Top 10 Employer Strategies for Health Care Reform

June 5, 2013
Charles P. Stevens
Michael Best & Friedrich, LLP
(414) 271-6560 (Ext. 18268)
cpstevens@michaelbest.com

© Michael Best & Friedrich LLP 2013. All Rights Reserved.
10. Know what is coming

- Do your homework.
- Learn the law and the areas in which it impacts your health plan.
- Learn effective dates and work backward on establishing decision points.
- Do not plan on there being any more delays in implementation (although there may be insufficient guidance).
- Do understand that there will be inherent uncertainty to some extent.
Challenges for Employers

- Complex compliance requirements
- Significant consequences for noncompliance
- Significant increases in the cost of health benefits and administration of health plans
- Uncertainty
  - Budgeting
  - Compliance
  - Direction of health care in the U.S.
  - Workforce Structuring, competition for employees
  - Whether employees without coverage will have a safety net
9. Know your special circumstances

- Few employers are “normal”; neither Congress nor the Agencies may have contemplated your business model.
- Do you currently offer coverage but have to cut benefits to deal with costs or are you an employer who will soon have to offer benefits for the first time?
- Are you a large or small employer?
- Do you have a grandfathered or non-grandfathered plan?
- Do your employees have low, medium or high incomes?
- Are your employees young, middle-aged, or older?
- Do you currently have a poor, medium or rich plan design?
- How much can you afford?
Rules for Seasonal and Variable Hour Employees

- Seasonal Employees are excluded in determining large employer status (not > 4 calendar months)

- Employees who do not average 30 hours per week and who are not offered coverage do not result in penalty for employers.

- Measurement period, Administrative period, Stability period.
  - Measurement period – 3 to 12 months
  - Stability period – at least the greater of:
    - 6 consecutive calendar months or
    - The length of the measurement period.
8. Get with consultants early and often

- You need to get it right the first time.
  - It is easier to change once than twice
  - Onerous penalties could be charged
  - Employees may claim they were entitled to better benefits
- Reading up on the law may not be enough.
- Brokers don’t know the law as well as lawyers; lawyers don’t know the available products and approaches being offered by the insurance carriers as well as brokers.
  Are both needed? Are your current consultants the ones you want as your strategic partners?
7. Compare only future options

- It is not worth dwelling on what used to be the norm, look at the new normal and compare available future alternatives.
- Be open to alternative approaches, such as early renewal, bare bones plans, “immunization” of your plan, and other options.
- Be option to workplace restructuring including more part-time employees and more leased employees.
- Try not to drop health coverage altogether.
Why you should not drop health coverage:

- The “tax-penalty” today for not offering coverage is typically lower than the cost of coverage, but if everyone dropped coverage this amount would have to rise significantly.
- If insufficient employers maintain health plans, insurance carriers will become more and more dependent on federal subsidies.
- Benefits continue to be valuable in attracting and maintaining the best employees.
- The exchanges may not be able to offer viable coverage.
6. Explore cost reduction approaches

- Consider a wellness program (or a more robust one than you currently have).
- Consider self-funding group health benefits as opposed to providing a fully-insured product.
- Find the window of minimum legal compliance and attempt to discern the impact on your employees, can or must you pay more to do better?
- Consider an arrangement that takes advantage of government subsidies through exchange-based subsidies for employees, employers, or other credits.
Will the Insurance Exchanges Work?

- High Rates, therefore only viable for individuals and small business if highly subsidized by the government
- The subsidies promised are high but may not be enough
- If coverage is expensive and not fully subsidized, only sick people will take coverage through the exchange
- Possible dumping ground for poor medical risk
- Not market-driven, instead highly regulated and highly subsidized; will sufficient market forces apply to ensure success.
- What is the impact if employers drop coverage and people flock to exchanges?
- What is the impact if few insurance carriers choose to put products on the exchanges?
5. If you are a small employer, then -

- Try to discern what the insurance rates will be if you do nothing.
- Compare your situation to that of your competitors in terms of using benefits to attract the best employees.
- Are there approaches that permit optimum application of benefit dollars for what the employees want?
- Are there subsidies or tax credits available?
- Are there innovative solutions worth considering?
“Pay or Play” – Definition of Large Employer

- Effective in 2014, if an employer employed an average of 50 employees on business days during preceding calendar year, it must offer “minimum essential coverage” to full-time employees.

- “Employee” is defined as someone working 30+ hours per week (120 hours per month).
  - Also includes FTE for part-time employees in counting 50 employees. FTEs are determined by taking the aggregate amount of hours they worked in a month divided by 120.
  - Seasonal employees are excluded in determining if you are a large or small employer, but included in the pay-or-pay penalty if they work > 30 hrs./wk.

- Temporary employees?

- Aggregation rules for business under common control.
Large Employer Example

- 30 full-time employees working 30+ hours per week.
- Plus 30 part-time employees working 24 hours per week
  (96 hours per month)
  - 30 employees x 96 hours = 2,880
  - 2,880 / 120 = 24 “FTE”s
- Total of 54 FTEs = This is a Large Employer and penalties apply if coverage is not provided
- Question: What would the penalty be if no coverage was offered?
4. If you are a large employer, then -

- Do you understand the special rules applicable to large employers, including the pay-or-play rules and the requirement that the employer must offer affordable coverage to employees?

- Does your offer of coverage meet the minimum value and plan design requirements?

- Is your coverage offered to at least 95% of your full-time employees?

- Are you at risk for not offering coverage to employees classified as independent contractors or leased employees?
“Pay or Play” – Employer Does Not Offer Coverage

A large employer is viewed as not offering minimum essential coverage when it:

- Offers no coverage to at least 95% of its full-time employees; or
- Does not comply with grandfathered or new requirements applicable to health plans regarding minimum essential coverage; or
- Does not contribute at least 60% of the cost of the coverage

Penalty = $2,000 per person per year (coverage costs much more).
“Pay or Play” – Employer Does Not Offer Coverage

- Penalty of $2,000 per full-time employee per year (calculated on a monthly basis).

- When calculating the penalty, subtract the first 30 full-time employees.

- Although the employer must consider part-time employees as full-time equivalents to determine whether it is a large employer, the penalty does not take part-time employees into account.

- Seasonal employees are can be excluded in determining status as a large employer but must be included in the full-time employees to whom coverage is offered.
“Pay or Play” – Employer Does Not Offer Coverage

- Although Congress mandated that the full penalty would be imposed unless the employer failed to offer coverage to all full-time employees, the IRS has issued regulations permitting employers to avoid the penalty as long as they offer coverage to 95% of their full-time employees.

- Where more than 5% of the full-time employees are not offered coverage, the employer pays the full penalty.

- Example: 5,000 full-time employees, offer not made to 251, the penalty is $2,000 X 4,970 employees = $9,940,00 or about $40,000 per person not offered coverage.
3. If you are a large employer and offer coverage, are you offering affordable coverage?

- If you are charging more than 9.5% of income to employees for their coverage, you may be subject to a $3,000 penalty.
- Is it feasible to use the subsidies through exchanges to help pay for coverage for low income employees?
- How will low income employees and all employees react to your plan design and the amount you charge as wage deductions for coverage?
“Pay or Play” – Employer *Offers* Coverage

Which employees are eligible for the premium tax credit?

- Employee whose household income falls between 100% and 400% of Federal Poverty Level (FPL); and

- Whose required contribution to participate in the Employer’s plan is greater than 9.5% of employee’s income; and

- Who obtains coverage through the exchange and not through the Employer’s plan.
“Pay or Play” – Employer **Offers** Coverage but charges more than 9.5% of income

Where the employee receives a premium tax credit, the employer must pay a penalty

- Penalty is the LESSER of (1) $3,000 x number of full-time employees who received the premium tax credit (i.e., elected coverage in the exchange); or (2) $2,000 x total number of full-time employees employed by the employer (less the first 30 employees).

- When calculating the penalty under (1), **do not** subtract the first 30 full-time employees.

- Although the employer used part-time employees as full-time equivalents to determine whether it was a large employer, the penalty does not factor in part-time employees.
2. Have you paid attention to tax impacts?

- Shared responsibility payments are not tax deductible; take taxation into account in discerning the impact of these tax penalties.
- If you make up for plan design changes or dropping coverage by increasing compensation, recognize the tax impact on employees and the FICA impact on both employee and employer.
- Hope that the Cadillac Tax never kicks in. (40% nondeductible excise tax on total premiums.)
1. Monitor how the Exchanges appear to be working

- If exchanges are not succeeding due to high rates or low participation among insurance carriers, employees may not have a safety net if an employer drops coverage.
- Likewise, steering low income employees to the exchange may not work.
- As the exchanges go, so will go individual and group insurances markets in the respective states.
- As the exchanges go, so will go the future of health care reform.
Final Advice:

- Don’t believe there is an answer for every question.
- Decide on Plan A, but have Plan B available.
- Be Nimble.
- Fasten your seatbelts.
Circular 230 Notice

Any Federal tax advice contained herein is not to be used for, and the recipient cannot use such advice for, the purpose of avoiding any penalties asserted under the Internal Revenue Code. If the foregoing contains Federal tax advice, and if the foregoing is distributed to a person other than the addressee, each additional and subsequent reader hereof is notified that such advice was written to support the promotion or marketing of the transaction or matter addressed herein. In that event, each such reader should seek advice from an independent tax advisor with respect to the transaction or matter addressed herein based on such reader’s particular circumstances.
Top 10 Employer Strategies For Health Care Reform

Charles P. Stevens

cpstevens@michaelbest.com

100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI  53202-4108
Phone 414.271.6560    Fax 414.277.0656