[buck research]

fyi® for your information®

Volume 32 | Issue 55 | September 14, 2009

Ohio Health Reforms Mandate Cafeteria Plans, Expand Access for Adult Children and Increase State COBRA Coverage Period

Ohio's recently enacted state budget (Am. Sub. H.B. 1) includes several provisions that may affect employer-sponsored plans. The new law requires employers with 10 or more employees to offer full-time employees the opportunity to pay for health insurance with pre-tax dollars, requires insurers and public employee benefit plans to offer coverage to dependents up to age 28, and extends the period of health continuation under the state COBRA law from 6 to 12 months.

Background

State lawmakers have been increasingly focused on improving access to health care and making health care more affordable, particularly for the recently uninsured. Two groups commonly targeted for expanded coverage are employees of small businesses who have lost their jobs and adult children who have aged out of their parents' health coverage. (See our August 24, 2009 *For Your Information* for a discussion of a recent New York law.)

Ohio has recently put in place new requirements for insurance companies and businesses that are designed to help uninsured adults obtain health care coverage. The Ohio Department of Insurance has also issued FAQs on these changes, both for businesses and consumers.

Section 125 Cafeteria Plan Requirement

Under the new law, certain private and public sector Ohio employers with 10 or more full-time employees will be required to offer employees the opportunity to purchase health insurance coverage, including individual policies, on a pre-tax basis through a Section 125 cafeteria plan. For this purpose, a "full-time employee" in the private sector is generally an individual who works 25 or more hours per week or who otherwise is considered a full-time employee, while a public employee is expected to work more than 1,500 hours per year unless the applicable collective bargaining agreement defines full-time employment otherwise. This requirement does "not apply to employers that, through other means … offer health insurance coverage, reimburse for health insurance coverage, or provide opportunities for employees to pay for health insurance with pre-tax dollars through other salary reduction arrangements."

Prior to adopting rules for implementation and enforcement of this new employer mandate, the Ohio Department of Insurance must receive federal confirmation that the rules will permit employers to establish cafeteria plans in

buckconsultants an ACS company

accordance with federal law and a determination that individual policies purchased through the plans would not need to comply with the group market rules of HIPAA.

Assuming federal approval, employers with more than 500 employees must have a plan in place by January 1, 2011 or six months after implementing and enforcement regulations are adopted, whichever date is later. Employers with 150 to 500 employees will have until the later of July 1, 2011 or 12 months after regulations are adopted to have a plan in place, and employers with 10 to 149 employees will have until the later of January 1, 2012 or 18 months after regulations are adopted.

> ***BUCK COMMENT.*** *Since a Section 125 plan is not an ERISA plan, the federal preemption of state laws for ERISA plans may not apply to this Ohio requirement. Employers who do not offer health coverage on a pre-tax basis to all employees as defined under this law may need to expand the offering of a Section 125 plan. For example, if a private sector employer does not offer coverage to employees working a minimum of 25 hours or more a week, or has a waiting period for health coverage, it may be required to offer a Section 125 plan to enable employees who are not eligible for employer coverage to purchase individual coverage on a pre-tax basis.*

Continuation of Coverage for Unmarried Adult Children

Ohio has joined a growing number of states that have extended the age through which adult children may be covered under their parents' health insurance. Under the new law, insurers, public employee benefit plans, and HMOs will be required to offer parents whose employer-sponsored health insurance has an age limit the option of covering their dependent children up to age 28. Importantly, the new law does not require employers who do not now offer dependent coverage to offer coverage to unmarried adult children, and employers that do offer dependent coverage do not have to pay the additional premium cost for any continued coverage to age 28.

To qualify for extended coverage as a dependent, a child must be unmarried, a natural, step or adopted child of the employee, and either a resident of Ohio or a full-time student. Although children do not have to be financially dependent on their parents to be eligible for continued coverage, they cannot be eligible for employee coverage under other employer-sponsored health insurance or for coverage under Medicaid or Medicare.

> ***BUCK COMMENT.*** *For Ohio state tax law purposes, the adult child will be treated as a dependent regardless of whether he or she meets the income and support limits under federal law. Thus, the value of the coverage will not be included in the parent's Ohio adjusted gross income. However, if the adult child does not satisfy federal requirements, the value of the coverage will be included in income for federal tax purposes.*

As long as these eligibility criteria are met, a child who previously reached the age limit and elected COBRA coverage will be eligible for continued coverage under the parent's policy after the new law takes effect. An adult child will also be allowed to terminate individual coverage to receive coverage under a parent's plan. In the event of a break in continuous coverage, the same pre-existing condition exclusions that apply to any other insured will apply to the child.

The new law applies to all group insurance policies issued or renewed and plans established or modified on or after July 1, 2010.

State COBRA Extension

Federal COBRA requires employers with 20 or more employees to permit employees and their covered family members to continue group health coverage for 18 months following the employee's termination of employment or reduction of hours. Ohio' s COBRA law originally provided insured coverage continuation rights for 6 months to employees of small businesses (i.e., fewer than 20 employees) who lose their jobs.

In early 2009, Ohio temporarily extended the eligibility period for state continuation coverage from 6 to 12 months to allow residents to take full advantage of federal COBRA premium subsidies. (See our February 24, 2009 *For Your Information*.) The new law makes that extension permanent. To be eligible for coverage, employees must have been involuntarily terminated (other than for gross misconduct), but entitlement to unemployment compensation is no longer required. Further, if prescription drug coverage is included in the group coverage, it must be included in the continuation coverage.

The changes are effective for policies and contracts issued, delivered or renewed on or after April 1, 2009.

Conclusion

The health reforms discussed above are intended to provide Ohio residents with greater access to more affordable health care. In that respect, they reflect a growing activism on the state level to reduce the nation's uninsured population, with an increased focus on the recently uninsured.

In addition to coordinating with their insurers to make certain the new requirements are satisfied, Ohio employers should ensure that their plan documents, summary plan descriptions, forms, and other communication materials reflect any necessary changes relating to COBRA or dependent coverage. Employers that do not already offer cafeteria plans to all employees covered by this law should reevaluate their current employee benefits program, and consider whether they should explore additional or other arrangements that would satisfy any future obligations under Ohio law.

Buck's consultants would be pleased to discuss the new requirements with you.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.