Multiemployer Plans, Health Benefit Exchanges and State Law

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What This Webinar Will Cover

- The challenges presented to multiemployer plans by the ACA
- The strategic concerns for multiemployer plans
- The immediate choices that face plan sponsors
- What changes can improve the exchange/multiemployer plan relationship
Multiemployer Plans

- Created by the Labor Management Relations Act of 1947 ("Taft-Hartley") over the veto of President Harry Truman
- Sponsored by at least one union and two or more employers
- Important to industries with mobile work forces
  - Construction, Entertainment, Hospitality, Trucking, and Health
- Assets held in a non-reversionary trust
Multiemployer Plans

- Eligibility and record keeping kept in a centralized location
- Over 20 million participants nationwide
- 90% of employers have 50 or less employees
- Often part of a family of plans that provide pension, education, vacation and other covered benefits
- Health plan’s trust fund often the “mother plan” that collects contributions for the family
Multiemployer Plans

*If you can’t get a decent job in the C-Suite be a union member*—These plans provide better benefits and more social protection than most non-union workers receive—that makes many people angry
Strategic Issues for Multiemployer Plans

Government retreat from social protection—a world wide trend imposed by economic conditions as well as political choices

- Social security and Medicare
- State and local cutbacks to Medicaid, education and job creation
- Changing political and social attitudes—an ebb and flow?
Strategic Issues for Multiemployer Plans

- Weakening job related benefits at a time of declining union membership
- Trend away from defined benefit plans towards defined contribution plans--what that means for employees
- Organizing issues
- "Union-way" versus non-union competition
- Generational conflicts
There Could Be Trouble Ahead...

What just happened in Detroit and why does this matter to multiemployer plans?

- abandoning retirement benefits to cover funding shortfalls
- retirees have weaker defenses

Collapse of plan sponsors tied to collapse of plans

Orphan participants sent to Medicare and exchanges--this does not help the public exchange
Public exchanges are not multiemployer plan friendly

- Exchanges can provide individual coverage that may be more attractive to some current multiemployer plan participants (i.e. Cheaper if not better)
- Exchanges can provide group coverage for non-union (non-signatory) employers
- No access to SHOP programs for multiemployer plans
The Public Exchanges--Fight or Flight?

What do multiemployer plans sponsors and participants want from the public exchange?

- Access
- Flexibility in plan designs
- HMO choice

Where does this leave plans for January 1, 2014?

- No immediate access to exchange
- Much confusion among employees and participants
The ACA and State Exchanges

- An insurance store for consumers
- Congressional Budget Office estimates that 12 million Americans will purchase health insurance through the exchanges
- By 2021 size of exchange market is estimated to double (according to Kaiser Family Foundation)
- Largest open enrollment in history
The ACA and State Exchanges

- Some individuals whose family income falls below 400% of the federal poverty level will receive subsidies to buy insurance
- Medicaid will be expanded in some states
- States that run their own exchanges will be responsible for setting
  1) Eligibility Standards
  2) Plan oversight
  3) Financial Management
## The ACA and State Exchanges

### Marketplace Options for States

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<th>State-Based Marketplace</th>
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<td>State operates all marketplace activities; however, state may use federal government services for the following activities:</td>
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<td>- Premium tax credit and cost sharing reduction</td>
<td>- Plan Management</td>
<td>- Reinsurance program</td>
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<td>- Exemptions</td>
<td>- Consumer Assistance</td>
<td>- Medicaid and CHIP eligibility: assessment or determination*</td>
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<td>- Risk adjustment program</td>
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<td>- Reinsurance program</td>
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* Coordinate with Medicaid and CHIP Services (CMCS) on decisions and protocols.

Source: National Conference of State Legislatures
The ACA and State Exchanges

Subsidy Qualifications—

The recipient must

1) Be lawfully in a state in the United States, unless their presence in the US is only for a specified period

2) Not be enrolled under a Marketplace plan as an employee or their dependent (through an employer who purchases coverage through the Marketplace for their employees)

3) Have a modified adjusted gross income (MAGI) of less than 400% of the federal poverty level (FPL) ($43,000 for an individual or $88,000 for a family of four, 2010 HHS Poverty Guidelines)

Source: National Conference of State Legislatures
The ACA and State Exchanges

Subsidy Qualifications— (Cont’d)

The recipient must

4) Not be eligible for Medicaid

5) Not be enrolled in an employer's qualified health benefit plan, a grandfathered plan (group or nongroup), Medicare, Medicaid, military or veterans' coverage or other coverage recognized by the commissioner

6) Not be a full-time employee in a company where the employer offers health insurance and makes the required contribution toward that coverage

Source: National Conference of State Legislatures
The ACA and State Exchanges

Essential benefits covered by exchange plans

1) Ambulatory patient services
2) Emergency services
3) Hospitalization
4) Maternity and newborn care
5) Mental health and substance use disorder services, including behavioral health treatment
6) Prescription drugs

Source: National Conference of State Legislatures
The ACA and State Exchanges

Essential benefits covered by exchange plans (Cont’d)

7) Rehabilitative services and devices
8) Laboratory services
9) Preventive, wellness and chronic disease management
10) Pediatric services (including oral and vision care)

Source: National Conference of State Legislatures
The ACA and State Exchanges

The Exchange States sites

- California Exchange—Covered California
  www.coveredca.com
- Maryland--www.marylandhbe.com
- Massachusetts-- www.mahealthconnector.org
- Nevada Silver State Exchange--www.exchange.nv.gov
- New York Health Benefit Exchange
  http://www.healthbenefitexchange.ny.gov/
- Oregon— http://www.coveredoregon.com
- Washington— http://www.wahbexchange.org/
The ACA and State Exchanges

- States with significant multiemployer plan presence and no state exchange
  - Florida
  - New Jersey
  - Ohio
  - Pennsylvania
  - Texas
Levels of Coverage

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Source: National Conference of State Legislatures
Multiemployer Plan Characteristics

- Pooled assets
- Plans are not an employer
- Range in size from a couple of dozen beneficiaries to many thousand
- Small employers make up majority of signatory employers
Multiemployer Plan Characteristics (Cont’d)

- Many plans can have a mobile work force with individual participants who work for a number of employers in any given year
- Working participants often subsidize coverage of retirees and unemployed
- Plans reflect union values of community action to provide social protection
Arguments for Allowing Multiemployer Plan Into Public Exchanges

- ACA gives states freedom to develop their own regulatory rules
- Multiemployer plans act as a conduit for employers to provide and individuals to receive health care benefits; the overwhelming majority of the plans’ contributing employers are small businesses that should not be excluded from the exchanges
Arguments for Allowing Multiemployer Plan Participation by Public Exchanges

- ERISA does not preempt state regulatory action
- Businesses with union contracts should not be put at a disadvantage with nonunion competitors
- The unique nature of multiemployer plans justifies allowing them to obtain health insurance coverage for multiemployer plan participants directly through the exchange
Arguments for Allowing Multiemployer Plan Participation by Public Exchanges

How can the current situation be corrected?

- The executive branch could add to, change or reinterpret governing regulations
- Congress could add legislation that specifically addresses multiemployer plans
- State Action--California AB 710
Arguments for Allowing Multiemployer Plan Participation by Public Exchanges

What is likely to happen

- No change in regulatory environment
- No action by current Congress
- Multiemployer plans and states left to fend for themselves
Are Private Exchanges the Answer for Multiemployer Plans?

- What is a private exchange?
- Marketplace for insurance and other related products
- Employers purchase health insurance through the private exchange and employees chose a health plan
- Some employers using it as a transition to a defined contribution model
Survey on private exchange attitudes among employers outside multiemployer plans

- 80% prefer to purchase from private rather than public exchange
- Favor a defined contribution model, with some residual involve in plans
- About 50% of employers preferred a multicarrier exchange

Source: Booz & Company
Are Private Exchanges the Answer for Multiemployer Plans?

**Insurance industry concerns about private exchanges**
- Margin compression--less profitable
- Administrative burden--participants will require more hand holding
- Disintermediation--less control by payors
Payor concerns about multiemployer plans?
- Plans are volatile customer base
- Control factor
- Plans are enthusiastic about disintermediation in practice
Are Private Exchanges the Answer for Multiemployer Plans?

Another Other Option--

- Health Reimbursement Arrangement and multiemployer plans
  - Funded by plan
  - Employer gets a tax deduction for its contributions (also tax free to participants)
  - Operate under defined contribution model
  - How they differ from Health Saving Arrangements (employees pretax contributions)
Many interests and policy goals are aligned
Both want best coverage for the largest number of citizens
Plans do not want to be in competition with the exchanges
State Efforts
   California AB 710
What’s Ahead for the Plans and Public Exchanges?

- Plans need access to larger pools
- Exchanges benefit from plans’ social protection schemes
A Wish List

- Let plans in the exchanges now, where possible, without harm to exchange
- Exchanges and plans should work together to set up alternative schemes such as private exchanges
- Provide special HRA rules for multiemployer plans