Patient Protection and Affordable Care Act

Health Care Reform

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(Note that this presentation is merely a very broad overview of only some of the more important provisions of the health care reform law that affect employers. This presentation should not be viewed as legal advice for any particular situation.)

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Introduction

Introduction

Health Care Reform which was passed on March 23rd, 2010 was designed to expand health coverage by:

- Developing a new marketplace for purchasing insurance
- Mandating individuals to enroll in health coverage
- Expanding eligibility for Medicaid
- Subsidizing low and middle income enrollees in the new marketplace
- Imposing fines on employers who do not offer coverage, or offer coverage that is unaffordable

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2014 Healthcare and Benefits Considerations

- **Unprecedented change ahead**
- **Confusion levels and costs rising**
- **Employee expectations evolving**
- **Benefit concerns are at an all-time high**

- **Crucial year for employers**
  - *** Delivery of benefits**
  - *** Communication of benefits**

✓*26% of US Employers say they understand ACA*

✓ *75% of Workers expect education from their Employer on the ACA*

✓ *But only; 13% of US Employers believe the ACA is an issue*

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Introduction
Government Regulation of Health Care Is Not New

Presidents Truman & Eisenhower

- Expansion of Hospitals and Insurance
- Expansion of Research & Pharmaceutical Oversight

Presidents Kennedy & Johnson

- Medicaid and Medicare

Presidents Nixon & Ford

- Cancer Research
- HMO Act

President Carter

- Cost Control Using DRG (diagnosis related groups)

President Reagan

- Catastrophic Coverage and COBRA

Introduction
Government Regulation of Health Care Is Not New

<u>President Bush (GHW)</u>
- Physician Payment Reform
- October 1992 – CDC Changed to Include Prevention
- Since 1940's CDC only looked at Infectious Disease/Now, Since 1980 CDC is Focused on Disease and Prevention

<u>President Clinton</u>
- Children's Health Insurance
- HIPAA

<u>President Bush (GW)</u>
- Medicare Part D

<u>President Obama</u>
- Mandatory Insurance and Accountability in Prevention, Treatment and Coordination

Health Care Reform Introduction

- Health Care Reform affects everyone, but today our focus will be on group health benefit plans offered by employers by discussing:
  - Characteristics of the new marketplace
  - Overview of the individual mandate
  - Review of the employer mandate, the effect of the delay
  - Special considerations
  - Next Steps

Individual Mandate

- **Individual mandate to obtain health coverage:** Effective as of January 1, 2014, most individuals have to maintain a minimum-level of health insurance coverage or pay a penalty
- **Minimum essential coverage includes:**
  - Medicare, Medicaid, TRICARE
  - Insurance purchased through an exchange, on the individual market
  - Employer-sponsored coverage
- **Penalties for failure to obtain coverage:**
  - In 2014: greater of $95 or 1.0% of income
  - In 2015: greater of $325 or 2.0% of income
  - In 2016: greater of $695 or 2.5% of income (indexed after 2016)
  - Dollar amount penalty is assessed against each individual in the household without coverage, but is capped at three times the per person amount (even if more than three individuals in the household do not have health coverage)
  - Assessed penalty for individuals under age 18 is half the individual rate

State Exchanges

- January 1, 2014: State health **e**xchanges became operational for individuals and small employers of 100 or fewer employees
  - – Small Business Health Options Program – SHOP
    - Small employer tax credit available if use SHOP
  - – Prior to 2016, States may limit the exchanges to employers with less than 50 employees
  - – Beginning 2017, States may open the exchanges to all employers
- States that failed to open an exchange participate in the Federal government exchange
- Open enrollment for the exchanges began October 1, 2013

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State Exchange Notice

- <u>All employers must notify new hires of the following within **14 days** of date of hire</u>:
  - The employee's right to purchase health insurance coverage through the exchange, the services provided by the exchange and how to contact the exchange;
  - The employee's possible eligibility for government subsidies; and
  - The employee's possible loss of an employer subsidy, if any, (in the form of a tax-free contribution to the employer-provided health coverage) if health insurance coverage is purchased through the exchange
  - Model notice language available at http://www.dol.gov/ebsa/healthreform/regulations/coverageoptionsnotice.html
  - Employers may distribute only Part A of the model notice
- No specific penalty for failure to provide such notice but there are risks

2014 Provisions - Exchange Plans

Subsidy Details:

✓ Eligible individuals will pay between **2% - 9.5%** of income for coverage in the marketplace/exchange

- ❑ **individuals and families who do not have access to affordable employer provided healthcare**
- ❑ **specific subsidy based upon income level v. federal poverty level when health care is not considered affordable**
- ❑ **affordability is based upon the cost of individual coverage regardless of family status**
- ❑ **If an employee is offered affordable coverage that meets the "minimum value" requirements then the person (and any related dependents of the person eligible for coverage under the employer plan) generally is not eligible for a premium subsidy**
- ❑ **subsidy paid from the Government to the carrier on behalf of the individual or as a tax credit to the individual on his or her Federal income tax return**
- ❑ **if an individual receives an inappropriate subsidy there will be tax consequences**

Subsidy Example:A1

✓ Joe Employee (age 34), Spouse & 2 children – Family of four.

- ❑ **$25,000 AGI; spouse is $20,000 ($45,000 income = 188% of the FPL)**
- ❑ **ESTIMATED cost of family coverage on the exchange/marketplace = $11,064**
- ❑ **ESTIMATED maximum that family would have to pay for coverage = 5.77%/AGI**
- ❑ **Subsidy amount = $8,468.00 / Family payment = $2,596.00**

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Slide 11

A1 This example should be updated to include actual (as opposed to estimated) figures.
Author, 1/22/2014

Employer Mandate

- Law does not require employers to offer health coverage to their employees
- Large employers that do not offer affordable coverage that has a required minimum value to all full-time employees (and their children under age 26) **may** be subject to a penalty
- The employer mandate and related penalties were originally effective January 1, 2014, but have been delayed until **2015 for employers with 100 or more full-time employees. Penalties for employers with 51-99 employees will have been delayed until 2016.**

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Employer Mandate

- For purposes of the penalty in 2015, a *large employer* is an employer who has 100 or more full-time employees or full-time equivalents for preceding year:
  - Full-time employees: those that work 30 or more hours a week calculated on a monthly basis
  - Full-time equivalents (total hours/120)
  - If workforce exceeded 100 FT employees for 180 days or fewer, and the excess employed during the 180 day period were seasonal workers, not a large employer*

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Employer Mandate

- In 2015, if at least 70% all full-time employees (and their children under age 26) are not offered "minimum essential" coverage and one full-time employee obtains Federally subsidized coverage on an exchange:
  - Penalty is equal to $2,000 multiplied by the number of full-time employees employed by the employer (minus the first 80*)
- In 2016 this requirement increases to 95%.

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Employer Mandate

- Penalties also apply if the health coverage offered is not affordable or pays for less than 60% of covered health care expenses
- IRS safe harbor – “affordable” if premium contribution for single coverage does not exceed:
  - 9.5% of employee’s W-2 wages
  - 9.5% of federal poverty limit
  - 9.5% of the computed monthly rate of pay

Employer Mandate

- If employer coverage is not affordable or does not provide minimum value, the penalty is equal to:
  - At least $3,000 multiplied by the number of full-time employees receiving assistance, BUT
  - Capped by the amount of the $2,000 penalty (i.e., $2,000 multiplied by total number of full-time workers, not counting the first 80*)

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Employer Mandate

- Common law employees****
- The penalty only applies with respect to full-time employees working 30 hours per week (or 130 hours per month), not full-time equivalents
- The law generally requires that the determination be made monthly
- Monthly approach impractical
- IRS released safe harbor to determine full-time employees

Employer Mandate

- Safe harbor for new employees:
  - Employee that is reasonably expected to work full-time (30 or more hours) must be offered coverage that takes effect as of the 91st day of the employee's employment
  - Must take a reasonable approach as to expectation of work hours

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Employer Mandate – Variable Hour

- **<u>Safe harbor for new variable and seasonal employees</u>**:
  - Apply an <u>initial measurement period</u> (IMP) of 3 to 12 months
  - IMP plus <u>administrative period</u> cannot extend beyond the last day of the month beginning on or after the employee's one-year anniversary (i.e. for a total of 13 months and a fraction of a month)
  - <u>Stability period</u> if determined to be full-time must be at least 6 consecutive months, not be shorter than the IMP and begin after the IMP
  - If determined to be part-time, stability period must be no longer than the length of the initial measurement period plus one month or, if less, the length of the remaining SMP plus administrative period for ongoing employees
  - Good faith application of seasonal employee
  - **Variable hour: it cannot be determined on employee's date of hire that the employee is reasonably expected to work at least 30 hours**

Summary
Employer Mandate – Delay 1/1/15 & 1/1/16

- PPACA Law does not require employers to offer health coverage to their employees………….

  However, employers with more than 100 employees will be subject to a penalty beginning in 2015 if they:

  - **Do NOT offer coverage to full-time employees (EEs working 30 hours per week and their children under age 26* – Spouse NA)**
  - **Offer coverage that is NOT affordable (9.5% Wages; Safe Harbors)**
  - **Offer coverage that DOES NOT provide minimum value (> = to 60% Value)**

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Employer Mandate

Focus on the big picture; the details will fall into place

How will this affect the business:

- ✓ Costs
- ✓ Impact on Employees
- ✓ Compliance

Offer employer provided coverage:

- ✓ Employees Needs
- ✓ Potential fines & fees
- ✓ Compliance

How much can the business afford to pay:

- ✓ Insurance costs
- ✓ Potential fines & fees

Strategy for offering coverage:

- ✓ Traditional insurance
- ✓ Self insurance
- ✓ HMO, PPO, ACO, Captive Solutions

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Special Considerations - Effective Dates

- These still apply on the first day of the 2014 Plan Year :
  - Pre-existing condition exclusion
  - Waiting periods cannot exceed 90 days
  - No annual dollar limits or lifetime limits
  - Non-grandfathered fully-insured small group plans must provide essential health benefits package (e.g., provide essential health benefits coverage, limit cost-sharing, and provide at least bronze level coverage)
  - Modified community rating for individuals and small group (<50)
    - Age, where you live, size of family, tobacco

Special Considerations - Effective Dates

- Increase in wellness incentives from 20% to 30% (50% for smoking)
- Increase in small business tax credit to 50% (35% for tax exempt)
- No cost sharing in excess of limits on high deductible health plans (deductible limits apply only to fully insured small group plans; out-of-pocket maximum limits apply to all group health plans)
- Coverage for routine costs of clinical trails

Special Considerations - Related Employers

- Controlled Group/Affiliated Service Group
- Determination of “large” employer
- Application of Penalties:
  - Penalties applied separately to each related employer but the exclusion of the first thirty is prorated for purposes of the no coverage penalty

Special Considerations - Transition Relief

- Transition Relief For Non-calendar Year Plans
  - Non-calendar Year Plans- Provided certain criteria were met, a delayed effective date that matched the “plan year” applied
  - Determining Full-Time Employee Count- Employers can determine whether they had at least 100 full-time or full-time equivalent employees in the previous year by reference to a period of a least six consecutive months, instead of a full year***.
  - Covering Dependents to 26- The policy that employers offer coverage to their full-time employees’ dependents will not apply in 2015 provided the employer is taking steps to arrange for such coverage to begin in 2016***.

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Special Considerations - Nondiscrimination

- Originally, for plan years beginning on or after September 23, 2010, nondiscrimination requirements were to apply to fully insured plans
- Rules “similar” to self-insured
- Awaiting guidance for implementation
- Take actions now to prepare
  - Are employee contributions identical for each benefit level?
  - Do maximum benefits vary based on age, years of service, or compensation?
  - Are the same type of benefits available to HCIs and to non-HCIs?
  - Are waiting periods the same for all?

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Special Considerations - Assessments

- Reinsurance (2014-2016):
  - Reimbursement to fund large claims in the individual market
  - Assessments to all groups
  - $5.25 PMPM in 2014 / $3.50 PMPM in 2015 / $2.19 PMPM in 2016
- Health Insurer Premium Taxes (2014 & beyond):
  - Funding of ACA / approx 2%-3% of underwriting premium
  - $8 billion 2014 / $11.3 billion 2015 & 2016 / $13.9 billion 2017 / $14.3 billion 2018
- Comparative Effectiveness Research Fee (2012-2019)
  - Research fee $1.00 PMPY / $2.00 PMPY
- High-Cost Insurance Tax (2018 & beyond):
  - 40% tax on health plans for coverage in excess of $10,200 EE Only / $27,500 Family

Summary/Next Steps

- Communicate with employees
- Self-Funding
- EE Consumerism
- Wellness
- Continue to move forward with respect to employer mandate and the pay or play analysis
  – Determine potential impacts of penalties
  – Establish procedures for determining full-time employees
  – Identify whether plans are affordable and offer minimum coverage

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Questions

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State Exchanges

- Essential Health Benefits includes:
  - Ambulatory and ER services
  - Hospitalization
  - Maternity and newborn care
  - Mental health and substance use disorder services
  - Prescription drugs
  - Rehabilitative services
  - Laboratory services
  - Preventive, wellness services and chronic disease
  - Pediatric services, including oral and vision care

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Individual Mandate looks like this…….

Are you (Exceptions to Individual Mandate):

- Part of a religious group with an exception
- Incarcerated
- Undocumented resident
- American Indian
- low-income where you don't pay federal income taxes
- Someone who falls into a Medicaid expansion coverage hole (FL GAP)
- Some other hardship exemption

or

Do you have:

- Coverage through a job
- Coverage through an exchange/at least bronze individual coverage
- Medicaid, Medicare, CHIP
- Tricare or VA Care
- Student Health Plan
- Grandfathered plan

YES

No Penalty

NO

Penalty

- 2014—Greater of 1% family income or $95 adult/$285 family maximum
- 2015—Greater of 2% family income or $325 adult/$975 family maximum
- 2016—Greater of 2.5% family income or $695 adult/$2085 family maximum

Individuals without coverage for less than three months in a year will not face a Penalty.

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Employer Mandate

- If at least 95% of all full-time employees (and their children under age 26) are <u>not offered</u> coverage and one full-time employee obtains coverage on an exchange and receives Federal assistance:
  - Penalty is equal to $2,000 multiplied by the total number of full-time employees not taking into account the first 30 employees

Individual Mandate

- **Medicaid expansion:** Expands eligibility to individuals and families up to 133% of the federal poverty level (FPL)
  - If cost effective, states can opt to subsidize employer-sponsored premiums for this group
- **Premium and cost share assistance:**
  - Individuals and families with household income of 100 - 400% FPL may be eligible for sliding-scale assistance in the form of:
    - Tax credits to help pay premiums; and
    - Out-of-pocket reductions to help with cost sharing (e.g., co-payments and co-insurance)
    - Subsidies based on silver level plan

2013
133% FPL
Individual = $15,282
Family of 4 = $31,322

2013
400% FPL:
Individual= $45,960
Family of 4= $94,200

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2014 Federal Poverty Level Guidelines

2014 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATESAND THE DISTRICT OF COLUMBIA

For families/households with more than 8 persons, add $4,060 for each additional person.

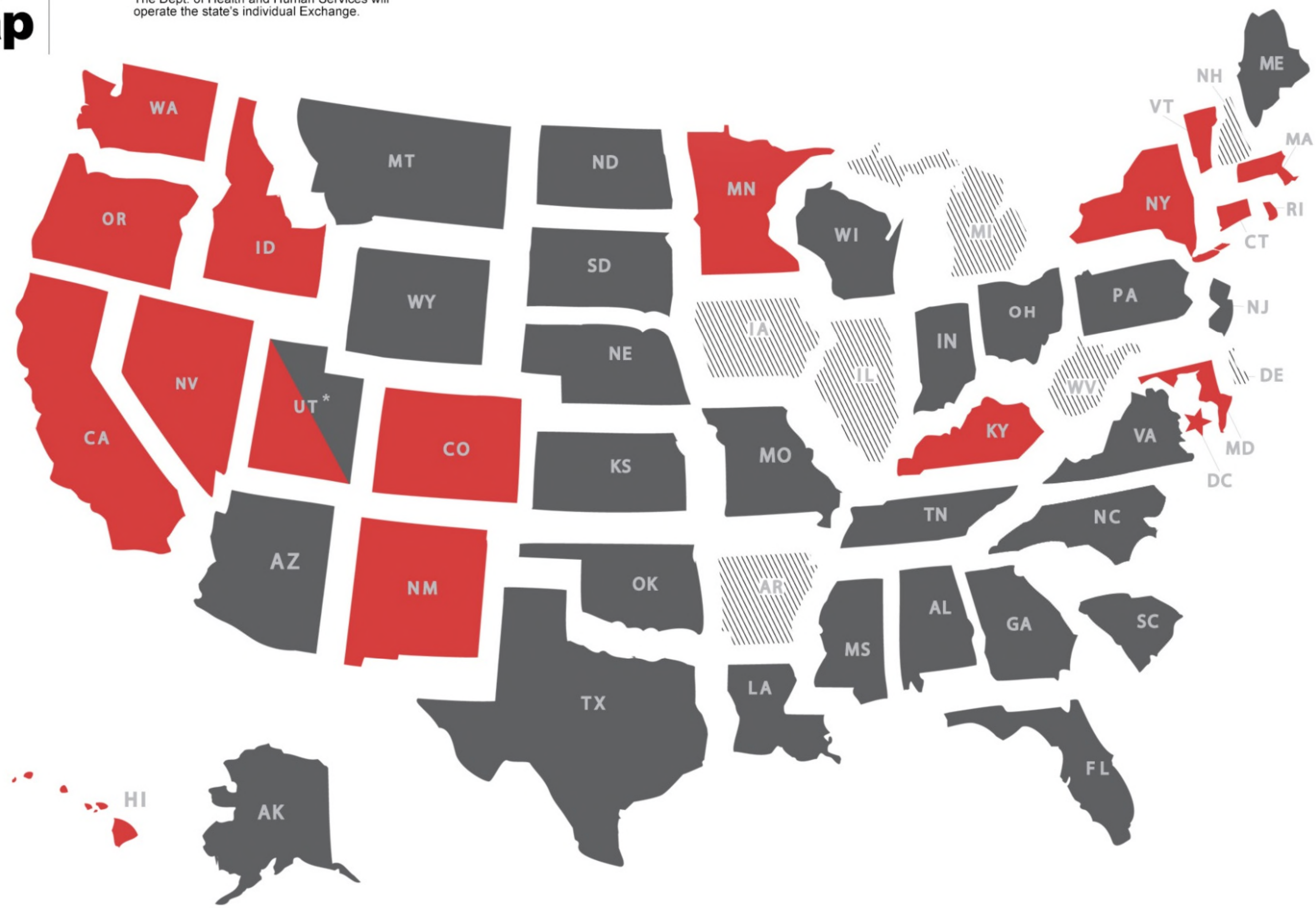
Persons in family/household	Poverty guideline
1	$11,670
2	15,730
3	19,790
4	23,850
5	27,910
6	31,970
7	36,030
8	40,090

State Health Insurance Exchange Map

Updated: 6/10/13

- Declared State-based Exchange
- Planning for Partnership Exchange
- Default to Federal Exchange

* Utah plans to operate its own SHOP Exchange. The Dept. of Health and Human Services will operate the state's individual Exchange.



Pay or Play Analysis
Economic Considerations

- Current insurance costs vs. penalty cost:
  - Number of employees/participants
  - Cost of current insurance coverage
  - Cost of providing "minimum essential coverage" that is affordable and provides minimum value
  - Cadillac Tax
- Cost of coverage under the Exchange

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Pay or Play Analysis
Noneconomic Considerations

- Employee Expectations
- Industry Standards
- Unions
- Types of coverage options available through the Exchange
- Demographics of workforce
- Increase in the penalties over time for employers and individuals