compliance corner

Update on Federal Health Care Reform and State Issues

December 2015

Strategy Update

As we near January 2016 effective dates, Ameritas is well positioned with exchange-certified status for our pediatric dental plans in 38 states (with a few additional states pending). Our policy documents to offer pediatric dental benefits as certified or not are approved in 44 states. We are following up with a few states to finalize approvals, and we just received certification in Texas. For 2016, we chose not to file pediatric benefits in 6 states due to regulatory or market restrictions. Similar status is in place for two strategic partners on whose behalf we submitted certification applications and policies.

Industry advocacy efforts led by the Life Insurance Companies of New York trade association and participating carriers are underway on proposed network adequacy standards. These standards can impact a carrier's pediatric dental plan availability by county. The New York Department of Financial Services has advised that carriers that have met all other certification requirements may market their product as exchanged-certified in the meantime with a caveat on network adequacy. As a result, Ameritas and its strategic partners are able to market as exchange-certified in New York.

As of December 5th, roughly 4.5 million Americans have enrolled in the federally-facilitated public exchanges for 2016. State-based exchange enrollment figures are being compiled, but a number of states (such as Louisiana, South Carolina and Tennessee) have already surpassed their enrollment numbers from last year's Dec. 15 deadline. Open enrollment in the exchanges ends January 31; however the last day for consumers to enroll for coverage beginning January 1 is December 17. The Center for Medicare and Medicaid Services has advised there will be no special enrollment period in 2016 for those without health insurance that realize when they file their taxes they are subject to the individual mandate penalty. However, they just extended the open enrollment deadline from December 15 to December 17 due to an increase in interest in the federally-facilitated public exchange. A number of state-based exchanges, including New York and Minnesota, have announced similar extensions.

We continue to gather information on how medical plans and standalone dental plans have changed their policies or exchange strategies for 2016. We have already seen data that over one-third of the silver level preferred provider organization medical plan designs have been dropped by carriers in the marketplaces, and premiums for individual medical plans have lowered slightly in some regions of the country and risen drastically in others. We continue to watch the on-line employer "SHOP" marketplace and have seen lackluster enrollment numbers and little to no impact on small employer purchasing behaviors.

Regulatory Matters and Affordable Care Act Status Update

Federal Litigation

In litigation authorized in July 2014, U.S. House of Representatives vs. Burwell, this month the Administration and the House of Representatives filed supporting briefs in support of cross motions for summary judgment. This case is before the U.S. District Court for the District of Columbia. The briefs involve the question of whether the Administration's payment of cost-sharing reductions requires a separate appropriation outside of the Affordable Care Act. The U.S. District Court previously ruled that the House of Representatives had standing to bring this case and denied the Administration's request to immediately appeal that decision to the Court of Appeals. Briefing concludes on January 18 with oral argument expected shortly thereafter. This lawsuit asserts that President Obama exceeded his constitutional authority in delaying the implementation of the employer mandate of the Affordable Care Act and also addresses the risk corridors program.

Budget Reconciliation Bill

The Senate is currently voting on amendments to the pending budget reconciliation bill. While many amendments to change provisions of the Affordable Care Act have been presented, so far only one amendment has been approved in the debate – one that would permanently repeal the ACA's excise tax on high-cost, employer-sponsored coverage. This differs from a substitute amendment developed by Senate leaders, which would eliminate this tax from 2018 through 2024, but then allow it to take effect in 2025.

Tax Bill and Omnibus Appropriations Bill

Congress is targeting funding sources for the Affordable Care Act as it works to reach a budget agreement before the end of the year. Legislative language was released for the "Consolidated Appropriations Act, 2016" and the "Protecting Americans from Tax Hikes Act of 2015." The appropriations bill provides for a one-year suspension (2017) of the ACA health insurance tax and a two-year suspension (2018-2019) of the excise tax (Cadillac tax) on certain high-cost, employer-sponsored health coverage. The bill also makes the excise tax deductible for tax purposes and would impose various other requirements related to plan design used to benchmark the excise tax, the risk corridor program, required reporting by the Center for Medicare and Medicaid Services on how they used funds to establish the exchanges, and cybersecurity provisions based on the comprehensive bills that were approved by the House in April and by the Senate in October.

Automatic Enrollment Provision

The Bipartisan Budget Act of 2015 was recently signed into law with implications beyond keeping government offices open. The law repealed section 1511 of the Patient Protection and Affordable Care Act ("PPACA") – the automatic enrollment provisions of PPACA. Automatic enrollment would have required employers subject to the Fair Labor Standards Act employing more than 200 full-time employees to automatically enroll new full-time employees in a health plan offered by the employer. Automatic enrollment would have been subject to any applicable waiting periods, would have included a notice requirement, and would have required that employees be given an opportunity to opt out of the health plan before coverage began or in the future.

Consumer Operated and Oriented Plans (CO-OPs)

More than half of the nonprofit health insurance Consumer Operated and Oriented Plans (CO-OPs) are shutting their doors by the end of 2016, and additional ones are placing enrollment restrictions for 2016, showing early signs of financial duress. For most insurers, a state's guaranty fund will cover unpaid medical claims in the instance of insurer insolvency. However, in some states like New York, the guaranty fund does not support plans that are licensed as health maintenance organizations (HMOs), which is typically how these CO-OPs were set up. Guaranty funds in Kentucky, Louisiana, Nevada Oregon and Utah also do not support HMOs, and have seen their CO-Ops close as well.

Equitable Treatment

Industry work continues on federal bill H.R. 3463, the "Aligning Children's Dental Coverage Act," which was introduced last month. Ameritas participated in efforts to gain further congressional support on Capitol Hill with the trade association *America's Health Insurance Plans*, along with other dental and medical carriers. The legislation aims to reform compliance applied to dental plans outside of the exchange and the inequity in rules regarding purchase of the pediatric dental benefits between the on and off exchange markets. The bill is slowly gaining support, with 17 cosponsors to date.

Ameritas Readiness

As in prior years, there are many varied surveys and reports of ACA impacts on individual and employer sponsored health insurance, staffing, and costs. With two years of data now available, we are expecting the remainder of the year and into 2016 to produce credible data on medical plan changes and strategies, employer purchasing on and off exchanges, and the shift to individual products, voluntary group coverage and self-funded options. We continue to work with our industry to advocate for reforms on dental and vision benefits that are appropriate and do not result in reduced access due to unaffordable and unrealistic requirements.

We are working on implementation of California Senate Bill 137, which requires various updates to our provider directories.

Look for the Compliance Corner communications, visit our website, or ask your sales contacts any questions. Or contact Kate McCown, our Group Compliance Officer, at kmccown@ameritas.com or any member of our Compliance Team. Let us know if you would like copies of any materials mentioned.

Ameritas Group Compliance Team

Mail Box: group_compliance_reg@ameritas.com
Craig Lewin, Compliance Manager – 402-309-2347
Erin Shiley, Compliance Manger – 402-309-2296
Geri McKeown, Compliance Manager – 402-309-2222
Hannah Putz, Legislative & Contract Consultant – 402-309-2145
Jennie Bell, Senior Contract Analyst – 402-309-2306
Kate McCown, 2VP-Group Compliance – 402-309-2019
Mary Chmelka, Assistant Contract Analyst III – 402-309-2510
Mike Trebold – Compliance Manager II, Reg & Privacy Admin – 402-309-2368
Pat Peterson, Contract Analyst – 402-309-7200
Sam Thurber, Group Compliance Coordinator – 402-309-2485
Tonya Wilken, Group Contract Assistant - 402-309-2292

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