

Role of Health Insurance Agents and Brokers

Does this legislation include a role for health insurance agents and brokers?

Yes, health insurance agents are specifically included in participation in the various types of health insurance markets, including exchanges. There are two areas where there is no mention one way or the other as to agents. These are in the area of two new product types created in the Senate bill – the new multi-state plans being administered under the umbrella of OPM, and the new cooperatives. However both of these will be offered through state exchanges, and agents are specifically included in these.

What will happen to commissions as a result of this legislation?

It appears that commissions will continue to be determined by carriers, although state based exchanges are not prohibited from establishing additional rules. One area of concern is the minimum loss ratio provisions that will put limits on the dollar amount carriers can spend on administrative costs. This could put additional pressure on carriers since they will be penalized for not meeting the specific targets outlined in the law.

Implementation

What are the actual effective dates for the "immediate" changes? First plan year following 6 months of implementation, or 6 months from implementation? A self insured group renewing July 1, 2010, will set rates but then have to amend in Sept or Oct?

The law states that the changes would be in effect on plan years following six months from enactment. It is possible that some changes could come sooner via executive order or regulation, but unlikely.

Grandfathered Plans

Will grandfathered plans be exempt from community rating?

Yes, as long as no changes are made to the plan.

What if the plan makes a change to the coverage; alters the drug card structure from what was initially purchased?

It would no longer be grandfathered

Would an individual policy sold today, be considered 'grandfathered' or is a grandfathered policy only one in effect prior to the date this was signed into law?

Plans sold prior to the date of enactment are the only plans that can be considered grandfathered

If an insurance company changes a plan in order to comply with a state statute that mandates a benefit, does that cause a plan to lose "grandfathered" status?

No.

I am a bit confused about the grandfathering issue. Does this only apply to groups of 50+ employees as defined by the regulations as full time?

No, any plan could be grandfathered if it were in force before the date of enactment and no changes are made unless they are required by law.

If a plan has an anniversary date of 4/1/10 or later, if a change in benefit, like a move from a \$500 deductible to a \$750 deductible at renewal is made, will this change lose grandfathered status for this employer's plan?

A plan that renewed on 4/1/10 with no changes from the prior year would be grandfathered. But if on 4/1/10 it changed anything, it would no longer be considered grandfathered.

If the RECON bill requires all to conform to the 2010 insurance reforms, doesn't that remove the grandfathering provision because there has been a plan change?

We don't think that changes required by either federal or state law will impact grandfathered status if other changes are not made.

Is it important to retain "grandfathered" status? What is the advantage of being grandfathered?

You wouldn't have to comply with some of the market reform provisions in 2014 until you lost your status, but the immediate changes the plans will have to comply with anyway, because the reconciliation bill applied them to grandfathered plans. We think grandfathering was never a reality for group plans.

Health Insurance Exchanges

Are agents going to be involved in the health exchanges? I know an 800 number will be set up. Who is going to man this number?

Yes, agents are specifically allowed to sell plans both inside and outside the exchange. Each state will set up their own exchange, and while there will likely be a toll-free number, you should view like the carrier's 1-800 #s.

What will the advantages / disadvantages be for buying coverage in the exchange versus outside the exchange? I've heard that only plans inside the exchange will enable people to buy subsidized coverage...

For individual market consumers that are eligible for the subsidy it will only be available in the exchange. Cooperatives and multistate plans will be only in the exchange. Other than that, we expect that coverage inside and outside of the exchange will be the same..

Do we have any idea what the commission will be for agent for the exchanges?

This is not dictated by the legislation. We anticipate that carriers will continue to set them just as they do today.

Will coverage for small business outside of the exchange be available forever or do you know that yet?

The legislation anticipates that coverage will continue to be available for the foreseeable future both inside and outside of the exchange.

Explain the modification waiver and why is that of benefit to the states?

This is a very important provision that can give states more flexibility to do things differently than the way they are specifically addressed in the legislation. With a waiver, if states can demonstrate the ability achieve an objective in a different way, the waiver is approved. For example, in the case of tax credits only being available through the exchange, if a state could demonstrate the ability to administer the tax credits both through the exchange and outside the exchange, it would be approved.

Do the SHOP exchanges include agent compensation?

All exchange products are private products, with the carrier setting commissions for them, just as they do today.

Will SHOP exchanges bill the individual at home, or through the individual's employer?

Individual coverage will be billed directly to the individual and employer sponsored coverage will go through the employer as it is today. There were no special provisions included to allow "list bill" through the exchanges that would change the law from what it is today. And specifically, Section 125 pre-tax arrangements are available only

through employer sponsored plans.

If a large group is only able to get subsidies within the Exchange, wouldn't that be a driver for them to go into an Exchange in 2017?

No. In general an individual is not eligible for a subsidy if they have employer sponsored coverage, unless the employer fails the "affordability" test.

If tax subsidies are available only through the exchange and employers may have coverage outside of the exchange- can employees waive employer coverage to take advantage of tax credits through the exchange and will employers be penalized for that? How would that work?

Subsidies are only available to employees who have employer sponsored coverage available if their share of premiums under their employer's plan is deemed unaffordable or if their employer doesn't provide the minimum level of essential benefits.

So if we can sell across the exchanges, will agents need to be licensed in multiple states?

The exchanges will be state based. If you want to sell in another state, you will need a license there, just as you do today.

Are there any provisions in the exchange market for adjusting for risk of an individual or group in determining rates? Will there be a method of risk adjustment?

There will be limited means of risk adjustment on the front end -- modified community rating based on age bands of 3:1, geography, smokers status, family composition, and wellness program under certain circumstances. There also is a risk adjustment mechanism (similar idea to Medicare/Medicaid but with its own rules) on the back end but this is largely invisible to the employee and employer.

Employer responsibility Requirements

Do employers have to provide benefits to their part time Ees? And if they do not, do they have to pay the penalty?

There is no requirement to provide benefits to part-time employees. However, they are "counted" in terms of full-time equivalents in determining whether or not the employer mandate requirements apply to an employer.

Could you define the small business size parameters for the small business premium tax credit?

It is 25 employees or less, but to get the full credit it is 10 or less.

Is the 1-100 employees rule apply to eligible or enrolled. If eligible, does that include part-time, seasonal, etc.?

For the market reforms, you would count them the same way you count employees in a group now.

Did reconciliation bill include a continuation of COBRA until 2014 as the original House bill did?

No—that is not part of this bill. It was never in the Senate bill and reconciliation did not address it.

Did the requirement for employers to pay 75% of individual or 65% of family go away?

Yes, but there are fines for employers with more than 50 employees who have even one employee go to the exchange for a subsidy because their share of the premium exceeds 9.5% of family income.

Do employers have to pay dependent costs?

There is no specific requirement regarding what an employer must pay. But if an employee's share is greater than 9.5% of family income, and that is likely to mean that it is their share of whatever kind of coverage they want to purchase, whether individual only or employee plus family, the employer will pay a fine. This applies to employers with more than 50 employees.

An employer offers group health, what is required of an employer for those employees that have, in the past, waived coverage? Do you think there will be "open enrollment" periods to allow all eligible employees to get on the plan?

Although the details are not specified in the legislation, we anticipate both an initial enrollment period and annual enrollment periods.

So are you saying that small employers with 1-30 employees will not be fined if they do not provide coverage?

That is correct.

Back to the W2 info, does this now mean that employer sponsored benefits will be treated as taxable income?

No you just have to tell your employees the value for transparency purposes.

Can an employee get coverage under the group for self only and enroll family via exchange with subsidies? If so, does the employer still get the \$3000 fine?

We don't know this yet. It was not specified in the legislation but we will ask that it be clarified in guidance and regulations.

Can an employer still say a FTE is one that works 40 hours or will the min # of hours change with this bill?

Full time is defined as 30 hours for provision of health insurance purposes. We do not know yet what the averaging period will be. For example, if a person works 20 hours one week and 40 hours the next followed by 20 hours the next, etc, what will the time period be for determining whether the 30 hour requirement is met? Being discussed are time periods such as a month or a quarter. This is not intended to impact other employer benefits that may hinge on 40 hours.

Does an employer with two separate companies each with 40 employees have to count both companies in determining number of employees?

There is some language regarding common ownership that is vague. We expect additional guidance on this.

How do 1099 workers factor in to the mandate?

They are not specifically addressed but are unlikely to count since they are not employees.

How does the employer credit work?

In general, it applies to employers with 25 or fewer employees with average annual income less than \$50,000. It is available to non-profits and those without tax liability. It is on a sliding scale based on average income and

employer size. We have developed a one page explanation of the credit that is available on the NAHU website.

Are all the penalty \$ to be assessed only on employers with over 50 employees???

Yes.

I have several restaurant groups that have carved out a plan for management EE's but do not cover hourly. Will they now have to cover all EE's over 30 hrs a week even the hourly EE's?

First of all, the mandate only applies to groups of 51 or more. To determine whether the group is in that size category, full-time equivalents are used, which means that part-time hours are combined to determine the total number of employees. This is often an issue with restaurants. The employer of this size does not have to cover any of the full-time employees, but they will be fined if any of their full time employees access coverage through the exchange and are eligible for a tax credit. So, a fine is possible. Additionally, if the employer covers only management employees, it is possible that there will be a problem with the non-discrimination requirements. We don't have guidance on this yet.

I read that companies with 5 employees or more in the construction sector only must provide affordable coverage or pay the fine. Companies in other industries only apply to 50+ employees. Was this changed?

Yes, it was removed.

If employer has to use part time employees hours to calculate if they are over 50 full time, will they have to provide coverage to part time employees?

No, they do not have to cover part-time employees.

Is there a minimum employer contribution? I did see one in the house bill but not in the senate or rec bills?

No, but they could be fined if one of their full time employees goes to the exchange because the employer contribution is not enough to avoid coverage being deemed unaffordable for them. Their share of premiums must be no more than 9.5% of family income.

Is there a mandatory requirement for employers for part time employees to be covered?

No, part-time employees do not have to be covered, but have to be counted in terms of the number of hours they work to determine if an employer employs more than 50 full time employees. In this case, the calculation is based on full time equivalents.

What if an ee is covered by their spouses plan? Does the ees employer that is not providing coverage pay a penalty?

Not unless the employer is more than 50 employees and either doesn't provide coverage or provides what is deemed unaffordable coverage, AND the employee goes to the exchange and is deemed eligible for a tax credit.

Individual Mandate

What concerns have been expressed to congress regarding the \$95 buy out penalty? We see this as an incentive for individuals to NOT take coverage versus taking coverage.

The penalty has been increased and is no longer \$95, but we are also very concerned that the penalty is too low and that there are no other insurance related consequences.. We have communicated this concern multiple times to Congress.

If people are exempted from the individual mandate, what responsibility do they have for paying for any care received? Or, is that the responsibility of those who have coverage?

There is no provision to change this from what it is today. The only penalties are tax penalties and any debt collection by providers who are unpaid as a result of the person's uninsured status.

Market Reforms

Are non-HSA high deductible plans going to still be available?? We have customers who are willing to use them, save the monthly premium, and be responsible for the deductible??

Yes but they will be subject to the actuarial value requirements, so you might not see as high of deductible plans available anymore. Additionally, deductibles are limited to \$2,000 for individuals and \$4,000 for families starting in 2014.

If certain preventive benefits have to be paid at 100% (even if all other benefits are paid at 80%), can an insurer still pay the doctor's office visit at the 80% level?

It depends on the purpose of the visit. If it is in the category of services that must be covered as preventive, it must be paid at 100%.

Is this law going to mean no one can elect a deductible that is higher than \$2,000?

Yes, unless the employer contributes an amount to offset the difference. So for example, if an employer had \$3,000 deductible and contributed \$1,000 to an HRA or HSA, it would be permissible.

Are benefits maximums included in the annual and lifetime max?

By 2014, no annual limits will be allowed. It may be possible to address this via medical necessity.

An individual policy sold today, for a 19 year old...will it be subjected to underwriting?

Yes, underwriting is permitted until 2014.

Can you set up an annual maximum of \$1 million (at least until 2014) without running afoul of the "no annual limit for non-essential benefits" provision?

No. Annual limits will not be permitted on what are considered essential benefits starting with renewal dates following September 23, 2010. So this would not work.

In 2014, will there just be two family compositions (single and family)?

No that was not changed. Family composition is one of the few rating factors left, and will probably still remain single, employee plus spouse, employees plus kids and family.

Insurers outside the exchange can use claims experience after 2014?

For groups of 100+ only. Or any self-funded plan.

Does Modified Community Rating apply to fully insured plans over 100 lives? I believe that initially it did.

Now those provisions, which will go into effect in 2014, will apply to fully insured plans 100 and less. Also, in 2017, larger groups can enter the exchanges and would be subject to those requirements only if they purchase coverage there.

Do you think the annual limits mean \$dollars and/or annual limits on therapy visits? For example, our plan is limited to 30 physical therapy visits per year.

Both. But which annual limits may still be okay because they are considered to be for nonessential benefits is still to be determined.

I am hearing that the provision to offer guaranteed issue health insurance for children has been delayed to 2013 or 2014 due to a "technical" error, is this true?

The legislation requires preexisting condition exclusions for children to be eliminated within 6 months, but because of some technical drafting errors in the bill, extending the provisions to guarantee issue may not actually become effective until 2014. We don't believe this delay will occur and that some provision will be made via regulation very soon.

Is there a dollar limit to the preventive care service?

Specified services must be first-dollar cover and no benefit limits allowed.

What benefits will be included in essential benefits packages?

Essential benefits will be defined as a choice of levels of coverage. A list of services that must be covered will be determined, and this is described in general in the legislation. Other than the items where all plans must cover services the same way, like lifetime and annual limits, preventive services, etc., the level of coverage will be determined based on percentages of what an average person uses for the specified benefits. The lowest level will be 60% for example. Carriers will be able to design different plans, as long as they meet with actuarial equivalent. These essential benefits will apply to all fully insured markets. Self-funded plans will have more flexibility, but since they are likely to be more than 50 employees, they will still need to provide at least the minimum level of coverage in order to avoid a fine under the employer responsibility requirements. In addition to the four levels of coverage, there will be a separate level of coverage allowed for individuals age 30 and younger.

Dependent Coverage

How is 'Dependent' defined for the new dependent availability to age 26, and does a married 'dependent' qualify as well?

The reconciliation bill said they could be married but it doesn't require dependents of dependents to be covered. However it would cover pregnancy expenses for the insured dependent.

For current groups who have dropped their dependents because of age restrictions, what is the process to bring them back on to their parents/employers sponsored plans?

We are not sure they will be allowed back on if they have already aged out. We will have to see if this is going to be considered a qualifying event based on the forthcoming regulation/guidance.

If a dependent turned 25 October 2009 and hasn't obtained other coverage yet, can he get back on his parents plan until he turns 26 October of 2010? Understanding he will have a gap in coverage for October to March. Thanks.

The dependent coverage provisions will begin in October 2010, and only extend through a person's 26th birthday. So if this child turns 26 on October 2010, then in all likelihood no.

For married dependents -- can you give an example of when a married child might still be a dependent and thus eligible for coverage?

The new reconciliation bill says you can be married and on your parent's plan. It is changing the definition for dependent for plan purposes, not tax purposes (except that the employer exclusion would still apply for that dependent even if they aren't a dependent otherwise for tax purposes.) An example might be a child who is married but both she and spouse are students dependent on parental support.

What about children age 23 who are graduating in May and would no longer be eligible to be on their parents plans. Since the age 26 provision does not start until October do these graduating students need to get individual plans if eligible or Cobra? Will they be allowed to continue to 26 even though they are

graduating in May?

They won't have to be covered until the plan year following September 23rd, 2010, so they will need other coverage. It is unclear if this is going to be a qualifying event and they can get back on if they've already aged out. This will be addressed through guidance/regulation later, and as soon as we know this, we will let you know.

Will states have ability to trump federal dependent age limit if theirs is more generous?

Yes, if your state law is higher it could prevail. But, this may not happen, because there is a provision in the legislation that says that if states do more than what is required and it results in a higher cost relative to the tax credits available through the exchange, the state has to pay the difference. Few states have money for this.

Does the dependent coverage requirement apply to stand alone Dental, Vision, EAP, etc plans.

Unclear at this time. The regulations, etc. have not been developed yet. As soon as we have more information on this, we will let all members know.

What are the tax implications? This has been an issue in other states and dependents could not be added pretax?

The law specifically applies the parents' exclusion to the child. We do not expect there to be tax implications for parents or their children.

Small Business Tax Credit

The last slide referenced a 50% tax credit for small business. I have seen elsewhere a figure of 35% max for Phase I? Which is correct?

50%--it was changed through a recent amendment.

Regarding the credit employers will receive if they pay at least 50% of employee's premium, will that apply to this years tax return for year ending 2009 or next year for year ending 2010?

For the year ending in 2010. It applies to premiums paid beginning January 1, 2010 forward.

Is the tax credit minimum for 50% of the total premium including family, or 50% of single cost?

There is no guidance on this but in other legislation it has referred to whatever the employee elects.

Are owners eligible for the tax credit?

No. But their salary is also not included in calculating the average salary, which will allow more groups to qualify.

When will the small employer tax subsidy take effect?

The credit applies to premiums paid starting January 1, 2010.

Taxes

Are non-profit insurance carriers still exempt from the premium tax in 2014?

No, all non profits were never exempt, just BCBSA of Mi, BCBSA of NE and Mutual of Omaha. But now certain types of carriers will have to pay less than others.

Is this tax paid for by the employer or the insurance carrier?

Premium tax is paid by the insurer and will just be passed on to the consumer in the premium. The excise tax will be paid by the insurer or TPA (for a self-funded plan) but directly billed to the employer plan.

It's my understanding that the "Cadillac tax" takes effect in 2018 now, because of the Reconciliation bill. But doesn't the tax apply to the aggregate value of the premiums PLUS any employer funded HSA contributions, if applicable? A few slides ago, you mentioned that ER funded HSA contributions would not be included in the "valuation of health plans" on the W-2. I'm probably confusing two issues here, but nonetheless.

Two separate issues. HSA value will be included for the Cadillac tax. The W2 thing doesn't make the benefit taxable--it just makes the information available to the employee for transparency purposes.

Are the current limits for the 40% Excise tax, based on 2010 inflation, or will the \$10,200 etc. limits start in 2018, and then be indexed to inflation at that time?

We don't have guidance on this but the legislation says it will be indexed to CPI. Details on how the indexing will work will come in guidance.

The tax on those earning over \$200,000 / \$250,000. Are those earnings indexed to prevent AMT-like bracket creep?

No.

Consumer-Directed Health Plans

Are HSA non-qualified distributions taxes from 10% to 20% grandfathered? Will this apply to over-65?

This is not subject to grandfathering because this is a tax provision and not a policy provision. We don't know yet if it will apply the same way after age 65.

Does the ability to use pretax dollars in an FSA for OTC products go away 1/1/2001 or with plan years that begin on that date or after?

2013 but allowed if you have a doctor's prescription.

Can you address catch up contributions for HSAs any changes to these?

No change.

HSA OTC does this mean a doctor can write a script for Advil?

Yes. But remember a script requires a diagnosis.

Pre-tax HSA contributions from an employee's paycheck show up on the 8889 form under Employer Contributions. Will these now be included in the 40% tax?

Possibly. We are waiting for guidance to be sure.

The \$2500 FSA max. Is this per FAMILY?

Yes—but it doesn't apply to dependent care, just eligible unreimbursed health expenses. If your question relates to two spouses, each taking a maximum FSA – this has not been fully addressed. Great question.

When do the HSA provisions take effect?

2011 for the most part, although the deductible limitations begin in 2014.

MLR

Do the MLR requirements apply to self insured plans?

No, only fully insured plans.

With minimum loss ratios being implemented soon, what's the belief on the impact on agent commissions?

We are hopeful that the definitions of what is an administrative expense vs. claims will be clarified so that there is an adequate amount left for marketing including agent commissions. But it is possible there will be some commission compression in some markets, particularly rural areas and others where it is more expensive to do business.

Does the MLR apply on an individual group basis or across the pool of groups that the carrier has on the books?

We believe it will be calculated based on the entire pool of a category of business in a state.. Individual will be calculated separate from small group and small group separate from large group.

How do new rating factors and rating bands affect current state factors and bands? Same question for MLR requirements?

MLR rebates will apply to 2010 claims payments (rebates if applicable disbursed in 2011). The market reforms take effect in 2014 and will supercede state law. States that do more will be allowed to continue what they do, but will have to pay any difference in the cost of the tax credits if their additional benefits result in higher costs.

Will carriers get a claims rebate from the fed if they exceed the MLR ???

No, if a carrier does better than the minimum requirement, they will not be rewarded.

CLASS Act

Are there estimates of the benefits and costs of the CLASS ACT?

We are developing a full web page that will include this and other important information on this provision.

As the bill stands now, how soon do employers need to be enrolling employees in the CLASS ACT (LTC) benefit. Is that supposed to take place on 1/1/2011?

2011

How will the CLASS ACT interact with the State Partnership programs for LTC? Will the policy benefits comply with state requirements?

It is meant to be a supplement to private LTC policies, not be a comprehensive benefit. We do not know what if any coordination will occur with either private long term care coverage or private disability coverage.

Long term care provision - how will this compare to the private market?

It is really apples and oranges. We are preparing a summary that should better explain the differences and it will be posted to the NAHU website.

Medicare

Can you address Medicare Advantage plans today?

Cuts to Medicare Advantage plans will result in fewer available plans and fewer extra benefits for beneficiaries.

Does Pre-ex exclusion include the Medicare market?

It doesn't appear to include Medicare.

How does the new legislation affect Medicare Supplement plans?

It does not address them.

Is the .9% Medicare increase to those with incomes above \$200K, \$250K joint taxpayers on the excess of income above those amounts or on their total income?

We don't have guidance on this yet but probably it will be based on AGI.

Other Topics

Is Congress still exempt from this type of coverage?

Yes.

Will there be cross the state competition? Can a resident of Texas buy insurance in a different state?

There may be three potential areas to address multi-state availability. First, the multi-state plans offered through exchanges (administered by OPM) may offer uniform benefits for multiple states. Second, the cooperatives may be available regionally as opposed to just within a state. Third, there is a provision that allows states to enter into compacts with each other so for example of group of six states could decide that coverage within their states could be available to others within the compact.

Are there any special provisions for Vision Insurance? Does this all affect Vision?

There may be a requirement that vision screening and some coverage be provided to children, probably in 2014, but we are clarifying whether or not vision will be included in the preventive care benefits that take place for kids within 6 months.

Can a Limited Benefit Plan, with its' current shortcomings be sold during the next six months?

It is possible that limited benefits will be considered in the same category as critical illness policies and thus be excluded from the requirements. We don't know for sure yet. Certainly by 2014 they will not be able to be used to meet the purchase mandate requirements.

What about short-term plans relative to pre-existing conditions?

Since short-term plans provide comprehensive benefits, we don't think they will be able to avoid the pre-existing conditions exclusions provisions, but this was not specifically addressed in the legislation.

Are "management only" plans a thing of the past under this bill?

We don't know for sure yet. There are new nondiscrimination rules for which we have little detail. It may be a simple test like the one for Section 125, or it may be more elaborate and not permit any sort of classed out employees. In particular, groups of more than 50 employees are unlikely to be able to use them.

Do we know which states are the 17 high cost states that were indentified?

Not yet and this list may change by 2018.

Will COBRA or HIPAA portability rules go away?

The law didn't specifically address this and there are no plans at this time to take them away. But certainly the question arises whether HIPAA portability is an issue beginning in 2014.

What is going to happen to COBRA? Will people still need to buy it?

This legislation does not impact COBRA and I think people will still want it, particularly between now and 2014. But even beyond that date people may prefer to continue their employer sponsored coverage.

Is the employer value for health insurance, when added to a W-2, for taxation purposes or informational purposes?

Informational only.

Does the annual maximum limits able to in network only or out of network as well?

Both.

What is NAHU's thoughts on the likelihood that States suing the gov't will win their lawsuits?

Unclear, but even if they are successful it will take years, and implementation goes on until the court challenges are finished.

Wellness programs -- they are supposed to take effect Oct. 2010...but when will the employer actually receive a grant?

Unclear--no guidance or regulations have been released yet. As soon as information is available, we will inform the entire membership.

What is the definition of small group? Under 50?

1-100 for the market reforms starting 2014. But for the employer responsibility requirements it is 50 employees or less, with PT workers taken into the calculation on an aggregate basis (this is new based on the reconciliation bill). States can request that the definition be 1-50 but only until 2016.