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Inside Health Insurance Exchanges

Timely News and Strategies for Doing Business on Federal, State and Private Exchanges

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Mandate Delay Is Good News for Employers, But May Mean More Bumps for Carriers

While the recently delayed employer mandate gives midsized employers a little breathing room, it throws yet another curveball to health insurers. A final rule (79 Fed. Reg. 8543) issued Feb. 10 by the Treasury Dept. delays — for the second time — a requirement that employers with between 50 and 99 full-time workers offer health coverage or pay a penalty.

Joel Ario, who served as HHS's first director of the Office of Insurance Exchanges, says the delay is likely to have minimal impact on employers because about 99% of large employers already offer health coverage to at least some employees (see chart, p. 6). "Unlike the individual mandate, which is an integral part of the coverage expansion in the individual market, the employer mandate was designed to preserve the status quo in group coverage, not expand it, by deterring employer dumping," he tells *HEX*. Ario is now managing director at Manatt Health Solutions.

The delay is good news for midsized employers (50 to 99 employees), many of which were struggling to comply with the mandate, says Adam Solander, an associate at the law firm Epstein Becker Green. Employers with fewer than 100 employees typically don't have a human resources staff to help the owners understand the rules.

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More Employers Will Self-Insure If States Let Large Firms on Exchanges in 2017

Beginning in 2017, states have the option of allowing large employers (i.e., more than 100 employees) to purchase a fully insured health plan through public insurance exchanges. If that happens, fully insured large group coverage sold through the exchanges must include the 10 essential health benefits (EHBs) and comply with other standards that now apply only to the individual and small-group market plans (see box, p. 2). It is likely that these same rules will apply to fully insured large group plans sold outside of the exchanges as well. For carriers, that could mean even more employers will seek to avoid these new requirements — which will likely lead to increased costs — by transitioning from fully insured products to less profitable administrative services only (ASO) accounts. It also could mean a sicker risk pool among employers that decide not to self-insure. It's unclear whether HHS will allow large employers into the federally facilitated exchanges, or if the states will make that decision.

During a Feb. 6 conference call to discuss fourth-quarter 2013 earnings, Aetna Inc. President and CEO Mark Bertolini noted that commercial risk members offered four-times to five-times greater contribution to earnings than ASO members on a dollar basis.

"Most midsized employers don't know about this," says Christopher Condeluci, of Counsel at the law firm Venable LLP in Washington, D.C. Midsized employers (e.g., 100 to 5,000) employees tend to have fully insured health benefits while larger employers typically self-insure, which allows them to sidestep the EHB provision and the new adjusted community rating rules, as well as state mandates. The provision of the Affordable Care Act (ACA), he tells *HEX*, is evidence that this administration and proponents of the law would like to see large groups going through the exchange. "It's a function of wanting to standardize plans and better regulate the market." Prior to joining Venable, he served as tax and benefits counsel to the Senate Finance Committee during the crafting of the Affordable Care Act.

Rich Stover, a principal with Buck Consultants, a Xerox Company, notes that 2017 is "a long way off" and that anything can happen between now and then.

Rules Extend Beyond the Exchange

Large-group employers were happy that Congress exempted them from the premium rating rules, EHBs, actuarial value requirements and the single risk pool. The drafters of the law saw the small-group and individual markets as being dysfunctional. But the exemptions for large employers go away in 2017 if states opt to expand exchanges to include large employers. "And that is the big deal I'm suggesting," Condeluci asserts.

State exchanges viewed as successful will be most likely to allow bigger employers into the exchanges. Success will probably be measured by whether insurance premiums in the small-group and individual markets are seen as affordable and if the exchange has helped reduce the uninsured population. But Condeluci notes that states are not required to allow large-group plans into their exchanges.

Surprisingly few employers have paid attention to this provision because they incorrectly believe that they will be affected only if they buy coverage through the exchange, Condeluci says. "But the statute is crystal clear on this....If a state makes this type of election, then the adjusted community rating rules will apply to large group inside and outside of the exchange....no more experience rating," he explains. "The reason we have the same rules inside and outside the exchange is to make sure the exchange doesn't get adversely selected against. And state regulators will have no choice but to impose the EHB actuarial value and the single risk pool to plans sold outside of the exchange as well as inside."

Healthiest Employers May Self-Insure

Stover says it makes sense that lawmakers looked to limit adverse selection by requiring the same rating requirements outside of the exchanges. But he notes that small employers with young and healthy employees are good candidates for self-insuring.

ACA Allows States to Open Exchanges to Big Employers

Here's a look at two provisions of the Affordable Care Act that give states the option of opening their exchanges to the large-group market beginning in 2017:

Section 2701 of the Affordable Care Act "applies to health insurance issuers offering health insurance coverage in the individual and small group markets, and in the large group market if a state, beginning in 2017, allows health insurance issuers in the large group market to offer qualified health plans (QHPs) in such market through an Exchange pursuant to section 1312(f)(2)(B) of the Affordable Care Act. Sections 2702 and 2703 apply to issuers in the individual and group (small and large) markets. These provisions apply to health insurance coverage in the respective markets regardless of whether the coverage is a QHP offered on Exchanges."

Section 1312(f) notes that "if a state permits health insurance issuers that offer coverage in the large-group market in the state to offer such coverage through an Exchange starting in 2017, the provisions of this section applicable to coverage in the small group market apply to all coverage offered in the large group market in the state."

SOURCE: HHS Rule published in the *Federal Register*, Feb. 27, 2013.

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From the state's standpoint, if they allow large employers in, they essentially get an influx of healthier lives into the exchange, so that should help hold down premium costs. But it also could cause fully insured employers with healthy employee populations to self-insure so that they can avoid the requirements, and that could leave a sicker risk pool, warns Stover.

Jay Savan, an employee benefits consultant in Mercer's Atlanta office, agrees and says allowing large plan sponsors on the exchanges will encourage large employers in those states to self-fund their health insurance. "Perhaps that will inhibit states from forcing the issue, but that would require an appreciation for the unintended consequences of the law," he says.

Stover suggests that some states might work to limit the size of employers that can self-insure.

"My advice to the carriers — as well as to self-insured and large-group employers — is this is something that is going to affect behavior just like the [overall ACA] is affecting behavior," says Condeluci.

Editor's note: Condeluci covered this topic in detail in a 2011 article published by BNA. Visit http://tinyurl.com/mnaapb7.

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Group Gives Failing Grades to Federal and State-Run Exchanges

State-and federally run insurance exchanges in 15 states received failing grades, while exchanges in California, Connecticut, Kentucky and New York were given A's, in Decision Resources Group's "State Exchange Report Card," released Feb. 13.

Troubled state-run exchanges in Maryland and Oregon received low but passing grades in November, but were downgraded to F's in the most recent report due to technical problems and enrollment struggles *(HEX 1/23/14, p. 1)*. Federally run marketplaces in states such as Alabama, Georgia, Louisiana, Missouri and Oklahoma also ranked on the low end of the grading spectrum.

But not all federally run exchanges scored the same. Florida's federally run exchange posted a surge in commercial enrollment in January, pushing that state's grade from an F to a solid D. Nearly 300,000 Floridians have now selected a private plan via the exchange — 23% of whom are under the age of 35, according to HHS. Despite the enrollment jump, barriers such as restrictions on where navigators can operate and the state's overall involvement in the exchange kept that state's grade low, says Bill Melville, market analyst at Decision Resources Group. "In general, it seems that the gap between the states that are doing well and those that are doing poorly has gotten wider," he tells *HEX*.

Melville says that Texas, which has 6 million uninsured and elected not to expand Medicaid, is a difficult state to rate. While the state has enrolled 200,000 people through the exchange, "that's really a drop in the bucket," he says.

The biggest surprise, he tells *HEX*, has been North Carolina's federally run exchange, which has enrolled more than 160,000 people. Navigators, according to Melville, have been "digging in" in small communities with high uninsured rates and getting people to enroll. And some successful state-partnership exchanges have an uncertain future. Arkansas' innovative "private option" Medicaid alternative could be shut down, Melville warns *(HEX 5/1/13, p. 1)*. Other problem-plagued state-run exchanges, such as Massachusetts and Minnesota, are likely to be downgraded unless they show improvement.

Melville will discuss the report's findings at the upcoming Managed Markets Summit, Feb. 25-27, in Orlando.

Download the State Exchange Report Card and explanatory executive briefing at www.hl-isy.com/State-Exchange-Report-Card.

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HHS Touts 3.3 Million Enrollees, But Many Premiums Are Unpaid

HHS on Feb. 12 said exchange enrollment thrived in January, with 1.1 million people signing up for health plans, making it the best month yet by volume and bringing total enrollment to 3.3 million since Oct. 1. Most planners expect March, the final month of open enrollment, to bring a torrent of enrollees. Importantly for health insurers looking for a younger, healthier stable of enrollees, the new HHS data show the proportion of young adults (ages 18-34) selecting a marketplace plan increased by 3 percentage points from 24% in December to 27% in January. But some industry observers are dubious about the figures, and some others contend the latest enrollment numbers are inflated — likely 10% to 25% lower when unpaid premiums are considered. HHS did not say how many of the total enrollees had paid their premiums.

A dozen state-run and federally operated exchanges have met or surpassed sign-up targets, including Colorado, Connecticut, Florida, New York, North Carolina and Wisconsin, according to the Associated Press. The worst