Uphill Battle Seen for ACA Impact on Self-Insured Taft-Hartley Plans

by Bruce Shutan
When President Obama apologized for promises made about keeping existing health insurance without warning the American public about substandard coverage, perhaps no one felt more wounded than certain segments of self-insured Taft-Hartley plan participants.

Their angst has generated strange bedfellows: organized labor and conservative Republicans taking turns slamming the Affordable Care Act (ACA) and public exchanges or calling for the repeal of Obamacare, which has become a pejorative moniker among critics.

But equally telling is a level of confusion among many policymakers. They mistakenly assume that “self-insurance is in the exclusive realm of the private employer marketplace,” says Self-Insurance Institute of America President and CEO Mike Ferguson, when, in fact, it’s a health plan funding approach also used by a large number of Taft-Hartley plans and many public-sector organizations.

**Reports from the trenches**

Ken Boyd, International Vice President of the United Food and Commercial Workers (UFCW), reports that retail-grocery operations will be affected more than, say, the union’s meat packing and processing members with full-time positions because of all the variable hours those employees work. “I see employers on the retail side basically trying to keep everybody under 30 hours a week so they don’t have to provide health care coverage,” he observes, fearing the trend’s impact on the next collective-bargaining cycle.

Since the UFCW offers a comprehensive health care package to its members that meet essential health benefit requirements under the ACA, Boyd says the only real meaningful plan design changes needed involve lifting coverage caps and covering children up to age 26.

He says some rank-and-file members are concerned about their hours being scaled back to a point where they no longer can keep the plan they very much appreciate, which includes medical, dental, prescriptions, eyeglasses, life insurance and disability coverage.

Tom Holsman, CEO of Associated General Contractors of California (AGCC), is concerned about the ACA’s impact on indemnity plans and their viability for the nearly 600 contractors and specialty subcontractor member companies he represents across the state.

Anticipated changes in the AGCC indemnity plan for 2014 include raising some annual deductibles, eliminating preexisting conditions, of course, and extending coverage to adult children—all of which are expected to make it less appealing relative to PPOs and HMOs. “After that,” he says, “it becomes a little less clear; and as a result, there’s more skepticism and fear than there is knowledge and confidence.”

One possible long-term solution Holsman suggests would be “to take the indemnity plans that are currently offered and pattern them after exchanges,” offering similar programs that charge a higher deductible “so there’s a larger self-funding that goes on.”

**Stop-loss backlash?**

Ferguson predicts there’s a reasonable chance “that somewhere down the line the U.S. Department of Labor, Health and Human Services and Treasury will issue a joint statement that could be a game changer for self-insured Taft-Hartley plans.”

The potential suggestion by the Administration would be that they aren’t really self-insured because they’re transferring much of the risk to a stop-loss carrier and they’re also substandard because they are not subject to the essential health benefits rule. The effort could be seen as in keeping with monitoring the small-group health care marketplace to determine trends that could either enhance or inhibit ACA implementation.

“Our concern is that the regulators will take a creative interpretation of the definition of health insurance coverage and say ‘well, stop-loss really should be included in this definition,’” Ferguson explains. “SIA has introduced legislation to prevent this from happening.

There’s a growing concern among all self-insured plan sponsors that “the federal government will want to regulate stop-loss insurance in a way that would make it more difficult to obtain,” according to Ferguson.

Such intentions come on the heels of recent restrictions at the state level, particularly in California, that prevent stop-loss carriers from selling policies with attachment points below certain levels aimed at discouraging small and midsize employers to self-insure their group medical risks. One motivation is a worry that self-insurance will have an adverse impact on public health insurance exchanges.

But for now, stop-loss coverage appears to be safe for collectively bargained plans. “In the short term, the ACA is encouraging all Taft-Hartley funds to buy stop loss, so we’re seeing an increase in proposals here for 2014, and it’s actually related to the unlimited annual maximum coverage for all covered members,” reports Dan Wolak, president of Ullico, a major writer of stop-loss insurance for self-insured Taft-Hartley plans.

**Reinsurance fee assessment**

Asked about the proposed exemption of certain self-insured plans from the ACA’s temporary reinsurance fee in 2015 and 2016, Boyd believes self-insured Taft-Hartley plans “shouldn’t have to pay the reinsurance fee
because that’s going to insurance companies for taking everybody else. We already provide it. We’re paying that price. Why should we pay for coverage for a Blue Cross, Blue Shield, Aetna, United Healthcare, whoever it may be, so they can take some people in? We take care of family coverage. We’ve done all of those things and a majority of the self-insured employers have done all those things. We don’t have preexisting illnesses.

"This is just a program pretty much designed by the health insurance companies to make sure that they make a profit," he continues. "We don’t make a profit. We’re not-for-profit. Taft-Hartley, at the end of the day, we pay out what we pay in. We don’t pay shareholders. We don’t pay stockholders. We don’t pay anybody else. We set our rates based upon what we need each year, and we go down that road and that bargain is part of our employee’s rates of pay, and that becomes an issue, some of the stuff."

The reinsurance program, however, "is critical to assuring greater stability in the marketplace as the new insurance reforms are implemented and new people enter the system," counters Clare Krusing, a spokeswoman for America’s Health Insurance Plans.

"All stakeholders have a shared interest in maintaining a stable and well-functioning individual insurance market," she explains. "The reinsurance program will mitigate some premium increases for individuals and families purchasing coverage on their own. It will make it easier for employees not eligible for employer-sponsored coverage, such as part-time and seasonal workers, to obtain health care coverage."

Ferguson says the federal government is leaning toward exempting from the reinsurance tax only entities that are both self-insured and self-administered, which may apply to many Taft-Hartley plans but very few private-sector single-employer plans.

After his interview with The Self-Insurer, Boyd was heading to Washington, D.C., for more lobbying on behalf of his constituents to preserve Taft-Hartley plans and avoid placing people on the tax rolls by steering them to subsidies through public health insurance exchanges.

He’s not alone. The Taft-Hartley HealthWORKS coalition has met with representatives from the U.S. Department of Labor, members of Congress and White House staff. Among their requests: that small employer tax credits be extended to those that contribute to multiemployer plans and that these businesses be permanently deemed to have met the employer shared responsibility requirement to offer health care benefits.

Despite the difficulties labor unions have faced under the ACA, Ferguson observes that the Obama Administration is still friendlier to Taft-Hartley plans than private employers. For example, annual lifetime coverage limits will be phased out for these plans. "The private employer community doesn’t have that luxury," he believes. "The Administration has been skeptical of private employer self-insurance in the small group market."