Economy

Glitch in health care law allows employers to offer substandard insurance

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A flaw in the federal calculator for certifying that insurance meets the health law's toughest standard is leading dozens of large employers to offer plans that lack basic benefits such as hospitalization coverage, according to brokers and consultants.

The calculator appears to allow companies enrolling workers for 2015 to offer inexpensive, substandard medical insurance while avoiding the Affordable Care Act's penalties, consumer advocates say.

Insurance pros are also surprised such plans are permitted.

Employer insurance without hospital coverage “flies in the face of Obamacare,” said Liz Smith, president of employee benefits for Assurance, an Illinois-based insurance brokerage.

At the same time, a kind of Catch-22 bars workers at these companies from subsidies to buy more comprehensive coverage on their own through online marketplaces. No federal tax credits for health coverage are available to people with workplace plans approved by the calculator.

The calculator is used by self-insured employers, which include most large firms.

Like insurance companies, self-insured employers must certify that their plans pass health-law standards for consumer value.

One official way to do that is to get a passing score on the Department of Health and Human Services’ “minimum-value” calculator, an online tool.

An employer checks boxes on the screen indicating what benefits are offered — such as hospitalization, mental health care and pharmacy coverage — as well as workers’ share of the cost. The calculator then determines if the plan covers enough potential medical costs to be considered adequate insurance.

“There are a lot of errors in the calculator,” said Shannon Demaree, director of actuarial services at Lockton Companies, a large broker. “It allows more plans to pass as qualifying coverage than we believe really do.”

It’s unclear which companies, or how many, are offering calculator-approved coverage without hospital benefits. Retailers, temp agencies and other lower-wage employers that haven’t traditionally offered comprehensive insurance are the most likely to sign up, brokers say.

“There is very high interest” among Lockton’s clients, Demaree said.

Some 35 employers working with Assurance intend to offer such coverage, Smith said. The American Worker Plans, another Illinois firm, is advising about 30 companies considering that type of coverage, said Jon Duczak, the company’s senior vice president.

While they offer such plans because employers ask for them, Assurance and the American Worker Plans said they are cautioning them about their use. They did not identify the employers.

HHS is aware of potential problems with the calculator but has not changed it, said industry authorities.

“I think they were somewhat naive in not realizing that people were going to game the heck out of it,” said

Hobson Carroll, an independent actuary who works closely with self-insured employers.

HHS, which developed the calculator, referred queries about it to the Treasury Department, which it says is responsible for ensuring plans meet value standards. Treasury referred a reporter back to HHS.

Intended to discourage coverage that leaves workers vulnerable to large medical costs, the calculator is an official yardstick for determining whether plans meet a “minimum value” of benefits, the most stringent health-law standard for employers.

Passing the calculator test shields an employer from getting fined as much as $3,000 per worker next year, lawyers say.

Instead of buying a commercial medical plan, employers that self-insure assume most of the risk of covering worker health costs. They generally outsource the design of the insurance and the administration of claims, however.

The average inpatient hospital bill is more than $10,000. But for workers, the plans’ disadvantages go beyond the lack of hospital benefits.

The availability of company-sponsored, calculator-approved coverage at a certain price disqualifies them from getting tax credits that could help pay for better coverage through an online marketplace, said Sabrina

Corlette, project director at Georgetown University's Center on Health Insurance Reforms.

"Employers who offer these types of plans as the only option for their employees really need to search their consciences," she said.

Next year, large employers face penalties for the first time for not providing qualified insurance. Benefits experts stressed that most will offer traditional coverage including hospitalization.

But temporary staffing firms are especially interested in lower-value plans that may not include hospitalization, said Brian Robertson, executive vice president at Fringe Benefit Group, which recently bought the American Worker Plans.

Key Benefit Administrators, which designs coverage and handles claims for what it says are more than half a million members, offers a minimum-value plan to self-insured employers that lacks inpatient hospital benefits, according to documents on Assurance's Web site.

Key's design "meets the . . . actuarial value requirement" measured by the calculator and immunizes employers from paying all health-law penalties for insufficient coverage, the promotional materials say.

The plan's total cost of about $200 per month per worker is about half the price of similar coverage with hospital benefits, experts said.

Confidentiality agreements with customers prohibit Key from commenting on the plan, said Wallace Gray, the company's general counsel.

"We've had a million different attorneys check this out," Assurance's Smith said of Key's design. According to HHS' standards, "it does meet all the criteria to be a compliant plan," she said.

But when Lockton tested such plans on a calculator used by the private sector, they flunked.

To meet the health law's minimum value threshold, self-insured coverage must pay for at least 60 percent of expected medical costs in a typical plan. (Members pay the rest in deductibles, copays and other out-of-pocket expense.)

In Lockton's analysis, one plan with no hospital benefits being promoted as health-law compliant scored 63 percent on HHS' calculator — slightly above the minimum. But the industry calculator gave the same plan a value of only 47 percent — far below the 60 percent level needed to qualify as adequate, Demaree said.

"All of their [Lockton's] concerns are definitely concerns that we've had," said Assurance's Smith.

Several consultants said they wouldn't be surprised to see revisions in the minimum-value calculator — if not this year, then next.

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