

Health Insurance Exchanges: Did the “essential health benefit,” pediatric dental care, just become voluntary?

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The Patient Protection and Affordable Care Act (PPACA) and the Healthcare and Education Reconciliation Act (HCERA) are collectively known as the Affordable Care Act (ACA) – the Country’s new healthcare reform law. The primary intent of healthcare reform is to enable low and moderate income individuals to obtain quality, affordable health coverage by spreading the inherent risks of insurance coverage amongst all Americans.

A basic tenet of insurance is this: the bigger the group (i.e., risk pool), the smaller the risk, and the more affordable the insurance; the smaller the group, the greater the risk, and the more costly the insurance. The healthcare reform mandates found within the ACA establish Congress understands this principle well.

Under the ACA, Congress sought to enlarge the insurance risk pool by requiring most U.S. citizens to maintain health coverage or pay increasingly severe tax penalties. Starting in 2014, individuals who fail to maintain a certain level of health insurance coverage (referred to as “minimum essential coverage”) for themselves and their dependents will be subject to tax penalties.

The tax penalties start off rather miniscule in 2014 (the greater of: 1.0% of income or, a flat fee of up to \$285 per family), but grow fairly quickly and significantly over the next two years (the greater of: 2.5% of income or, a flat fee of up to \$2,085 per family in 2016). Certain employers are subject to thousands of dollars in tax assessments should they fail to provide their full-time employees with access to affordable and valuable health insurance.

To assist individuals and employers with obtaining affordable insurance coverage, ACA mandates creation of online marketplaces known as “Exchanges.” The Exchanges are to function as facilitators – bringing buyers and sellers of insurance together. Every state is required to establish an Exchange before January 1, 2014. Exchanges will be available by fall 2013 in order to enroll individuals for a January 1, 2014 effective date. One of the ways an individual can avoid incurring a tax penalty under ACA is to purchase a plan on the Exchange.

Starting January 1, 2014, every issuer offering health insurance to individuals or to small employer groups (100 employees or less) – whether the plans are offered on or off the Exchanges – must include coverage for a set of benefits Congress deemed to be “essential health benefits.” Essential health benefits (EHBs) are 10 categories of benefits designed to be similar in scope to those offered through “typical” employer-group health insurance plans. The EHBs include benefits such as emergency services, prescription drugs, hospitalization, maternity and newborn care, and pediatric dental care.

Typical employer plans usually consist of separate medical and dental policies. Comprehensive medical plans may provide coverage for oral medical conditions (e.g., reconstruction of cleft lip and palate, or oral cancer treatment), but most do not cover preventive dental services or treatment of

dental decay. Dental benefits such as these are most often provided under a separate (“stand-alone”) dental insurance policy.

The plans offered on Exchanges are known as qualified health plans (QHPs), and are comprised of two plan types – comprehensive medical plans and stand-alone dental plans. The ACA requires every medical QHP to include coverage for all 10 EHBs at a minimum; dental QHPs must include coverage for pediatric dental services. A recent ruling by the Department of Health and Human Services (HHS) created an exception to this mandate: medical QHPs do not have to include coverage for pediatric dental care if there is at least one dental QHP offering the pediatric dental benefit.

This doesn’t sound all that bad – at least, that is, until one realizes the practical implications of this HHS ruling. Remember, individuals may satisfy the requirement to have health insurance coverage by purchasing a QHP on the Exchange. If a plan can exclude coverage for pediatric dental care and maintain its designation as a QHP, an individual could purchase a plan without pediatric dental coverage without incurring an ACA tax penalty.

HHS has changed pediatric dental care from a mandated benefit to a voluntary benefit with its ruling. This change is contrary to the Congressional view that pediatric dental care is an essential benefit and one that should be included in all health plans. When a benefit changes from mandatory to voluntary, the risk pool becomes smaller and the benefit becomes more expensive. An unaffordable benefit could result in fewer children having dental coverage – the opposite of what Congress intended to accomplish through healthcare reform.



Ms. Dana M. Smith, Esq. serves as General Counsel to Dental Select. Prior to joining the Executive Team of Dental Select, she served as General Counsel to an international advisory and investment firm, a public company co-listed on both the London Stock Exchange and the Frankfurt Stock Exchange. Prior to these General Counsel positions, Ms. Smith was an attorney with a Salt Lake City law firm, specializing in transactional law, contracts, and securities; most notably serving as legal counsel to a NYSE-listed closed-end fund with \$100M NAV. Ms. Smith also co-founded Acadia Group IR, an investment relations firm providing strategic business consulting, corporate finance and investor relations services to publicly-listed emerging growth companies. Prior to her legal career, Ms. Smith worked with Dental Select for over seven years, serving on the Company’s management team. Ms. Smith received her Juris Doctor from the J. Reuben Clark Law School at Brigham Young University in Provo, Utah, and a Bachelor of Arts in English from the University of Utah. Ms. Smith is a current member of the Utah State Bar.

¹ Each state has the option of restricting Exchange access to employers of no more than 50 employees until 2016; in 2016, all states must allow employers of up to 100 employees to access Exchanges. In 2017, access to Exchanges is extended to large employers.

² 42 U.S.C. 18022 Section 1302

³ “Offering Dental Benefits in Health Exchanges: A Roadmap for Federal and State Policymakers.” NADP and DDPA; Sept 2011. Available from: www.nadp.org/Libraries/Newsletter_Links/Dental_Exchange_White_Paper_v9-9-11-3.sflb.aspx

⁴ 45 CFR § 155.1065(b). Available from: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-25/pdf/2013-04084.pdf>