SMALL BUSINESS LEGISLATIVE COUNCIL

SBLC REPORT

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2015

The Department of Health and Human Services (HHS) issued a final rule on health care reform insurance matter on Friday (Just one of many we have seen and will see). The rule focuses on issues of concern to health care insurers dealing with guaranteed availability, guaranteed renewal and most importantly in my view, premium pricing and risk rating. The rule has not been published yet in the Federal Register, but I guarantee you that most of the health care insurance industry spent the weekend reading it and yes, I read it so you do not have to.

I will get back to that rule in a minute, but it leads me to a question I am asked often, "Where do I see health care going?" Increasingly, I believe 2015 is going to be an important reality check moment. (Yes, 2015 not 2014 when the mandates kick in.)

The first hard decisions for small employers will come at the end of this year. We will get our first glimpse of the new pricing for health care insurance. Everybody is bracing us for sticker shock. While I believe we are in for a round of "grab market share when you can" competition among insurers that might produce some "deals," I have steadily moved towards a conclusion that it will be in the context of an overall increase in premiums. Some of it is because of the administrative costs of health care reform. I get asked all the time about a new health care tax this year. The "tax" is a fee that is being assessed on insurers based on amount of premiums collected. Some insurance companies have been very effective in marketing it to their insureds as a new tax on the insured. For most intents and purposes, they are correct - since they are going to do what any rationale business would do, try to pass the cost directly to the customer but it is not the direct tax they make it out to be (yes there are a couple of new individual health care reform related taxes this year, just not this one.) Either way, there are some built in costs to the system that will show up in premium increases. The rule (or probably more accurately the underlying parts of the health care reform law it is designed to implement) HHS issued on Friday is going to result in additional front-end increases but also has 2015 ramifications.

Once the initial premiums have been set, insurers are going to have limited options for premium increases. Ratings are going to be set in the future with only bands based on age, family size, tobacco use, and geography. On the front end, I think the insurers will err on the side of trying to get the baseline set high enough to overcome the fact they can no longer use traditional variables such as pre-existing conditions, no guaranteed renewal, or occupation to fine-tune their pricing. By the way, a possible unintended consequence of this final rule is that HHS opened up the possibility of a lot more rating by "where you live." Everybody kind of thought we would have more statewide activity or up to seven geographic areas as in the proposed rule. The final rule allows the insurers to make their offerings based on Metropolitan Statistical Areas (MSAs) plus an additional band. Bottom line: There could be big differences between your premium and your friend's who lives across the state.

(If you want to show off when this becomes the buzz, MSAs encompass at least one urban core with a population of at least 50,000 people, plus adjacent territory that has a high degree of social and economic integration with the core. MSAs are always established along county boundaries, but may include counties from more than one state. The 367 MSAs in the United States include approximately one-third of the counties and 83 percent of the population of the United States.)

Okay, back to 2015. I am increasingly of the mind that we will have some sort of individual mandate penalty amnesty and maybe some employer shared responsibility penalty relief or amnesty.

The penalties are paid "after the fact"- in the case of individuals with their tax returns for 2014, which means in early 2015. Based on what I see happening, there are going to be a lot of folks who have no clue about what to do in 2014. In addition, here's the part that I think compounds the problem. The penalty is based on each month you do not have health care coverage. Even though there is a "short coverage gap" allowance, folks could end up with a penalty for part of 2014, even if they are trying hard to do the correct thing. I think the filing season for 2014 returns is going to be brutal.

Employers with penalty exposure (basically over 50 full time employees) are going to have similar challenges in calculating their penalty exposure for 2014. It too is made on a monthly basis, and the kicker here is that even if you are doing things correctly, there are a lot of tricky moments when your exposure for a specific employee depends on several variables (e.g. the employee comes in or goes out of full time status) and until employers get the hang of it, they are going to be some "oops" months in that first year where they have an unexpected penalty. - Some added pressure for some employer relief in 2015 when their 2014 returns come due.

Of course, we cannot count on sympathy in 2015, so if you are penalty adverse as I am, you need to get a running start at the end of this year so you can avoid those penalties for months in the early part of 2014.

This brings me back to the final rule HHS released on Friday. Mind you, this is not a surprise; the premium pricing limitations were part of the legislation. When you read the rule, it brings into focus the complexity of implementation on the health insurance side. (Unfortunately, we have a pretty good idea of the complexity for larger employers already.) With each passing day, I have been becoming more of the mind there is going to have to be a major adjustment in 2015 (or 2016 as this particular aspect is a bit more complicated) in what insurers are permitted to do in order to come up with premium prices or as a nation we have to go in a different direction because the change turns out to have been too big to manage. The conspiracy theorists among you who believe the whole reform thing was just a platform for a single national health care payer system will say "aha." I am not in that camp, but the more time I spend on the implementation, the more I am convinced the first attempt at pricing is going to be rough. If we are going to keep the private sector in the game (I am in that camp), I am anticipating there is going to have to be a revamping of the premium pricing structure a year or two into this.

2017

I am still hoping we can achieve tax reform this year. While I am nervous about the consequences for small business, (1986 was not really as wonderful as some think) I believe we have to have a "restart" on the code. SBLC is working the issue and I am optimistic we will have more to report this year. Infrastructure funding also remains a priority for us. In addition, like Simpson and Bowles, we have not given up on major debt reduction efforts.

As regular readers of the Weekly know and I have already noted before, it has not been all that regular or weekly lately. As I have mentioned before, we try to stay away from reporting on everything just because our friends are the sponsors of it. The general litmus test is that it has to pass the "snowball's chance" test. I have been asked, "How long is this going to last?"

Everybody is expecting some regulatory activity. However, over the course of this Administration's second term, I see "only" a half dozen that might have more than industry-specific ramifications that we would "work" and maybe a handful more that might be worth noting.

Other than the aforementioned issues, I do not see more than one or two initiatives in this Congress worth noting and I do not anticipate a major change in the composition of Congress as the result of the next congressional elections.

So, it could be 2017 before the switchboard lights up again.