA/Contract Administration: Checklist

- Determine status of plan(s)
- Determine timing of mandates
- Consider special applications of mandates (e.g., impact on part-timers)
- Cost out mandates
- Evaluate maintenance of grandfather status
- Consider plan benefit reductions that could jeopardize grandfather status
- Evaluate ability to shift costs prior to contract expiration and/or reopen
- Ensure satisfaction of legal bargaining obligations

Healthcare Reform: Collective Bargaining Perspectives

- **Current CBAs/Contract Administration**
- **Preparing for Collective Bargaining Negotiations**

Preparing for Collective Bargaining Negotiations: What Do I Need to Know?

1. Effective Dates/“Grandfather” Status
2. Status of Immediate Mandates for All Plans
3. Minimum Essential Coverage (MEC)
 - Individual Penalties
 - Employer Penalties
4. Health Insurance Exchanges
5. Cadillac Tax

Minimum Essential Coverage

What Is It?

- MEC sets financial parameters on coverage
- For employer-sponsored coverage to be MEC:
 - it must be Affordable - - it cannot require employee contributions in excess of 9.5% of the employee's household income, and
 - it must provide Minimum Value - - employer must pay at least 60% of covered healthcare expenses
- MEC does not mandate particular coverage, except it must be medical coverage that is more than limited-scope dental and vision

Minimum Essential Coverage

What it means in 2014

- As of Jan. 1, 2014, tax penalties will be assessed against:
 - Individuals who do not have MEC (which may be obtained through employer-sponsored plans, governmental plans or an Exchange)
 - “Large Employers” who do not make available MEC to full-time employees (FTEs) and their dependents
- Large Employers will have to file a return with the Secretary certifying whether they offer MEC

Individual Penalties (2014)

- Individuals (and their dependents) must maintain MEC
- Annual penalty assessed for each month of noncompliance for each individual and dependent is greater of:
 - 2014 - \$95 or 1% of income
 - 2015 - \$325 or 2% of income
 - 2016 - \$695 or 2.5% of income
 - After 2016 – Indexed
 - Families will only be liable for half the amount of the per/person penalty for children under 18
 - Total family penalty is capped at 300% of applicable dollar amount
 - Penalty cannot exceed national average premium for bronze-level plans offered through Exchanges
- Certain exceptions (e.g., religious objectors, low-income, etc.)

Employer Penalties (2014)

Large Employer Not Offering MEC

+

One or more FTE receives
government subsidy through
Exchange

=

Annual Penalty will be \$2,000 for
each FTE (excluding first 30 FTEs)

Large Employer Offers MEC

+

One or more FTE receives
government subsidy through
Exchange

=

Annual Penalty will be \$3,000 per
FTE receiving government subsidy,
OR, if less, \$2,000 per each FTE
(minus first 30 FTEs)

*Penalties are assessed monthly, and are not deductible

*After 2014, penalty amounts will be indexed

Health Insurance Exchanges (2014)

- Exchanges are not insurance companies, but rather standardized insurance marketplaces that provide access to health insurance
- Exchanges will be state-established government or nonprofit entities
- Beginning in 2014, individuals may enroll in Exchanges
- Beginning in 2014, small employers (defined by states as either less than 50 or 100 employees) may offer Exchange coverage to their employees
- Beginning in 2017, states may allow large employers to obtain coverage for their employees through an Exchange

Cadillac Tax

Excise Tax Paid on High Cost Plans (for tax years after Dec. 31, 2017)

- Tax is paid by insurer (for fully insured plan) or third party administrator (for self-insured plan), but likely passed on to employer
- Employer (for multis, Plan Sponsor) is responsible for calculating and reporting taxable excess benefit
- Tax is NOT deductible
- 40% excise tax on value of all applicable employer-provided coverage that exceeds:
 - \$10,200 for self-only coverage
 - \$27,500 for other coverage, e.g., employee + 1, family
 - But, \$27,500 is threshold amount for all levels of coverage in multiemployer plan

Preparing for Collective Bargaining Negotiations: Checklist

- Determine status of Plan(s)
- Determine timing of Mandates and other changes
- Cost Mandates and other changes
- Evaluate importance of maintaining Grandfather Status
- Plan for known health care cost increases and consider options to limit cost exposure
 - Past and future cost increases
 - Contribution rate versus benefit design
 - Caps and/or employee co-pay over certain percentage increases
- Build in maximum flexibility for unknowns
 - Shorter duration contract (expiration prior to 2014)
 - Health care re-opener provisions
 - *Automatic*
 - *By mutual agreement*
 - *Triggered by certain threshold changes in costs*

QUESTIONS?

For more information,
please visit the
“Healthcare Reform Law” link at
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