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Comments - Interim Final Rules Group Health Plans

I am very concerned that the Interim Final Rules will permit local governments to circumvent national health care reform through a grandfather provision. Unless expressly forbidden by law, the regulations should apply to local governments that are not regulated by the state inwhich they reside and particularly self funded health plan.

First of all self funded health plans typically are not truly self funded. Rather, many so called self funded plans in the public and private sector include contributions from others beyond the employer. These other parties typically are required to make contibutions to an insurance type arrangement but without the same individual and aggregate protections.

In several respects local governments slip through the safety net of regulations at the State and Federal levels. This failure of regulations leaves local public retirees only the courts to turn to in addressing actions that are not appropriate in an insurance environment and would not be permissible under State or Federal regulations if those regulations applied to local governments. The resort to the courts pits public monies against the covered individuals and results in costs that make this approach impractical.

Self funded health insurance and accident plans are excluded from regulation from the State Insurance Commissioner in California, as self funded plans are generally under regulations of ERISA. However, self insured local government plans are not regulated by ERISA. Public employee plans in California are subject to meet and confer requirements and labor contracts providing some protection for active employees. However, employee unions do not represent retirees and this group is particularly vulnerable to abuse.

In California and particularly in the more conservative counties like the County of Orange a public out cry exists over the passage of national health care reform as well as pension envy created by a depressed economy and shattered 401k plans. It is not currently perceived to be in the interests of the political elected bodies to act in a way that is favorable to public employees and even more so in respect to public sector retirees.

In Orange County the Board of Supervisors has applied for the reimbursement for claims between $15,000 and $90,000 for retirees age 55 through 64 and most likely will benefit from that new provision of law. However, none of these reimbursements will find their way into premiums for retirees until at least 2012. The County of Orange in October 2009 implemented a rate holiday that was negotiated with employee unions for their self funded plan for a 6 month period. As a result employees and the County paid nothing for coverage for a 6 month period and drew down reserves by $18 million. Retirees who are separately rated from actives and share the reserves of the self funded plan were not provided a rate holiday and paid 7.5 million of premiums during the employee rate holiday.

The County of Orange has adopted 18% rate increases for 2011 for employees and 25% increases to retirees. However, because the trust fund that contributes to the costs of retiree coverage is approximately a fixed $10 per month per year of service, actual increases for retirees will approximate 30 – 50% with two party coverage costing over $20,000 per year. The County also increased retiree rates by 2% to pay for coverage of dependents through age 26 from the previous provision of age 23 with full time student status. Currently the $300, $500 deductible plan has 1 enrollment in family status out of over 1,800 enrollees. The 2% additional premium is applied against over $25,000,000 in revenues. Most retirees with Medicare and 1 dependent will see annual increases of about $2,400 and pre-65 retirees will see increases of twice that amount.

Further, many County of Orange retirees do not qualify for Medicare. County employees were exempted from the extension of Medicare to public employees if they were hired before April 1, 1986. So for many retirees, little choice exists as alternative plans are not available to them. No Medicare Risk plan is currently available to retirees with just Medicare Part B coverage. Currently half of all County of Orange retirees do not have any County health plan and are not eligible to enroll. Of the 5,000 insured retirees, 1,600 had disabilities at the time they retired and they have pre-existing conditions that make coverage in the private market particularly difficult and expensive.

Public sector retirees need the protections of outside review and access to the benefits of national health care as every year retirees are driven out of coverage by costs they simply cannot afford.