csba

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Governance Brief

Health Policy: Implications of Covered California for school boards, districts and personnel

Introduction

The Patient Protection and Affordable Care Act, signed into law on March 23, 2010, altered health care in America. This governance brief outlines significant portions of the landmark legislation that affect school boards, districts and personnel.

After the act was passed in Congress and signed by President Obama, its controversial "individual mandate," which penalized individuals who did not follow the requirement of obtaining adequate coverage, was challenged in court. On June 28, 2012, the Supreme Court upheld this mandate as well as most other provisions in a 5-4 decision. The statute requiring all states to expand their Medicaid programs was struck down and converted into an optional practice.

Notable effects of the Affordable Care Act to school districts include, but are not limited to:

- A mandate which penalizes employers for not offering adequate health coverage to employees.
- A statute implemented in 2010 which allows dependents to stay on parents' plans until age 26.
- An opportunity to retain old health coverage plans.
- A total of $200 million available in grants for school-based health centers (SBHCs).
- The development of Covered California, in which individuals can shop for health insurance and entities like SBHCs may potentially participate.
- Yearly rebates to individuals and employers from insurance providers when providers are not in compliance with certain spending ratios.
- Beginning with 2012 W-2s employers must report the cost of employer-sponsored health coverage on each employee's Form W-2.

Five questions you should ask at your next board meeting

1. Do our current health plans meet the requirements?
2. How is our district preparing for the Healthy Families shift?
3. How will our district interact with Covered California (the health benefit exchange)?
4. What are we doing to inform our employees about this?
5. Are we taking advantage of the school-based health center options; should we be?

Background

California is making strides toward implementation of the Affordable Care Act statutes. The state hopes to open Covered California—the first health benefit exchange in the nation—by 2014, and is preparing to incorporate the optional Medicaid expansion to extend coverage to all individuals under 133 percent of the federal poverty level (FPL) by Jan. 1, 2014 with the state's Medicaid program, Medi-Cal. Credits for those within 133 percent to 400 percent of the FPL will allow more individuals to purchase insurance on the exchange and fulfill the act's individual mandate for compulsory health insurance.

Under the expansion, school districts may continue billing California's Medi-Cal for Medicaid outreach efforts, administrative activities and medical services for special education, called the Medi-Cal Administrative Activities

Program (MAA). CSBA's Practi-Cal provides members with assistance in the medical billing services process.

Thus far, the Affordable Care Act's new insurance regulations have provided access to health care coverage for 8,600 Californians with pre-existing conditions, have allowed more than 350,000 young adults to stay on their parents' plans until the age of 26, and have covered more than 370,000 low-income Californians. Under the expansion, potentially half a million people will obtain coverage in the next two years.

Once health care reform is implemented in California, it is estimated that 92 percent of all state residents will be covered either through their employer, the new Covered California market or the Medicaid expansion. This figure would narrow the 6.9 million currently uninsured Californians, which make up about 29 percent of the state's population, and the generally upward trend of the number of uninsured Californians may reverse under the Affordable Care Act.

In his January State of the State address, Governor Brown called a special legislative session to consider and act upon legislation to implement the Affordable Care Act. CSBA will continue to update members as the laws take shape.

Relevance for districts and county offices of education

The employer mandate in effect under the Affordable Care Act requires employers to offer "adequate" health coverage to employees and their dependents. Most district plans are sufficient, but all districts should be aware of the Free Rider Penalty that will take effect on Jan. 1, 2014.

The Free Rider Penalty applies to large employers, which are defined as having an average of 50 or more full-time employees, or full-time equivalent employees, during the previous calendar year. The number of employees is based on the number of full-time employees who work at least 30 hours a week, plus the hours worked by part-time employees during the month divided by 120.

Certain seasonal workers may be excluded from this total. The IRS has requested additional clarification in determining who counts as a full-time employee. Once a final determination is made, substitute teachers, contract workers and intermittent workers may fall under the definition of a full-time employee. The American Fidelity website cited in the resource section below has many helpful resources explaining the employer penalty.

"Adequate coverage" is defined under the mandate as well. Employers must offer health coverage and pay for at least 60 percent of the expenses for a typical population, and more than 9.5 percent of an employee's household income. If these requirements are not met, a penalty is applied against the employer while the affected employee(s) receive tax credits to shop on Covered California. Penalties follow a specific formula, totaling up to a few thousand dollars. The Kaiser Family Foundation's website provides useful charts of the specific penalty assessed.

Employers with grandfathered health coverage plans may still be subject to the penalties if the coverage is not adequate or affordable; these plans are not exempt from the Free Rider Penalty.

The 9.5 percent household income measure has been heavily discussed as a controversial point in the policy to assess employer penalties. If this is the standard to be used, California must come up with a new system to measure household as opposed to individual incomes. This will be challenging. The IRS recognizes the difficulty in measuring household income, and has proposed that the measurement be based on an employee's current W-2 wages from the employer.

As mentioned, any employees not receiving adequate coverage offers from their employers will be eligible to shop on Covered California with federally granted tax credits. The exchange will only be open to individuals and small groups, but that policy may change in the future.

Medical loss ratio and rebates

Under the Affordable Care Act, insurance providers are required to abide by the Medical Loss Ratio, in which 80 percent of premium dollars must be spent on health care expenses instead of nonmedical costs. For large groups, 85 percent must be spent on health care expenses.

Not following the ratio results in automatic nationwide rebates each year by Aug. 1—some of which will come through to employers, like school districts, for redistribution to employees. Last summer marked the first round of rebates, as this statute went into effect on Jan. 1, 2011.

Rebates may be received by districts or county offices in multiple ways: a direct check, a discount on future premiums, or a lump sum into a credit or debit account used to pay premiums. Employers who cover 100 percent of their employees' health care premiums may retain the entire rebate themselves. Those who only contribute a portion of the premium, with employees covering the other portion, will have to determine how to distribute the rebate proportionally to their employees. Employers can redistribute rebates in three ways: provide a cash refund based on the percentage of premiums paid by the employee that year, reduce future premiums by that same amount, or enhance existing benefits.

Californians have received an average of $30 for the individually insured, $206 for small group insured, and $43 for large group insured from insurance providers this past July. Overall, 1.8 million Californians have received a sum of $73.9 million in rebates.

Grandfathered plans

A school district can maintain a grandfathered plan, one purchased on or before March 23, 2010, as long as they have certain documentation and a notice. Documentation providing terms of the health coverage in effect on March 23, 2010 must be available to various entities upon request and submitted to new insurance carriers. Organizations can fulfill the notice requirement by including a statement of the plan's grandfathered status among the plan materials given to beneficiaries.

A grandfathered plan does not have to comply with statutes that apply to all newly issued coverage beyond March 23, 2010. Grandfathering would be worthwhile if it is difficult or expensive to incorporate some of these mandates into existing plans. If there is relatively low effort or cost in implementing the statutes, grandfathering may not be the best course of action. Grandfathered plans result in less flexibility and are restricted from making changes to benefit offerings, plan design and employer contributions toward the cost.

Collectively bargained plans follow special rules. Any insured, not self-funded, collectively bargained plan maintained from one or more collective bargaining agreements ratified before March 23, 2010 is considered grandfathered until the end of the last agreement. After the termination date of the agreement, the plan must follow the general grandfathering rules to identify itself as grandfathered. The American Fidelity website provides numerous resources concerning the specifics of grandfathering.

Medi-Cal cuts in California's 2012-2013 budget

A review of Medi-Cal cuts in the current budget implies that reimbursement services to school districts for special education services, as well as outreach or administration for Medi-Cal, will not be affected. It is important to be aware that the areas recently cut in Medi-Cal are not offset by the future expansion under the Affordable Care Act.

About Medi-Cal

Medi-Cal is California's Medicaid program, which provides health services for 7.7 million low income individuals that include families with children, seniors, persons with disabilities, foster care, pregnant women and people with specific diseases, such as tuberculosis, breast cancer or HIV/AIDS. Currently, Medi-Cal is financed equally by the state and federal governments.

With the passing of the 2012-2013 state budget, Medi-Cal has seen more than $1 billion in cuts. Public, private, and district hospitals have suffered a decrease of $387 million. Shifting dual eligibles and elderly benefiting from Medi-Cal and Medicare to managed care from fee-for-service (FFS) plans saved another $663 million. Eliminating the Healthy Families program decreased general fund spending by $13 million. Other medical cuts amount to an additional $58 million taken from Medi-Cal.

The Affordable Care Act promises federal help with future state expansion of Medicaid programs to cover those under 133 percent of the FPL. One-hundred percent of the expansion will be funded by the federal government, but the state will have to pay 10 percent of the new cost by 2020. The phase-in of cost sharing will begin in 2017. Approximately 1.2 to 1.6 million Californians will be newly covered under the Medi-Cal expansion. Another 2.1 million are expected to purchase coverage without subsidies through Covered California.

Healthy Families program

With the passage of California's 2012-2013 budget, Gov. Brown eliminated the Healthy Families program, which serves low-income children who are ineligible for Medi-Cal. His intent is to shift all 880,000 participating children to Medi-Cal by 2014. School districts may be concerned with the impact this decision has on children's academic performance in school. As shown in multiple studies, student health impacts the ability to learn in the classroom.

Critics believe Gov. Brown's decision results in a lower quality of care for children who used to be part of Healthy Families. Healthy Families spent about $100 per child per month, whereas Medi-Cal will only spend $85 per child per month.

Proponents point to the $13 million savings in California's general funds for this year's budget, and projected savings in the future, as well as a broader variety of services available through Medi-Cal.

School-based health centers

The Affordable Care Act contains provisions which allocate and appropriate $50 million each year from 2010 to 2013, totaling $200 million over four years, in funding for SBHC facilities, equipment and general capital expenditures across the country. There may be opportunities for SBHCs to take part in the newly developing Covered California as well.

Thus far, $190 million of the $200 million appropriation has been distributed, of which $27 million went to 70 different California SBHCs. That leaves roughly $10 million left for future awards, which will most likely be distributed with another nationwide application process. School districts can be notified of new grant availabilities

and open applications through organizations such as the California School Health Centers Association.

Another provision in the Affordable Care Act authorizes funds for SBHC operating costs, which would vastly improve SBHC stability in day-to-day functions. This provision would grant money for SBHC equipment, training, management, operating and personnel—differing from the previous allocation for capital expenditures alone. Unfortunately, this authorization of funds has not been appropriated by Congress yet. The provision expires in 2014, so funding for SBHC operations will be unlikely if this is not worked into the federal budget soon.

With Covered California opening in 2014, exchange entities are actively seeking to work with community organizations, such as SBHCs, to increase the visibility of the exchange to others. SBHCs may become "navigators," which assist in the educational outreach and enrollment activities. It is undetermined whether SBHCs would be compensated for such work.

Highly compensated employees

If an employer discriminates by favoring highly compensated employees regarding eligibility or benefits for health plans, that employer will be penalized under the Affordable Care Act. However, this statute has been suspended until an unreleased future date in which the IRS would issue regulations or further guidance on the issue.

Cadillac tax

Although not an immediate concern to most policymakers, the so-called "Cadillac" tax provision of the Affordable Care Act will be enacted in 2018. Health insurance providers are given a 40 percent excise tax if their plans have annual premiums totaling $10,200 for individuals or $27,500 for families, adjusted for inflation. Essentially, the tax penalizes the availability of high cost plans, also known as "Cadillac" or "gold-plated" plans.

Timeline

March 23, 2010	• Affordable Care Act signed into law. Certain mandates take effect immediately. • Plans bought on or before this date may be considered grandfathered.
July 15, 2011	• First round of SBHC funds awarded to applicants, totaling $95 million.
Dec. 8, 2011	• Second round of SBHC funds granted to applicants, totaling $14 million.
June 27, 2012	• The Healthy Families program is eliminated, with the passage of California's 2012-2013 budget. The plan also includes more than $1 billion in cuts to Medi-Cal.
June 28, 2012	• Most statutes of Affordable Care Act upheld by U.S. Supreme Court. Medicaid expansion deemed optional instead of mandatory.
Dec. 2012	• Third round of SBHC funds awarded to selected applicants, totaling $80 million.
Jan. 1, 2014	• Individuals earning less than 133 percent of FPL eligible to enroll in Medicaid; states receive full federal funding, phasing to 90 percent funding in subsequent years. • California opens Covered California—the first health benefit exchange. • The employer mandate, which subjects employers to penalties for not providing access to affordable insurance for employees, takes effect. • All 880,000 children from former Healthy Families program complete shift to Medi-Cal.
2018	• Cadillac tax enacted, imposing 40 percent tax on providers with high premiums.
2020	• States who participated in the Medicaid expansion are expected to pay 10 percent of the expansion cost.

Resources:

CSBA

CSBA's Practi-Cal (Medicaid and Medi-Cal billing services)
www.csba.org/ProductsAndServices/AllServices/PractiCal.aspx

Sample board policy and administrative regulation BP/AR 4154 – Health and Welfare Benefits
(Available to policy services clients)
www.csba.org/Services/Services/PolicyServices.aspx

Policy brief: "Expanding Access to School Health Services: Policy Considerations for Governing Boards"
http://bit.ly/1fjFCla

American Fidelity Assurance Company

Free Rider Penalty
www.afadvantage.com/for-employers/health-care-reform/plan-sponsorship-provisions/free-rider-penalty.aspx

Grandfathering
www.afadvantage.com/for-employers/health-care-reform/plan-design-mandates/grandfathering.aspx

Blue Shield of California

Health Reform Presentation
www.blueshieldca.com/bsca/documents/about-blue-shield/health-reform/051611Member_Health_Reform_Presentation.pdf

California Education Coalition for Health Care Reform (CECHCR)

Free Health Benefits Training for School Districts
www.ccscenter.org/cechcr/About%20Health%20Benefits%20Training

California Healthcare Foundation

California's Uninsured
www.chcf.org/publications/2011/12/californias-uninsured

The Affordable Care Act in California
www.chcf.org/publications/2010/05/the-affordable-care-act-in-california

California Health Benefit Exchange
www.healthexchange.ca.gov/Pages/Default.aspx

California School Health Centers Association

(General information on SBHCs and relevant news)
www.schoolhealthcenters.org

Health Access

Final 2012-2013 California Budget Includes Harmful Cuts to Health Care
www.health-access.org/files/preserving/2012-13%20Budget%20Fact%20Sheet%2007-09-12.pdf

The Affordable Care Act in California: After Two Years—Big Benefits, More Work to Do
www.health-access.org/files/advocating/HA%20ACA%20Two-Year%20Report%203-20-12.pdf

Kaiser Family Foundation

Employer responsibility under the Affordable Care Act
http://healthreform.kff.org/the-basics/employer-penalty-flowchart.aspx

State Exchange Profiles: California
http://healthreform.kff.org/state-exchange-profiles/california.aspx

Summary of New Health Reform Law
www.kff.org/healthreform/upload/8061.pdf

Legislative Analyst's Office

The 2012-213 Budget: Analysis of the Governor's Healthy Families Program Proposal
www.lao.ca.gov/analysis/2012/health/healthy-families-021712.pdf

SIA Cabinet Report

Districts, like other employers have many questions with health care reform
www.siacabinetreport.com/articles/viewarticle.aspx?article=2457

The Sacramento Bee

Health insurance rebates due next week across California
www.sacbee.com/2012/07/25/4657544/health-insurance-rebates-due-next.html#mi_rss=Business