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Companies Try to Escape Health Law's Penalties

Some Employers Seek to Shift Employees to Medicaid; Others Plan to Offer 'Skinny' Benefit Plans

Insurance brokers and benefits administrators are pitching a variety of options to companies who want to avoid health-law penalties while holding down costs. ASSOCIATED PRESS

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With companies set to face fines next year for not complying with the new mandate to offer health insurance, some are pursuing strategies like enrolling employees in Medicaid to avoid penalties and hold down costs.

The health law's penalties, which can amount to about $2,000 per employee, were supposed to start this year, but the Obama administration delayed them until 2015, when they take effect for firms that employ at least 100 people.

Now, as employers race to find ways to cover their full-time workers while holding a lid on costs, insurance brokers and benefits administrators are pitching a variety of options, sometimes exploiting wrinkles in the law.

The Medicaid option is drawing particular interest from companies with low-wage workers, brokers say. If an employee qualifies for Medicaid, which is jointly funded by the federal government and the states, the employer pays no penalty for that coverage.

"You're taking advantage of the law as written," said Adam Okun, a senior vice president at New York insurance broker Frenkel Benefits LLC.

Locals 8 Restaurant Group LLC, with about 1,000 workers, already offers health coverage, and next year plans to dial back some employees' premium contributions. That is because an employer can owe penalties if its coverage doesn't meet the law's standard for affordability.

But the company, which is based in Hartford, Conn., hopes to reduce its costs by offering eligible employees a chance to enroll in Medicaid, using a contractor called BeneStream Inc. to help them sign up. The government program is more affordable for employees and saves money for Locals 8, said Chief Executive Al Gamble. "The burden gets shifted to Medicaid," he said.

Such maneuvers could fuel controversy. Big employers with significant Medicaid enrollment in their workforces have been a political flash point in some states. The health law aimed to expand Medicaid eligibility to most people with incomes at or below 138% of the federal poverty level, but not all states have adopted that standard.

"We've got to be careful about not fooling ourselves into thinking everybody wins," said Matt Salo, executive director of the National Association of Medicaid Directors. "The cost to the taxpayer does go up significantly."

BeneStream said its business is growing rapidly. "The economics of this are what's driving change," said CEO Ben Geyerhahn. The law "created this as a valid waiver" for employers.

Another idea gaining ground with employers is offering bare-bones, or "skinny," health plans that cover preventive care but exclude major benefits like hospital coverage. These low-cost plans differ from the now-illegal "mini-med" plans that capped benefits. Though skinny plans offer a narrow range of benefits, they don't limit payouts.

Making such plans available allows employers to avoid the approximately $2,000-per-employee penalty for not offering coverage to at least 70% of their full-timers. And workers who sign up won't face the law's penalties for individuals lacking insurance.

Since skinny plans don't meet the federal standard of covering 60% of the cost of medical care, they can still leave an employer vulnerable to a different fine—about $3,000 for each worker who opts out and instead gets a federally subsidized plan through an insurance exchange. Employees can't get subsidies if their employer offers insurance that meets the law's standards for coverage and affordability.

Major insurers such as UnitedHealth Group Inc. and Cigna Corp. are marketing skinny plans. Cigna said it offers such plans alongside richer alternatives and with "transparent and clear communication to ensure customers fully understand their health-care coverage choices." The insurer said companies have shown growing interest in the plans, but relatively few have adopted them.

UnitedHealth said it works with clients to identify plans that comply with the Affordable Care Act and "meet their needs."

Other vendors say interest in skinny plans is brisk. "It's just crazy how many we're writing," said Jeff McPeters, a principal owner at Group & Pension Administrators Inc.

Ruiz Protective Service Inc., a 400-employee firm that provides security services and polygraph tests, plans to start a skinny plan in January. The company can't afford the about $2,000-per-worker penalty or traditional insurance, according to owner Hector Ruiz, who said the new plan "will satisfy the law and not put us out of business." He said he thinks the preventive-care policies will be affordable for employees, and the company will be upfront about the coverage limits.

Consumer advocates have raised red flags about skinny plans. "If coverage doesn't protect them when they get sick, it doesn't do much for" workers, said Cheryl Fish-Parcham, private-insurance program director at the nonprofit group Families USA.

A Treasury Department spokeswoman said the department "will continue to monitor possible employer actions that might be contrary to the intent of the law and consider what responses, if any, might be appropriate."

Federal officials have said most large employers already offer coverage that meets the law's requirements. The companies worried about penalties are largely in industries with significant low-wage workforces, such as restaurants, nursing homes and hospitality. Previously, many of these companies didn't offer coverage to hourly workers or had mini-med plans.

Some employers are mixing strategies to hold down costs. Garden Fresh Restaurant Corp., parent of the 128-unit Sweet Tomatoes and Souplantation restaurant chains, has been hiring part-time workers as full-timers have left. The law doesn't require companies to offer coverage to part-timers working less than 30 hours a week.

Next year, Garden Fresh plans to offer full-timers a high-deductible plan that meets all of the law's requirements. To limit enrollment it won't cover spouses or domestic partners who have coverage available through their own employers.

“We’ve been able to mitigate quite a bit of the costs,” said CEO John Morberg. Garden Fresh expects only about 20% of previously ineligible front-line restaurant workers to sign up for coverage. “If it exceeds that, we’ll have to go to the menu board to raise prices,” Mr. Morberg said.

At least a few companies are resigned to paying penalties, but are trying to minimize the bite. Paul Dalrymple, owner of five Buffalo’s Cafes in Georgia, doesn’t plan to offer coverage to his 200 employees. To limit his exposure, Mr. Dalrymple is trying to keep the number of eligible workers to a minimum. He said he has begun cutting hours of everyone but managers and cooks to 29.5 a week, and he is hiring more part-timers to make up the lost hours.

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