 ▶ *Mark Reynolds, RHU*

ACA Rules – Which Ones Apply To Self-Funded Plans And Which Do Not

The big day for the Affordable Care is nearing — January 1, 2014. Though there is still much unsettled about the ACA's future and its impact many things are clear; one area of clarity is the advantage of ERISA-based, self-funded plans (e-based plans).

Brokers and employers need to know and will quickly learn that there are certain aspects of the ACA that do not apply to e-based health plans. In this article, we will discuss a few points that truly make e-based health plans employer driven and provide better benefits for covered members.

First A Little Bit About ERISA

ERISA refers to the law passed back in 1977 that allows single employers to self-fund their health plans. Prior to ERISA single employers could not legally self-fund their plans. ERISA is also the regulatory code that gives oversight of employer's plans to the Dept. of Labor (DOL) and preempts state departments of insurance (DOI) from intervening in the employer's plan. That is why you often hear the term "ERISA preemption" when discussing self-funded plans.

Also, it is important to remember that when we talk about self-funded or e-based health plans, we are not talking about the fully insured high-deductible plans (HDHPs) that implement HRAs or MERPs to lower cost and enrich benefits. These HDHPs with HRAs, which are so popular in California, have two parts. As you know, one part is the fully insured HDHP, which is regulated by the DOI and a second part, which is the HRA that is actually regulated by the DOL.

Advantage — Self-funded Plan

So, what ACA rules do and do not apply to self-funded plans? Let's look at the rules that do not apply because they give employers the flexibility to make their plans as rich as desired while still controlling cost.

Medical Loss Ratio (MLR)

The ACA's guidelines concerning a carrier's MLR is one of the reasons employers are seeing premiums increase under the ACA, but the MLR rules do not apply to self-funded plans. The MLR rules push fully insured rates up due to the simple effect of mathematics so this is an advantage for employers that choose to self-fund their health plans.

Advantage — Self-funded plan Three to One Rating Formulas

As you know the ACA dictates that the highest rate a fully insured carrier plan charges cannot be more than three times higher than the lowest rate it charges. This has been explained at every seminar or Webinar you have attended for the past three years so we all understand it. It will be painfully clear for our citizens to see the impact of this ACA provision as people transition to the new rating system in 2014.

E-based plans are not constrained by the three to one rule. First of all the actual premiums of E-based plans are always much lower because they are basically excess loss insurance that kicks in after the self-funded plan has paid a predetermined amount (known as the specific deductible) but self-funded plans don't have increasing effect of the 3:1 rule so this certainly gives employers an advantage in pricing for their self-funded plans.

Advantage — Self-funded Plans Geographical Rating Areas

The ACA, along with efforts by the California legislature, has divided the Golden state into 19 rating areas. Currently, carriers have only nine rating areas. This ACA provision can be argued both ways regarding the effect it has on fully insured plans, but the fact remains that this rule does not apply to self-funded plans.

That means that carriers providing self-funded plans can price their plans based on the widely accepted actuarial standards without the constraint of lines on a map. Self-funded plans put employers in the driver's seat with regards to benefits, risk, and cost so avoiding arbitrary rating areas gives employers another advantage for self-funded plans.

Advantage - Self-funded Plans Essential Health Benefits (EHB)

This one can sound counter intuitive or at the very least confusing so stick with me for a moment. Self-funded plans are not required to provide the EHB as fully insured plans are required to provide. One's first thought is "Well, that's not fair." But stick with me.

Self-funded plans are still required to meet minimum value just as fully insured plans are required. There is a calculator to determine the minimum value of health plans. Also, self-funded plans are required to pass the minimum value test in order to be deemed acceptable of qualified under the ACA.

The advantage for self-funded plans is that employers can make their plans as rich as they desire, but not waste premium dollars for benefits that people never use. Plus, if we look at the current market, every health plan you sell contains the 10 category of benefits outlined by the EHB so this provision is somewhat unnecessary and does add cost to fully insured plans again by the virtue of mathematics.

Advantage - Self-funded Plans. Traditional Advantages that continue under ACA

When considering which ACA rules do and do not apply to self-funded plans, we cannot leave out the traditional advantages that still exist. I will briefly identify a few of these.

Transparency and 24/7 Access To Data

Fully insured plans never give employers access to claims information, unit cost of health care cost, utilization frequency, Rx data, etc. etc. etc., but self-funded plans do. Employers can have access to their group's data on a 24/7 basis if desired.

Plus, experience proves that, when given access to data, employers tend to make benefit richer not leaner, employers tend to lower member's contributions not raise them, and renewals are reasonable and/or negotiable.

Wellness, Flexibility and Accountability

The ACA does require certain wellness benefits to be included as a part of the EHBs and for some flexibility for controls in obesity and smoking. These apply to self-funded plans as well. However, self-funded plans have much more flexibility and accountability when implementing creative benefits to encourage better health and wellness.

Along with the transparency of information discussed earlier, self-funded plans can create incentives for life style changes and actually monitor and account for improvements. In addition, the employer retains savings generated by actual life style improvements to pass along to employees in the form of better benefits or other rewards.

Advantage - Self-funded Plans Better Cost Management

If we are honest, we would agree that, over the past 10 years, employers and members have received little benefit as a result of their carrier's fully insured plan cost management. I realize that the counter argument to this is that premiums would have risen faster or by greater amounts without cost management. One would have a difficult time proving to an employer that any containment of cost that carriers were able to achieve went to the employer's benefit. It's just human nature for the employer and employee to assume that since employer's rates increased double digit, sometimes by 40% to 50% a year, that the carrier either did not control cost or somehow benefited by these increases.

Regardless of those arguments, the fact is that self-funded plans give employers a chance to control costs and review the data to determine if their efforts to control cost are working. Then the employer can make decisions for further controls as a result of its analysis. The employer truly sits in the driver's seat with self-funded plans and that makes their plans employer driven for the benefit of the covered members.

Advantage – Self-Funded Which ACA Provisions Apply to Self-Funded Plans?

It is easy to start thinking that self-funded plans got a complete pass with regards to the ACA. Not so and here is a list of those provisions that to apply.

Unlimited Lifetime maximums
* Minimum Value (as stated earlier)
Cover Kids to age 26
* Specified Wellness and Preventive **SBCs**
* Mandatory Notices
90 Day waiting period (60 days in Calif.)
* 60 day notice of material change
Transitional Re-ins fee ($63/yr/member)
* PCORI fee
Sharing of all data with Feds in 2014
* No Pre-ex (except for Misrep)

Finally, it is easy to see why every employer will want their consultant to research self-funding as an alternative to the employer's fully insured plan. While self-funding may not be right for every employer, every employer has the right to consider it and decide for themselves if it makes sense.

Our industry continually evolves to provide innovative solutions to market obstacles and the self-funded products available in the market today are a good example of that fact. Through employer driven self-funded products, employers can lower their costs, control costs in the future, provide the benefits their employees need without wasting precious dollars, implement effective life style changing wellness plans, and provide all of this with complete access to the data for analysis and plan design.

It's a good time to consider the advantages that ERISA based self-funded plans provide to employers. ❑

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