HEALTHCARE REFORM AND THE EVOLUTION OF BROKER SUPPORT SERVICES

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Gone are the days when placing employer-based health insurance coverage involved a relatively simple transaction between an employer and its benefit broker. The Patient Protection and Affordable Care Act (PPACA) significantly complicated the landscape for employer-based health insurance, including imposing stringent new compliance mandates on employers. In an effort to manage this risk, employers and human resource (HR) departments are demanding more services from their brokers. In an attempt to satisfy this demand, many brokers have expanded service offerings to address their clients' evolving needs. Some of these solutions include technology, legal / compliance, HR, wellness, communication and compliance consulting services. Here is a look at what new issues employers are facing and how some brokers in the post-healthcare reform world are providing support. Finally, we look at some questions employers might want to consider when looking for a broker to provide compliance assistance.

The Employer Shared Responsibility Provision – The Employer Mandate: The PPACA's Employer Mandate requires every employer with 50 or more full-time or full-time-equivalent employees to provide PPACA-compliant health insurance coverage to their employees or pay a financial penalty to the federal government.

For a number of reasons, Congress and the Obama administration intended for the PPACA Employer Mandate to be phased in over time. Under extensions granted by the Obama administration, as of January 1, 2015, all applicable large employers (ALEs) (employers with 100 or more full-time or full-time-equivalent employees) were required to offer minimum value and affordable coverage to 70 percent of their full-time or full-time-equivalent employees and 95 percent of their employees by 2016.[1] The mandate for small businesses with 50 to 99 full-time employees or full-time-equivalent employees is effective January 1, 2016. Employers failing to meet these requirements will pay a financial penalty for noncompliance. The mandate does not apply to employers with 49 or fewer full-time employees.

By design, the PPACA Employer Mandate significantly increases the number of employers who provide health insurance coverage for their employees. According to the Kaiser Family Foundation, in 2014, only 55 percent of employers offered health insurance coverage to their employees. In 2015, that number increased slightly to just 57 percent.[2] In addition to the financial burden, these employers will also have to find a way to satisfy the law's complicated and equally burdensome reporting and compliance obligations. Not surprisingly, many benefit brokers have begun to offer PPACA compliance services to help their clients navigate their way through the law.

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[1] https://www.irs.gov/Affordable-Care-Act/Employers/Questions -and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056

[2] Kaiser Family Foundation (2015). 2015 Employer Health Benefits Survey http://kff.org/report-section/ehbs-2015-section-one-cost-of-health-insurance/

PPACA COMPLIANCE ISSUES CONFRONTING EMPLOYERS

1) Employer Tracking – Employers now need to measure and track variable-hour employees to determine their responsibility under the PPACA Employer Mandate and determine which employees must be provided an offer of coverage. This is exceptionally tedious for employers with large variable-hour workforces or those with high employee turnover.

2) Employer Reporting – Employers are required to demonstrate compliance with the PPACA Employer Mandate through annual reporting. As a means of proving compliance, all employers with 50 or more full-time or full-time-equivalent employees are subject to Section 6056 reporting beginning in January 2016, regardless of whether or not they offer health insurance to their full-time employees. At their most basic, these Sections require fully-insured groups to report the months in which each full-time or full-time-equivalent employee was offered coverage and the months in which they were enrolled in that coverage. So far in 2015, this reporting requirement has added challenges for employers, providers and brokers alike.

3) Cadillac Tax – Based on current legislation, high-cost health plans will be subject to the Cadillac Excise Tax beginning in 2018.[3] This is a tax of 40 percent on any annual total premium amount above the Cadillac threshold ($10,200 for an individual and $27,500 for a family in 2018). The thresholds will increase slightly with the Consumer Price Index (CPI); however, as the health insurance trend has historically been significantly higher than the CPI, this tax is expected to affect at least 26 percent of employers in 2018. Without any changes to the legislation, the number of affected employers is expected to continue to rise.

Faced with these new PPACA requirements, employers are increasingly looking to the broker community to provide them with tools to ease the administrative burden of tracking eligibility, enrolling individuals in coverage and fulfilling the new reporting requirements, as well as assisting in monitoring their potential liability as it relates to the Cadillac Tax.

Many brokers have begun providing PPACA compliance solutions for their clients. At the very least, competitive brokers will provide assistance to the client in evaluating technology solutions for PPACA compliance and will assist in sourcing and pricing. HR solutions can take many forms and can be all-inclusive or fulfill select needs of the client, including but not limited to:

[3] http://kff.org/health-costs/issue-brief/how-many-employers-could-be-affected-by-the-cadillac-plan-tax/

Benefit Administration – These systems allow employees to enroll in their benefits online. This information includes tracking when individuals were offered coverage, who was enrolled during the plan year and when individuals enrolled or declined coverage. In addition to assisting with the employer reporting requirements, benefit administration systems facilitate enhanced employee engagement by integrating wellness platforms, providing plan comparison tools and communication and improving overall employee education.

Benefit administration platforms can be extremely costly, with the total cost varying widely depending upon the size of an organization and the features provided by the system. Lately, a number of brokers have developed their own benefit administration platforms for customers or have partnered with technology firms to provide client access to these systems.

Variable Hour Tracking Tools – Employers are required to monitor each variable-hour employee's time worked and make an offer of coverage upon declaring them "full-time." These tools help manage the process of tracking individuals for healthcare eligibility under the PPACA Employer Mandate. As not all employers have a variable-hour workforce and thus do not need these tracking capabilities, it is not uncommon for these tools to be included as an add-on to benefit administration systems rather than as a standard offering.

Employer Reporting Modules – Employers are required to report the information collected to prove their compliance (or non-compliance) with the PPACA Employer Mandate. Different modules can be provided as an add-on to current benefit administration technologies or payroll systems. Brokers typically do not provide the capability to fulfill an employer's reporting requirements. However, it is standard and expected practice for brokers to be knowledgeable about the options for employers.

Cadillac Tax Calculators – Brokers should be providing clients with annual calculations of their potential liability under the Cadillac Tax. Additionally, brokers should provide clients with a multi-year strategy for avoiding or limiting their liability as we approach 2018.

Some brokers have gone so far as to provide access to all of the above benefit administration solutions at no additional cost to their clients. At a bare minimum, clients should expect their broker to provide solutions to streamline PPACA compliance.

In addition to these challenges associated with PPACA compliance, employers are still required to keep up-to-date with the Employee Retirement Income Security Act (ERISA), state and other pre-PPACA federal requirements imposed upon benefit plans. The PPACA is constantly evolving as clarifications, revisions and adjustments are being made on what seems like a daily basis. As the law has evolved, employers have been required to revise health plan eligibility, waiting periods, benefit plan provisions and plan

documents as well as provide new employee notices. Faced with the daily challenges of operating their business, overwhelmed employers and HR departments are becoming increasingly reliant on their brokers to keep them apprised of new compliance requirements and to provide guidance on the administration of their benefit plans.

The task of keeping current has overwhelmed many brokers who have found it impossible for their client managers to provide sufficient client service while also being PPACA experts. Navigating the complex and ever changing regulations imposed upon healthcare plans by the PPACA has elevated the value of compliance experts.

The response of the broker community has included providing access to ERISA attorneys and other counsel as a standard service option. Through this offering, employers can obtain advice tailored to the needs of their specific benefit program and organization. Not only do brokers market this access as an added service to clients, they also rely on their ability to pull from these resources for everyday consulting. Today, brokers provide clients with checklists, help manage the programs for ongoing compliance requirements, provide strategic plans for annual compliance and have begun a standard practice of annual reviews for all benefit plans.

Furthermore, employer sponsors continue to face the challenge of administering and complying with the Consolidated Omnibus Budget Reconciliation Act (COBRA), annual Form 5500 filings, nondiscrimination testing and Health Insurance Portability and Accountability Act (HIPAA) compliance.

The ways in which the brokers help their clients with these requirements include:

COBRA Compliance and Administration – Due to the administrative complexities, COBRA administration can be extremely tedious and can open the employer to increased liability. Historically, brokers have assisted clients in procuring proposals for outsourced COBRA administration. However, with the development of new technology, some brokers have begun providing COBRA administration as a part of their service offerings.

Form 5500 Filings – Benefit plans with 100 or more lives at the beginning of the plan year are required to file a Form 5500. Many brokers will take on the task of filing Form 5500s for clients at no charge. Typically, brokers can complete the entire process, only requiring final sign off from the client. This service has become an almost standard compliance service offering.

HIPAA Compliance – Although not typically a service provided by brokers, many have begun to provide HIPAA and other HR consulting offerings. Brokers have begun presenting clients with additional resources including but not limited to HR training videos and 24/7 compliance information, along with proactively providing HIPAA notices for employers.

Love or hate the PPACA, it is in all likelihood here to stay. And while changes to specific requirements are inevitable, employers subject to the law will need to find a way to operate their businesses...

Just as employers have had to adjust to the changing healthcare landscape, brokers have been forced to innovate and expand their services to remain competitive. Brokers have begun to offer technology, additional compliance and legal resources and to expand their HR services to accommodate the needs of lean HR departments.

Brokers have evolved from the vendor placing benefits coverage to the client's long-term HR benefit plan advisor.

For the smaller employer entering the health insurance marketplace for the first time, selecting the right benefit broker can be a daunting task. For employers who need assistance to meet the PPACA's reporting and compliance obligations, the decision becomes even more complicated. From face-to-face meetings to online communications, brokers are promising comprehensive, "one-stop shopping" solutions to overwhelmed and inundated smaller employers.

As is the case with any professional advisor, the key to finding the right benefits partner begins with having a clear understanding of what the law requires the employer to do, what specific services the broker or benefits consultant is promising to provide and their ability to deliver as promised. The following is a list of questions and considerations that a smaller employer may want to consider when choosing a broker or other partner to help administer its benefits:

- What is included in its suite of services – and what services are provided at additional cost?
- What technology resources are provided to clients?
- What is the broker's strategy for annual client service?
- Does the broker provide access to legal counsel?
- What is the broker's plan for communicating benefits information to employees? What services / resources will the broker provide in this capacity?
- How will the broker participate in and support Open Enrollment?
- Can the broker operate in each state in which the employer has employees?
- Will the broker provide a dedicated account manager?

Love or hate the PPACA, it is in all likelihood here to stay. And while changes to specific requirements are inevitable, employers subject to the law will need to find a way to operate their businesses while satisfying the PPACA's current (and likely expanding) compliance obligations. Choosing the right benefits broker or consultant can be the key to achieving that balance.

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