THE AFFORDABLE CARE ACT: What Public Sector Employers Need to Do Now … Later This Year … and Beyond

By J. Richard Johnson

The Affordable Care Act (ACA) has changed the environment for public employer health benefit plans. The federal government is now a factor in every state and local jurisdiction health plan, either through direct mandates, benefit limitations, penalties and taxes or the expansion of federal benefit programs (Medicaid) that may affect lower-income employees and retirees. As a result, states and local governments' traditional role in providing "hire-to-grave" health benefits for active and retired employees is changing. Public employers will have to make potentially significant changes to their health plan eligibility and/or workforce compensation going forward, if they want to keep their traditional group insurance benefits. Public plans will also have a new competitor for employee and retiree health insurance coverage — the state health insurance Exchanges — that may be more cost-effective than the employer's plans for some individuals.

This article discusses actions public employers need to take now and over the next year to fulfill ACA requirements, to prepare for additional mandates and to allow their health plans to continue to be a positive factor in attracting and retaining quality employees. The following sections outline major areas, which public employers should be focusing on going forward.

What You Need to Do Now

Some actions should be initiated now, including the following:

- *Ensure your benefit coverage meets ACA mandates.* The ACA imposes minimum coverage and benefit mandates and reporting requirements on insurers and employers that sponsor health benefits. Public employers should work closely with their carrier for insured plans and with their consultant and/or third party administrator for self-insured plans to make certain they have addressed all mandates and other requirements. Some new requirements, such as new fees, will increase the cost of benefits.
- *Grandfathered plans must determine how soon grandfathering will end.* Many public sector plans have already abandoned the grandfathered transition and are making more extensive plan and employee contribution changes to keep the overall cost sharing in line with objectives. If losing grandfathered status has not yet occurred, employers should analyze when they will need to make plan changes for additional mandated benefits.
- *Provide an Exchange notice to all new hires.* Employers need to make the Exchange notice a part of the regular new employee information package. Documentation should be maintained as to all components included in that package, including a list of items the new employee acknowledges receiving. To the extent that employee consent is required to send future documents electronically, consent can be obtained at hire.

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- *Study the current eligibility requirements in light of the employer shared responsibility penalties that go into effect in 2015.* The penalty is designed to encourage large employers (those with 50 or more full-time employees) to continue providing health coverage. A penalty may be triggered when a full-time employee (30 or more hours a week) receives a federal subsidy in a state Exchange. Although the original 2014 effective date was delayed a year, it is not too early to work through the details of determining which employees must now be counted as full-time under the ACA. For public sector employers, the new rules also include seasonal and variable-hour workers, such as those

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hired full time only in the summer as lifeguards or groundskeepers. Special rules exist for employees of educational institutions.

- *Start reviewing changes in eligibility rules and/or employment management requirements for the new definition of full-time employee.* There are voluntary safe harbors for employers to determine whether variable-hour employees, ongoing employees, seasonal employees and new employees work full time for penalty purposes. The analysis process is detailed and often tedious to make sure all employee situations are considered; however, the result is a clear picture of where gaps exist with employees working full-time under ACA rules, but not currently eligible for health benefit coverage.
- *Test your current plan minimum value against the Exchange coverage tiers.* The Exchanges provide plan benefits at different "metal" levels (bronze, silver, gold, platinum) based on the percentage value of the plan in paying for medical costs. To avoid some of the potential penalties, employers must provide a plan with a minimum value of at least 60 percent. While most public employer health plans are already at a higher than 60 percent value, it is important to analyze and test each plan to assure the employer meets that minimum requirement. This analysis will also provide helpful benchmarks for plan values as changes are considered in the future.
- *Communicate with employees and retirees about how their employer-sponsored coverage affects their options for enrolling in the state insurance Exchange and receiving a federal subsidy.* Most employees do not understand that their existing employer-sponsored and subsidized health benefit coverage automatically disqualifies them from receiving a federal subsidy on the Exchange. Employers should inform employees how the ACA affects their options. Employees naturally look to the employer to help them understand their benefits, and this situation should be no exception.

What You Need to Do Within Six Months

Looking a bit further down the road, public employers will soon need to be working on the following actions:

- *Study the impact of the ACA on early retirees (who are not yet eligible for Medicare) in your health benefit program.* Retirees who are not yet eligible for Medicare are not counted for purposes of the employer shared responsibility penalty. This means the employer has considerably more latitude in how benefit plans are structured and to what extent they are subsidized. Many public employers are already finding that encouraging early retirees to purchase health coverage through the state Exchange might be a better strategy for the future. In some cases, subsidized coverage on the Exchange may result in not only reduced premiums, but also subsidized out-of-pocket costs. Some employers may even decide to shut down their early retiree benefits to maximize the retiree's ability to obtain federal subsidies on an Exchange. This type of analysis usually requires extensive analytical work to arrive at the best solution.
- *Examine the feasibility of offering Medicare retirees a Medicare Advantage/prescription drug plan option instead of participation in the active employee group health plan.* Medicare Advantage (Part C) and Medicare Prescription Drug Plans (Part D) now offer reasonably stable and lower participant cost alternatives to the traditional employer group plan. Depending on the overall program structure, Medicare Advantage Part D plans may be offered as an option or as a required selection.
- *Consider whether a private insurance Exchange is advantageous for Medicare retirees.* The private Exchange market is growing significantly, spurred on by large public and private employers willing to cede administrative control and customer service functions to a third party specialty service contractor. These private Exchanges can be structured to offer eligible retirees a wide range of available plan designs and program features. Employers should consider seeking qualified professional help to determine whether a private Exchange makes sense for their particular workforce.

- *Implement new eligibility policies for 2015 to be ready for open enrollment.* Revised eligibility requirements will need to go into effect for 2015, which means months of advanced planning and communication to help affected employees understand their options and make reasonable choices in the enrollment period.
- *Make vendor contract modifications or bids for benefits/administration for 2015.* Public sector procurement takes considerable time. Employers are advised to start the contract bidding and/or modification process early so all vendors will be in place, tested and functioning smoothly before the change effective date.
- *Take new plan designs into account in GASB liability valuations for Other Post-Employment Benefits (OPEB).* As public employers make health plan changes, those modifications also affect the jurisdiction's GASB OPEB liability. By keeping the GASB liability in mind, public employers will be better able to manage their ongoing OPEB liability.

What You Need to Do by Year-End and Going Forward

The following actions encourage longer-term planning and deliberation:

- *Analyze the impact of the excise tax on employer plans.* Starting in 2018, the ACA imposes a ceiling on the current favorable pre-tax treatment for health plan benefits. High-cost health plans will be subject to a 40 percent excise tax on the excess amount over a threshold. High-risk employees, such as public safety workers, receive a higher threshold. Public sector employers should consider adjustments to benefit design or additional cost-saving measures such as wellness programs for better compliance with the excise tax limits.
- *Monitor the impact of the state health insurance Exchanges on active and retiree plan participation.* As employees and retirees sort out the attractiveness of coverage on the Exchanges, it is also important for the employer to monitor how enrollment in the group program is changing and whether additional changes are necessary to preserve the employer program.
- *Rethink the structure and funding of providing health benefits to employees and retirees through a group health plan arrangement.* In the long run, will a group health benefit model provide a reasonable vehicle for future delivery of medical benefits?

What Can You Expect 10 Years from Now?

Although the ACA raises many questions about the future of public sector group health benefits, one thing is certain — this is just the beginning. Within the next 10 years, it is possible that a majority of employees in the workforce will be covered by individual or employer-subsidized health insurance through an Exchange, either a state health insurance Exchange or a private Exchange sponsored by an employer. Many people applying for work with public jurisdictions will already be covered by health insurance through an Exchange, either individually or in their previous private sector employment. Additionally, new hires may expect to be able to keep their Exchange coverage and merely change the source of funding.

Like their private sector competitors, public employers will provide health benefit subsidies more on a defined contribution basis (a fixed dollar amount per month or a fixed percent of pay), rather than as a percent of the cost of the plan. Over time, public sector employers may become health plan *facilitators* rather than health plan *sponsors*. Health insurance will no longer be an employer risk, but a basic compensation component where the employee must make choices of the best plan and acceptable cost and risk. In such an environment, to gain a competitive employment edge, private employers may turn to offering compensation to supplement the policies their employees purchase on an Exchange. Public employers may have to follow suit.

Conclusion

There is much for public sector employers to do this year to fulfill ACA mandates that are now in effect and to plan for and implement changes for future years. It is not too early to begin the analyses and projections that will be required. Some of these analyses will require professional assistance and state and local governments should plan accordingly. As the employer sponsored health benefit environment changes, public employers can improve their competitiveness for quality employees by rethinking the purpose as well as the structure and funding of their health benefit programs.

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This article presents a checklist of what public sector employers need to be doing now and into the future to make their health plans compliant with the ACA. For more information, Segal Consulting regularly produces resources that go into much greater detail. A list of those resources, including a Health Care Reform Timeline for Calendar-Year Group Health Plans, can be found at www.segalco.com/publications-and-resources/health-care-reform/.