The Affordable Care Act Repair and Reform

A white paper on the effects of the Patient Protection and Affordable Care Act on multiemployer health plans.

For over 65 years, the International Brotherhood of Electrical Workers (IBEW) and its employers in the construction industry have provided affordable, high-quality health care coverage for workers through multiemployer health plans. Working jointly as labor and management through the collective bargaining process, we have strived to offer competitive living wages and benefits to employees and their families nationwide. Unfortunately, these plans are in jeopardy. The Patient Protection and Affordable Care Act (ACA) is threatening the multiemployer health plan coverage of 26 million Americans.

About Multiemployer Health Plans

Multiemployer health plans are operated and administered by a board of trustees comprised equally of representatives from labor and management. Most of these plans are self-insured in order to reduce employer costs and increase benefits to participants. Across all industries, the current multiemployer plan system provides affordable, high-quality health care coverage to millions of American workers, retirees, and families. Participating in a multiemployer plan allows businesses to spread risk across a larger, more diverse pool of individuals, which reduces premium costs. In addition, construction industry employers have the ability to hire short-term employees without the burden of increased administrative costs.

The IBEW’s multiemployer health plans provide an opportunity for continuous coverage for participants through a national reciprocity system. National reciprocity allows IBEW members to work for multiple employers throughout the United States without an interruption in health care coverage. Due to this unique structure, it is common for members to maintain coverage during times of unemployment or disability.

The ACA’s Effect on Multiemployer Health Plans

The ACA threatens the viability of multiemployer health plans in four ways: 1) the high employee threshold of the employer mandate, 2) the reinsurance fee, 3) the definition of qualified health plans, and 4) the lack of multiemployer-specific administrative guidance. We believe it may be impossible to reverse the damage done to these plans if these issues are not resolved. The IBEW cannot afford to sit on the sidelines as the ACA threatens to harm our members by dismantling multiemployer health plans.
The Affordable Care Act: Repair and Reform

High Employee Threshold for ACA Requirements

The ACA does not penalize small businesses with less than 50 employees for failing to offer their employees health care coverage. This exempts almost all construction industry employers from the ACA employer mandate. By not requiring construction employers to offer health care coverage to their employees, the ACA begins a race to the bottom with respect to benefits. Employers contributing to multiemployer health plans will be forced to choose whether to provide health care benefits for their employees or remain competitive.

This high employee threshold will have a devastating effect on the entire construction industry. Approximately 93% of employers in the industry have fewer than 20 employees. In electrical construction specifically, almost 70% of employers have 20 or fewer employees. Thus, these small businesses will be placed at a competitive disadvantage causing multiemployer health plans to dissolve and employees to be responsible for purchasing their own coverage through the exchanges.

Although the exact type of health care coverage that will be available through the exchanges is unknown, it is likely that it will not be comparable to that available through multiemployer health plans. In addition the premiums of the exchange plans will vary for individuals based on income, age, family size, and other factors. This means that two employees working in the same job with identical responsibilities could pay different amounts for health care coverage through an exchange. Calculating and tracking these cost variances would make it very difficult for an employer to provide health care coverage through an exchange.

The Reinsurance Fee

Beginning in 2014 and continuing until 2016, either the Department of Health and Human Services or individual states will assess a fee for everyone enrolled in a plan outside of the exchanges. Health insurance carriers will pay the fees on behalf of employers who sponsor fully insured plans. Presumably, the carrier will pass this cost and any additional fee on to the employer or employee through increased premiums. For self-insured plans, which includes the majority of multiemployer health plans, the plan administrator will be responsible for paying the assessment.

In multiemployer plans, trustees set the benefits, corresponding contributions, premiums, and employee co-pays. Just like fully insured plans, self-insured plans will recoup the expense of the reinsurance fee by increasing the employee and employer contribution amounts. This means collective bargaining agreements between IBEW local unions and their contractors will need to be renegotiated. This creates an opportunity for the multiemployer health plan structure to change, shifting more individuals into the exchanges and leaving fewer dollars to fund ACA provisions. As individuals leave multiemployer plans, there will be fewer people to shoulder the reinsurance fees—resulting in higher per-person costs and forcing even more individuals into the exchanges.

Defining Qualified Health Plans

As currently structured, the ACA does not include multiemployer health plans in the definition of a qualified health plan. As a result, employees do not qualify for the subsidy to offset the cost of health care coverage and employers do not qualify for the tax credit for contributions to self-insured multiemployer plans. In order to fix this problem, the implementing regulations should deem all multiemployer health plans as qualified health plans. Doing so would alleviate two major problems with the ACA. First, assuming IBEW members meet all other qualifications, the ACA individual subsidy to offset the cost of health care coverage would be available to them. Second, defining multiemployer health plans as qualified health plans would allow otherwise

“...And that means that no matter how we reform health care, we will keep this promise: If you like your doctor, you will be able to keep your doctor. Period. If you like your health care plan, you will be able to keep your health care plan. Period. No one will take it away. No matter what. My view is that health care reform should be guided by a simple principle: fix what’s broken and build on what works.”

—President Obama, July 16, 2009
eligible small employers to receive the tax credit for contributions to multiemployer health plans.\(^{13}\)

This disparity in treatment between collectively bargained plan contributions and the contributions to other health plans will create another competitive disadvantage for employers who have been providing quality coverage for their employees for years. Failure to deem multiemployer health plans as qualified health plans will force employers to reconsider participation in multiemployer health plans in order to remain competitive.

**The Lack of Specific Guidance for Multiemployer Health Plans**

Despite many efforts by the National Coordinating Committee For Multiemployer Plans (NCCMP) and other groups, application of the ACA to multiemployer health plans remains unclear. In several cases, multiemployer health plans have been addressed through transitional rules. An example is the transitional guidance in place until 2014 for the §4980H pay or play penalty.\(^{14}\) However no clear guidance has been given with respect to the effect of other provisions, such as the 90-day limit on waiting periods before an individual is covered by a plan. The proposed rule issued by the Departments of Treasury, Labor, and Health and Human Services addresses “variable hour employees,” which seemingly covers participants in multiemployer health plans, but a final rule has not yet been issued.\(^{15}\)

It is important to keep in mind the reporting differences for multiemployer health plans. Due to the nature of the construction industry, work-hours are often unpredictable. Most plans are funded, and eligibility is determined, on a per-work-hour basis. Multiemployer health plans do not receive information on hours worked until at least one month after the hours were worked. This makes the requirements associated with providing notices to employees and paying ACA-required fees more complex for these plans. For example, the notice required by the Department of Health and Human Services regarding availability of exchange coverage contains a section where the employer must indicate whether the employee will qualify for health care coverage within 90 days. Because of the way work-hours are reported for multiemployer health plan participants, employers will not know whether an employee qualifies for coverage within this time frame.

So far this problem has not been addressed by any of the agencies responsible for implementing ACA provisions. It is not clear how multiemployer plans will comply with portions of the ACA or fit into the new health care insurance system beginning in January 2014. Further administration guidance is needed.

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**Call to Action**

The IBEW is asking for your help in lobbying the Obama administration and the Departments of Treasury, Labor, and Health and Human Services, to work together to propose administrative regulations that will address the issues explained in this white paper. Absent administrative action, the IBEW is asking Congress to address these concerns by amending the ACA. This would reduce the negative impact on small businesses already providing good health care coverage for employees.

*We look forward to working with you on these critical issues.*
Endnotes

1. Treatment of Multiemployer Plans Under the Affordable Care Act Alston & Bird LLP August 20, 2011 p.3.
2. 26 USC §4980H(c)(2)(A).
4. Calculated using contractor size data provided by NECA June 2013.
5. See David Blumenstein & Joanne L. Hustead, Multiemployer health plans vs. The Exchanges: Digging in or Letting Go, BENEFITS MAGAZINE May 2013 at 14-21.
7. Blumenstein & Hustead, supra note 5, at 18.
8. See 26 USC §4376.
10. See generally id.
11. See generally id.