Understanding the Dedicated Personal Insurer Act

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Background/Overview

The Patient Protection and Affordable Care Act generally requires individuals to obtain qualifying insurance by 2014 or pay a tax penalty. Under current Texas statutes, creating an insurance company generally requires millions in capital, extensive paperwork, multiple personnel, and high annual fees. The proposed act provides a reasonable mechanism for fiscally responsible individuals to formally self-insure under state authority. Potential benefits of the act include:

- Compliance with PPACA (Obamacare) mandates; avoidance of federal tax penalties; increased long term income;
- Reduction in overhead from billing operations, waste, fraud, and abuse associated with traditional commercial insurance; faster payment to providers; economic efficiency;
- Protection of the doctor-patient relationship from interference including failure to pay for "experimental" treatment; flexibility to seek care from any provider;
- Promotion of healthy behavior; elimination of "moral-hazard" from shifting the financial consequences of risky behavior;
- Authorization of catastrophic coverage through reinsurance;
- Protection of privacy, in that information would not be disclosed to large commercial insurers;
- Compatibility with religious beliefs with respect to payment for controversial products and procedures;
- Promotion of general savings; avoidance of "agency"/conflict-of-interest problems in investment; and
- Affirmation of individual freedom within the healthcare market.

Key Provisions

Designated Insured / Dedicated Insurer

By constructively limiting insurance coverage to a single individual insured by their own capital, all of the conflict-of-interest problems associated with the insurance market are eliminated. As such, the complex coverage requirements, rate-making, and consumer protection provisions of state insurance law need not apply.

There are benefits to various insurer forms. Allowing a natural person to self-insure is the simplest option. A captive corporation provides limited liability with respect to federal regulations.

Reasonable Savings Requirements

An 8% savings requirement is similar to that used by Singapore's medical savings program. Individuals unable to obtain insurance for that percentage of income are exempt from the ACA mandate. A $60,000 reserve is sufficient to address almost all routine and emergency care.

Capital Flexibility

Allowing flexibility in the type of securities held probably will result in the greatest long-term accumulation of savings, and by extension, ability to meet obligations. Retaining control over savings also allows capital to be more easily reallocated based on changing market conditions.

Certificated Limited Authority

Embodying the authority to issue insurance in a certificate is an effective means of regulation. Including appropriate disclaimers on the certificate may help inform the public of their intended use.

Authority to Issue Coverage

The individual mandate in the ACA applies to individuals that could be claimed as a dependent, therefore it is important to authorize coverage for the designated insurable individual as well as their spouse and dependent children.

Reinsurance Authorization

Authorizing dedicated insurers to purchase reinsurance can provide protection against costs in excess of savings.

Prohibition on Applications and Premiums

By prohibiting applications and premiums, it is clear dedicated insurance is not a commercial product subject to federal guaranteed issue regulations.

Audit Process

Activity of dedicated insurers may be audited at random or when there is a reasonable suspicion of non-compliance. This process is similar to that used in controlling income taxpayer audits.

Termination Procedures

The authority of dedicated insurers may be voluntarily surrendered and may be revoked if they are not compliant with the requirements. Upon termination, outstanding policies are canceled. If an insurer's authority is terminated, the same designated individual may not participate in the program until after a period of time sufficient to deter misuse of the program.

Fees

Administrative fees are credited to the Department of Insurance operating fund. Dedicated insurance should be approximately revenue neutral with respect to that fund. Since the fund is self-leveling, there would be no impact to state general funds.

Privacy

Keeping dedicated insurance information confidential will help prevent identify theft and protect privacy.

Considerations & Investigations

Economic Considerations

Self-insurance provides an efficient market-based mechanism for healthcare payment. Given the incentive to minimize expenses, self-insured individuals incur about 25% of the lifetime medical costs of commercially insured individuals while achieving similar longevity. Currently the US spends nearly 18% of GDP on healthcare, more than any other country. However, the US is first in responsiveness, meaning patients get requested care in a timely manner. Other countries have lower costs, with France spending about 12%, Canada 11%, and the UK 10% of GDP, but they impose supply-side controls which sometimes delay or deny care to patients that request it. In contrast, Singapore, which uses an individual savings-based approach to healthcare payment, spends only 4% of GDP on healthcare while achieving similar health outcomes. If the US matched the efficiency of Singapore's model, over $2 trillion in healthcare costs would be saved annually.

Dedicated Insurance and Federal Law

The IRS Counsel has confirmed a plan issued by a dedicated insurer can qualify as minimum essential coverage in the individual market.

Just as ERISA plans for very small employers are exempt from most HHS regulations, dedicated insurers are either exempt or the regulations can be easily complied with. Several regulations are merely administrative. Dedicated insurance is exempt from guaranteed issue provisions because it is issued outside of a direct application process, state law is only minimally preempted, and financial capacity limitations restrict it to a single individual. Since dedicated insurers generally will not contract directly with providers, they are exempt from the HIPAA transaction standards.

Capital Requirements

Historically, both individuals and small employer plans authorized under the Employment Retirement Income Security Act have had broad discretion over the amount and form of medical savings.

In Singapore, individuals save 7% of their income for medical care, with a cap of about $35,000. Individuals in the US who would spend more than 8% of their income on insurance are exempt from the individual mandate and would generally be eligible for subsides for premiums in excess of this amount. Motor vehicle self-insurance requirements in Texas require $55,000 in savings. Therefore an 8% savings requirement with a $60,000 cap is comparable to other programs.

Individuals depositing securities with the comptroller to demonstrate motor vehicle safety responsibility have also had flexibility as to the form of the deposit. Statutory preferences for mortgage-backed securities contributed to the 2008 financial crisis, and the market value of government securities could be impacted by changes in interest rates. Allowing flexibility in the type of securities held probably will result in the greatest long-term wealth accumulation, and by extension, ability to meet obligations. It will also help businesses maintain access to capital.

Stop-Loss Coverage and Chronic Conditions

As licensed insurers, dedicated insurers would be able to purchase reinsurance or stop-loss coverage to protect against the rare instances when savings may be exceeded. Given the novelty of this concept, there is no guarantee commercial reinsurance will be immediately available, however dedicated insurers will be able to participate in the federally-sponsored transitional reinsurance program until 2017. The permanent federal risk adjustment programs would also compensate dedicated insurers in the event the insured individual had a chronic illness, based on their increased actuarial risk. As such, the necessity of stop-loss coverage is reduced.

Cost-Shifting Mitigation

The dedicated insurance savings requirement will help prevent "free-riding" and medical bankruptcy. More than 75% of medical bankruptcies are associated with individuals that have insurance, but are unable to meet their coinsurance requirement or become unemployed due to their illness and have inadequate savings. Uncompensated care accounts for only 2% of medical spending.

Dedicated insurers would be liable only for reasonable and customary charges similar to those paid by commercial insurers. Based on charges, the largest source of medical cost-shifting is underpayment by Medicare and Medicaid. For example, at Brackenridge Hospital in Texas, private parties pay 30% of charges, Medicare pays 24%, and Medicaid pays only 16% of charges. Since designated insurable individuals receive more of their compensation in taxable form, they pay more Medicare taxes, improving the stability of the system as a whole.

Federal risk adjustment programs provide a mechanism to reduce adverse selection, and would apply to dedicated insurers. Overall, we can expect that designated insured individuals will provide more reliable payment than participants in other programs.

Potential Program Demand

About 25% of Texans are medically self-insured (or uninsured), including 33% of the working-age population, indicating many people are unsatisfied with commercial insurance offerings.

Individuals with lower incomes may be eligible for exemptions from the ACA mandate. However, approximately 8% of the self-insured population earns more than $75,000/year, including more than 500,000 Texans.

Proof of Ability to Pay

It is expected most routine care will be supplied without special proof of ability to pay. The Emergency Medical Treatment and Labor Act provides that emergency care be provided without regard for proof of ability to pay. In the case of expensive non-emergency treatments, program participants can prove the ability to pay by providing a prepayment, credit card pre-authorization, deposit, escrow, credit check, bank reference letter, bank statement, or pay stub.

Selected Resources

World Health Statistics: http://www.who.int/gho/publications/world_health_statistics/2012/en/index.html

List of Countries by Health Expenditure Per Capita:

http://en.wikipedia.org/wiki/List_of_countries_by_total_health_expenditure_(PPP)_per_capita

WHO Ranking of Health Systems:

http://en.wikipedia.org/wiki/World_Health_Organization_ranking_of_health_systems

Texas Hospital Charge Information: http://www.txpricepoint.org/

Census Bureau Health Insurance Data: http://www.census.gov/hhes/www/hlthins/