Frequently Asked Questions About Private Health Insurance Exchanges

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Private health insurance exchanges or “private exchanges” have attracted increased attention, especially from employers who are considering new health care strategies. This new strategy is intended to reduce employer costs and improve employee choice by leveraging multiple carrier competition and best-in-market efficiencies in the health insurance marketplace through private exchanges as opposed to the public health insurance exchanges under the Affordable Care Act (ACA), which are currently not open to large employers. Private exchanges typically bill themselves as a defined contribution approach to subsiding employee premium cost, utilizing a fully-insured coverage model. However, self-insured private exchange models are available.

HR Policy Association has received several questions about the private exchange/ defined contribution approach. Below are answers to a few of the most frequently asked questions.

1. **What types of private exchanges are currently available?**

   Private exchanges generally may be offered in two forms: those offering access to group plans and those offering access to individual policies; some allow a combination of both types of plans.

2. **What are the general advantages and disadvantages of private exchanges offering group plans versus individual policies?**

   Both approaches can reduce the employer’s administrative and compliance burdens while enabling the adoption of a defined contribution approach. However, the employer may only make pre-tax contributions to exchanges offering group plans. Any employer contribution offered to employees who enroll in a private exchange offering individual policies must be made on an after tax basis. Employers offering group exchanges may still meet the requirements for offering ACA-qualified coverage and avoid the related penalties provided that employer subsidy levels and the group coverage options offered meet minimum ACA requirements. Employers offering access to private exchanges for active employees featuring individual policies may not be considered to be "offering coverage" for purposes of the ACA employer mandate, and become subject to ACA penalties.

3. **Will private exchanges save money compared to offering qualified group plans?**

   They may or may not depending on each employer’s unique situation and the types of plan design, network coverage options, and administrative fees offered through the private exchange. Although the private exchange market for Medicare-eligible retirees is fairly well established and has consistently shown savings for many employers who have adopted this approach, private exchanges for active employees are relatively new and the market is still developing. This can make it more challenging to determine the potential for immediate and long-term savings at this time.
4. What are the primary differences between a group private exchange and a traditional employer sponsored plan that is established under IRS Section 125?

The two approaches have a great deal in common. Both allow employers to cap their contributions while giving employers pre-tax dollars. They also enable employers to offer an array of competing health plan and coverage options. The cost of coverage is determined in large part by each employer’s company-specific experience. Perhaps the greatest distinction is that under a private exchange, an outside party assumes the primary responsibility for selecting and managing the participating carriers while also taking over key administrative functions such as enrollment.

5. If the rate of increase in health care costs cannot be significantly reduced through a private exchange offering qualified group plans, won’t employers who participate in private exchanges eventually have to increase their defined contribution amount to keep employee costs from rising to the point where the coverage offered in the private exchange becomes unaffordable and triggers the ACA employer penalty?

Yes. That is one of the practical uncertainties surrounding private exchanges.

6. It is my understanding that large employers cannot provide group coverage through public exchanges for their employees until 2017. How is large employer defined for the purpose of providing employee coverage in a public exchange?

Initially, large employers cannot purchase group health plan coverage for employees through ACA exchanges. However, employees who are not offered qualified coverage by their employer may purchase an individual plan by enrolling through a public exchange. A large employer is one which has more than 100 employees (or more than 50 in some state exchanges). However, in 2017 each state may choose to allow large employers to purchase group coverage for their employees in their respective public exchange, but the states are not required to do so.

7. If we currently cover our full-time (30 or more hours per week) and part-time (less than 30 per week) employees with our pre-65 retirees through a single employer-sponsored plan, could we offer the part-time and pre-65 retirees a private exchange and allow full-time employees to stay in the plan we currently offer?

Yes. Employers may limit private exchange coverage to a particular segment of their workforce, such as part-time employees or retirees. Additionally, under the ACA part-time employees and retirees will be able to obtain their own guaranteed-issue health insurance through the public exchanges, (with a federal subsidy, depending on their income) starting in 2014. Allowing part-time employees and retirees to obtain coverage on a public or private exchange will not expose the employer to penalties under the ACA.
8. Can we cover employees differently based on line of business? For example, could employees in one line of business continue to be covered under a traditional employer sponsored plan, while those in another line of business are moved to a private exchange, or not offered coverage at all making them eligible to enroll in the public exchanges?

Yes, this benefit structure would be permissible provided the employer continues to offer coverage to its full-time employees, assuming the employer meets the definition of a “large employer” under the ACA.

9. One of the uncertainties surrounding private exchanges is whether employers who offer their employees access to a private exchange are considered to no longer be offering minimum essential coverage, and therefore could be subject to ACA penalties for failing to offer health insurance to full-time employees. Is this true?

Employers who offer employees access to a private exchange offering group plans should not be subject to ACA penalties provided that the coverage is affordable and the private exchange options meet the minimum ACA requirements. Additional guidance from federal agencies may be necessary to confirm this. However, large employers who offer employees access to a private exchange offering only individual policies are no longer considered to be offering coverage, and will become subject to ACA penalties.

10. Some employers believe that if employers stop offering traditional, affordable health coverage, the ACA penalties will increase. Under what circumstances and process can the ACA employer mandate penalties be increased?

Under current law, if a large employer does not offer health insurance to most of its full-time employees, the employer must pay a penalty of $2,000 per year for each full-time employee when any one full-time employee receives a premium tax credit to purchase ACA exchange coverage. If the employer offers coverage to its full-time employees, but it is deemed “unaffordable” or it does not provide “minimum value,” then the employer must pay the a penalty of $3,000 per year, but only for each full-time employee who receives a premium tax credit to purchase ACA exchange coverage. After 2014, both penalties increase each year based the national average premium growth rate. Any increase over this amount would require Congress to amend the ACA through legislation.

11. Are federal subsidies available to employees outside of the public exchange?

No. Federal premium assistance (e.g. a premium tax credit or a cost sharing subsidy) is only available for costs associated with “qualified health plans”, which are only offered through public health exchanges.
12. Can an employee use an HRA to purchase coverage on a private exchange?

Perhaps, if the exchange is offering group plans, but not for those offering individual policies. Beginning in 2014, an HRA offered to active employees must be “integrated” with an employer-sponsored health plan. It is still unclear what this means for employer-sponsored plans offered through a private exchange. It is our understanding that certain private exchange models are contemplating the use of an integrated HRA to fund the purchase of health insurance; however HRAs are not offered as a funding option in some of the larger private exchanges.

13. Under the private exchange/defined contribution approach, would employers continue to have access to aggregate employee claims data in order to effectively administer and enhance wellness programs in the workplace?

Not necessarily. The employer may have access to claims data if the exchange offers group plan, but it depends on the contract between the employer and the private exchange sponsor. However, the employer will not have access to claims data if the exchange offers individual policies.

14. Will the private exchanges also offer other health plan options like fully insured dental or vision plan options?

The availability of ancillary insurance products such as dental and vision is very likely in the private exchange marketplace. Certain private exchanges already offer these options. In addition, many insurers provide these products today through online consumer health insurance portals.

15. If employers are currently offering effective wellness programs, will they be less likely to continue offering these programs if they adopt a private exchange solution?

Some private exchange vendors currently offer wellness programs in the products they offer. There are two basic reasons for offering wellness programs: improving claims experience, and improving employee health to improve productivity and decrease absenteeism. If the employer no longer derives direct benefits from wellness through a private exchange solution, the incentive to offer wellness programs is diminished. Employers offering exchanges featuring group plans may still benefit from lower rates that are attributed to wellness programs, depending on their agreement with the exchange vendor. However, employers offering access to private exchanges featuring individual policies will not see any rate relief that is tied to the relative health of their employees. Regardless of the type of private exchange an employer may offer, they may still benefit from improved attendance and productivity if they continue to offer effective wellness programs.
16. What are the potential merits of the possible use of private exchanges (or similar concepts) by smaller employers, such as franchisees?

Just like large employers, franchisees could come together within a private exchange and work together in the development of an exchange and/or the selection of an existing private exchange vendor based on their relative capabilities. One could argue that the potential benefits of a private exchange for may be more appareexcuse smaller employers, since they do not currently have the buying power and economies of scale that large employers have. A well designed and run private exchange could help give franchisees and other small employers improved buying power.

17. While employer claims experience may be pooled in some exchanges, it is my understanding that each participating employer may receive its own rate based on its unique claims experience (i.e., not pooled experience). Is that correct?

It is our understanding that, for now, premium rates for private exchangers offering group plans are based on each individual employer’s experience, and not on all of the pooled lives purchasing insurance through the private exchange. Any private exchange that offers individual policies will have standard, state-specific rates and coverage features established by the participating carriers subject to approval by state insurance regulators. As a result, there is no variance across employers related to premiums or coverage features for private exchanges featuring individual policies.

18. Will the ACA’s age rating restriction (3:1 ratio) apply in private exchanges?

Beginning in 2014, the ACA’s rating requirements will apply to the individual and small group health insurance plans offered in and outside of the ACA exchanges. In these markets, the permitted rate variations are restricted to: (a) age, (b) tobacco use, (c) single or family coverage, and (d) rating area. Thus, fully-insured individual and small group products offered through private exchanges will be subject to age rating restrictions, but they will not apply to private exchanges offering group plans. However, if a state elects to open its public exchange to large employers in 2017, it appears that the age rating requirements will apply to fully-insured large group plans offered both in and outside of the state exchange, including private exchange offerings.

19. Are there any outstanding legal or regulatory issues involving private exchanges that employers should be concerned about as they consider such a health care strategy?

Yes. While each employer's situation will differ, employers should consider that private exchanges are a promising, but largely an untested, alternative to traditional employer-sponsored plans, and much of the landscape remains uncertain. With that in mind, employers should carefully consider their reasons for exploring a private exchange, with the realization that cost savings are questionable, and may not be immediate. In addition, employers should carefully explore their options for funding employer subsidies for private exchange coverage, their approach to communicating the concept to employees, and their continuing fiduciary responsibility under ERISA associated with choosing and monitoring the private exchange vendor.