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Skinny Plans: Adhering to the Letter (But Not the Sprit) of Health Reform

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An increasing number of employers are examining providing a low-benefits health plan that covers only preventive health services but not high-price major medical claims. Offering this type of low cost or “skinny” plan is allowed under the health reform law. The question is: Will skinny plans trigger a large-employer exodus to *de minimis* coverage, and if so, will the federal government rewrite the reform rules to disallow them?

For the first time under health reform, employers with large workforces must offer health insurance to workers (even if they earn minimum wage or not much more) or pay a penalty. Large employers can avoid a no-coverage penalty if they offer minimum essential coverage to at least 95 percent of their full-time equivalents and dependent children under age 26.

Given that fact, plus the fact that most health services are often unreasonably expensive, it is possible that many large employers will offer skinny plans, because they feel they have to comply with health reform at the lowest possible cost.

Offering a low benefits plan shields larger employers (with 50 or more employees) from the reform law’s expensive no -coverage penalty ($2,000 per year, times the entire number of workers employed (minus the first 30 full time equivalents)). While such plans may expose such employers to an inadequate- or unaffordable-coverage penalty, that tax is levied only in proportion to the number of workers who actually apply for and qualify for, subsidies and get coverage on a health insurance exchange. That triggers a far less expensive penalty for employers.

The prospect of offering “some plan any plan” to employees to avoid the prospect of massive health reform fines makes economic sense.

How is this possible? Let’s start by looking at the definition of “minimum essential coverage.”

Definition of Minimum Essential Coverage

The health reform law generally requires that all individuals and their dependents maintain “minimum essential coverage” each year, as provided by entities that include employer-sponsored health plans.

Employees are free to go to a health insurance exchange if their employer offers them a plan they do not like. Further, they can get a premium subsidy if their employer fails to offer coverage that: (1) is affordable; or (2) provides minimum value. A plan’s minimum value is measured with reference to benefits covered by the employer that also are covered in any one of the essential health benefit benchmark plans adopted by a state.

(**Note:** If employees buy coverage through an exchange they lose their employers’ contribution. And if they do so, they will pay for that coverage with after-tax dollars.)

An employer-sponsored welfare benefit plan is defined under ERISA (29 U.S.C. 1002) as “any plan, fund, or program” … “established or maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise.” This includes medical, surgical or hospital care benefits.

A skinny plan would be considered a plan, fund, or program established and maintained by an employer for ERISA purposes (and similarly for purposes of the Public Health Services Act). As such, it also would be considered an employer-sponsored health plan under reform.

Accordingly, an individual employee and their dependents covered under this type of arrangement would satisfy the individual mandate requirement and would not have to pay a penalty for the year.

The reality is that many workers, especially the young and healthy ones, would accept this type of “minimum essential coverage.” They probably would stick with the skinny plans until they actually get sick and need real care. If large numbers of employees are enrolled in skinny health plans, reform will have produced an unanticipated outcome.

Who Would Buy These Skinny Plans?

Skinny plans could become an option for restaurant and retail chains that are too big to fit in any small employer category. Employers that up until now have offered no coverage also might like skinny plans.

Young and healthy workers may find the bare bones option more attractive from a financial standpoint. A typical waiter at a chain restaurant probably fits the mold of an employee who wouldn’t think he or she needs more health coverage.

For example, Dallas-based Tex-Mex restaurant chain El Fenix says that it will offer limited insurance coverage to its 1,200 workers — covering prescription drugs, preventive care and physician visits —in order to avoid the no-coverage mandate, *Forbes* reported.

An article in the May 20, 2013,*Wall Street Journal* reported that:

San Antonio-based Bill Miller Bar-B-Q, a 4,200-worker chain, will replace its own mini-med with a new, skinny plan in July. … The new plan will have no dollar limits on benefits, but will cover only preventive services, six annual doctors’ visits and generic drugs. X-rays and tests at a local urgent care chain will also be covered. It wouldn’t cover surgeries or hospital stays.

Because the coverage is limited, workers who need richer benefits can still go to the exchanges, where plans would likely be cheaper than a more robust plan Bill Miller has historically offered…. The chain plans to pay the $3,000 penalty for each worker who gets an exchange-plan subsidy.

What About Attracting the Best and Brightest?

Few employers now offering full self-funded benefits to their employees would take the opportunity to switch to skinny plans. That’s because businesses trying to attract and retain high skill employees for long-term positions have an economic incentive to offer generous and attractive health insurance.

That’s what most already do. Otherwise, they would lose good employees to competitors. But the kind of businesses mentioned in the aforementioned articles — restaurants, retailers, assisted-living chains — tend to employ low-skill workers who typically work temporarily and are offered no health benefits. These skinny plans may very well be better than what they currently receive. In a high unemployment economy, they do not have to offer great health insurance to get the workforce they need.

It’s Cheaper to Pay the Unaffordable-coverage Penalty

The skinny plan would shield not only the individual workers from penalties but also the employer. As noted above, skinny plans can trigger unaffordable-coverage or inadequate-coverage penalties if a full-time employee applies for and receives a premium subsidy to get exchange coverage.

Under the inadequate/unaffordable-coverage rules, if coverage is unaffordable or does not provide minimum value, the employer will be subject to a $3,000 penalty tax for every full-time employee who purchases an individual market health plan through an exchange and accesses a premium subsidy for health insurance.

Offering skinny plans under this scenario is still far cheaper than failing the no-coverage test and paying a penalty for every member of the workforce (less the first 30).

Skinny plans may cost an employer only $40 to $100 a month per employee, much less than the $167 per month-per employee penalty for providing no insurance.

Please keep in mind that this strategy is very uncertain. Eventually, skinny plans may not pass muster if the government rewrites the definition of minimum essential coverage to eliminate them. But currently, nothing prohibits employers from using such plans.

Not So Much for Workers and Consumers

The real question that must be posed is whether this really is health insurance? In my opinion it’s not.

Instead it is a payment plan for small maintenance care. Insurance is needed to protect people from expensive needs that befall the unlucky insured party. Skinny plans don’t provide that because they exclude surgeries, hospitalizations,

mental health, maternity care, and the like, from coverage. That means such insurance policies are not a very good option for employees who might actually get sick.

This also means health reform is actually encouraging large companies to drop true insurance in favor of maintenance plans. That seems at odds with the government's intent for employers to continue to sponsor full health benefits, and to prevent consumers from being stuck with catastrophic bills that force them to declare bankruptcy.

Skinny plans do nothing to solve the dilemma of lowering health inflation so health care is more affordable and more accessible. This cannot be what President Obama envisioned when it came to reform. However, because the reform law was passed by Congress so quickly, seemingly without anyone parsing through the fine print of the bill, I predict we will continue to have more and more loopholes.

The Future of Skinny Plans

Federal agency officials have expressed surprise at the possible expansion of skinny plans. But will they try to shut them down?

If skinny plans thrive and the exchanges begin to go bust, federal agencies may conclude that skinny plans violate the new nondiscrimination rules that apply to fully insured health plans.

We will eventually find out whether the Obama administration will attempt to use nondiscrimination arguments to put a stop to skinny plans. Until then, it appears that offering a low-cost, skinny plan is a possible strategy when it comes to an employer's overall approach to offering health insurance to its employees and complying with the new reform requirements, including the employer mandate.

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