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ACA EXCHANGES – WHAT YOU NEED TO KNOW NOW!

August 22, 2013

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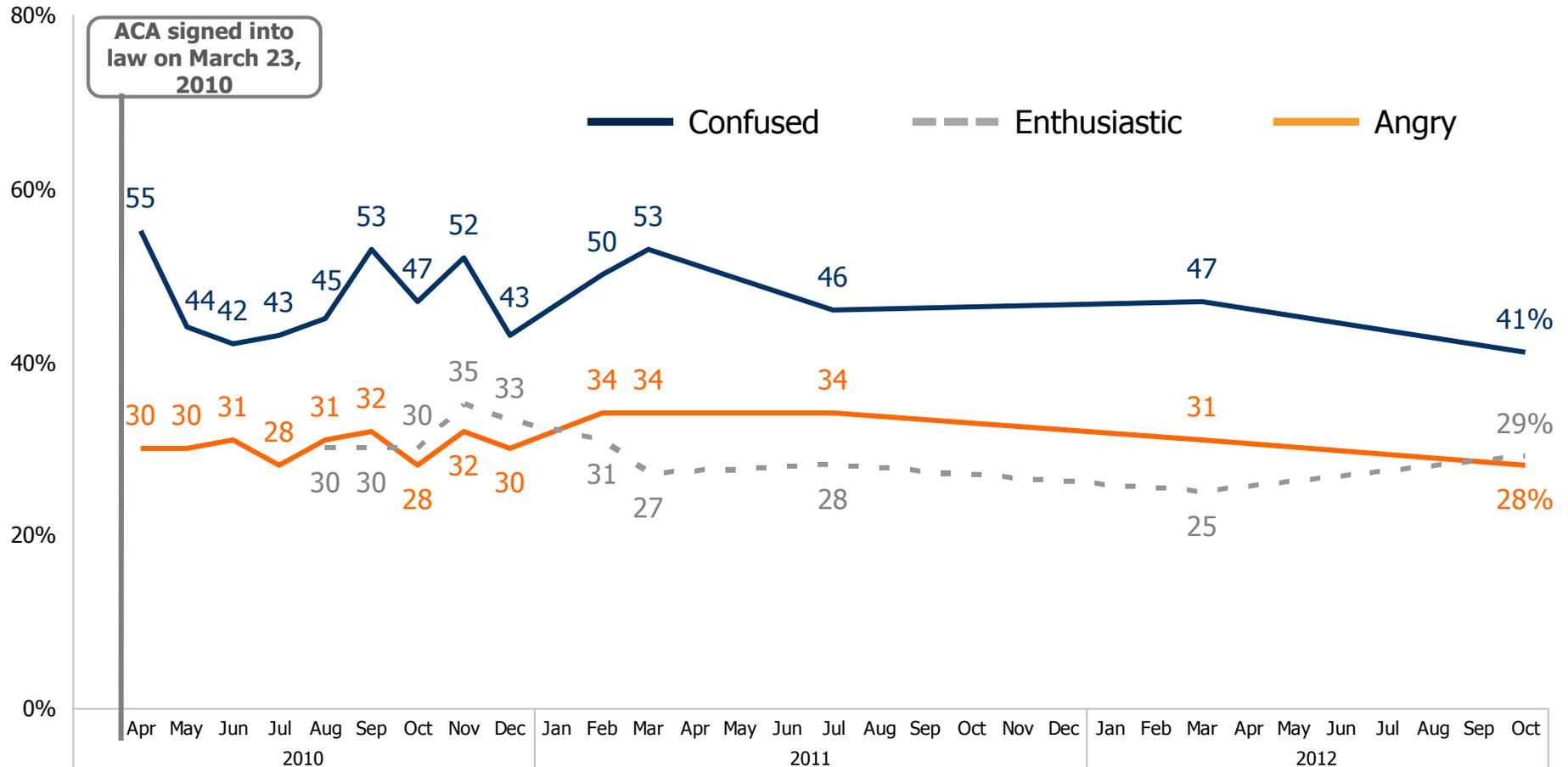
“No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.”

Bruce “Andy” Andrews
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Public Attitude Toward the ACA

Primarily – Confusion, with anger and enthusiasm in a tight race for 2nd...

Percent who say that each of the following describes their feelings about the health reform law:



Source: Kaiser Family Foundation *Health Tracking Polls*

Health Care Reform



Agenda

- ❖ Exchange overview – what are they, history, etc.
- ❖ Exchange characteristics
- ❖ SHOPs – Small Business Health Options Program
- ❖ SHOP Functions
- ❖ Employer Interaction with Exchanges
- ❖ Employer Penalties
- ❖ Exchange Application and Verification
- ❖ Private Exchanges?

Exchange Overview – What are they?

❖ **The “Marketplace” - State marketplaces where consumers may purchase health insurance**

❖ **Role in the new marketplace**

- Individual Mandate: to drive demand for insurance,
- Employer Mandate: to drive supply of insurance,
- Exchanges: to provide a marketplace and promote access,
- MEC + Cadillac tax + Nondiscrimination + EHB: product uniformity
- Information requirements – SBC, Notice of Exchange, etc.

Exchange Overview – What are they?

❖ 3 Basic Types

- ❖ **State-Based** - state government establishes an Exchange operated by the State, a quasi-governmental entity, or by a nonprofit.
- ❖ **“Partnership” Exchanges** - Initially the ACA did not provide this option. However, when the majority of states resisted establishing Exchanges, the federal government allowed “partnership” Exchanges where the state performs some functions and the federal government performs others
- ❖ **Federally Facilitated** - Where a state opts to not establish an Exchange, the ACA provides that the federal Department of Health and Human Services (“DHHS”) will operate the state’s Exchange. Twenty-six (26) states are currently defaulting to the federal Exchange. If a state later decides to run its own Exchange, it may do so

Exchange Characteristics

- ❖ **Exchanges require Qualified Health Plans (QHPs)**

- ❖ **Qualified Health Plan Characteristics – Essential Health Benefits (EHB)** - items and services that an insurance plan must cover within ten broad categories established by the ACA. Each state may provide a benchmark set of items and services to be considered EHB - which means that plans offered on that state's Exchange must cover those items and services.
 - Default – Largest Small Group Plan in the state – BCBS 320

- ❖ **Exchange Certification of QHP** - whether offered plans meet the requirements to be QHPs. A major component of a Qualified Health Plan is offering a package of Essential Health Benefits.

- ❖ **Small Business Health Options Program**

- ❖ **“Flip side” of the Exchanges:** Intended to help small business purchase insurance for their employees through the Exchanges.

- ❖ **Federal Definition:** “Small Business” is 100 or fewer employees
 - 2014-2015: FF SHOPS will accept state definition
 - Ala. Code 27-52-21(c): 2-50 employees
 - 2016: ACA definition - 100 employees

SHOP FUNCTIONS

- ❖ **Employee Choice model.** Facilitate the ability of small employers to offer a range of insurance plan options to their employees.
- ❖ SHOP functions:
 - Premium aggregation function - allows employers to easily pay for the different plans at once through the Exchange rather than paying for each plan separately.
 - Data Collection - FF SHOPS collect data on various health plans, facilitating insurance for employers with operations in multiple states,
 - Administrative and billing support - for employers whose employees are enrolled in multiple Exchange insurance plans
 - Summarized information to consumers.
- ❖ **Postponed Employee Choice function.** DHHS recently postponed the premium aggregation and the employee-choice rules for SHOPS from 2014 until 2015 with the goal of increasing participation.

ALABAMA STATE EXCHANGE

❖ **The Commission.**

- June, 2011 – Governor’s Alabama Health Insurance Exchange Study Commission.
- “a paramount priority of this administration.”
- Exchange establishment grant ~eight million dollars.

❖ **Recommendations.**

- Alabama establish a state exchange
- Allow any insurer to offer insurance
- Adopt a quasi-public authority to operate the Exchange
- The individual risk pool should remain separate from the small business risk pool
- Single State administrative entity to run both risk pools.

ALABAMA STATE EXCHANGE

- ❖ **Federal Exchange in Alabama:** November, 2012 - Alabama will not set up a state insurance Exchange and Alabama will not expand Medicare under the current structure. The Governor cited high costs.

- ❖ **Essential Health Benefits, Benchmark Plan:**
 - ACA defaults to adopting the largest small-group plan in the state as the EHB benchmark plan.
 - CMS designates the largest small-group plan in Alabama is the Blue Cross Blue Shield of Alabama 320 Plan PPO as of March 31, 2012.
 - Thus, plans offered in Alabama's federally-facilitated Exchange will be benchmarked against the items and services provided under the 320 Plan.

State Exchange Options

- ❖ **State Proposals - Secretary Sebelius recently noted willingness to work with states**
- ❖ **Unique state proposals**
 - ✓ Arkansas proposed using Medicaid dollars to buy private insurance
 - ✓ Arkansas would buy private insurance for those below 133% of FPL.
 - ✓ Broad conceptual agreement with HHS to support the Arkansas plan.
 - ✓ 1115 waiver concept recently released for comment;
- ✓ Tennessee created similar plan to use Medicaid dollars for private insurance, primarily because the Governor did not want Medicaid expansion plans to be better than Exchange plans. HHS would not support Tennessee's plan.
- ✓ Iowa also recently released a 1115 waiver concept for comment; similar to Arkansas, but with some differences.

Employer Reporting under the ACA

Separate Informational Return – Employers carry the administrative burden

- Employer name, address, & EIN
- Employee information – name, address, tax ID#
- The number of full-time employees
- Certification as to whether the employer offers MEC to employees
- What months coverage was offered
- The length of any waiting period
- Monthly premiums for the low-cost option offered by the employer

Penalty trigger – signing up on an Exchange

❖ Internal Revenue Code – “Right to Control Test”

- ❑ When an employee signs up on an Exchange and receives a credit or cost sharing reduction.
- ❑ Who are employees? The Right to Control test - No “magic number” of factors; factors merely assist in identifying facts used to evaluate extent of the right to control. 3 categories incorporates old 20-factor test.

1. Behavioral Control
2. Financial Control
3. Relationship of the Parties

Leased employee situations - The IRS could take the position that with sufficient control, the worker is an employee and thus the employer must offer insurance

Additional risk for misclassification problems

- ✓ **Missed employment taxes and**
- ✓ **Employer mandate penalties**

How will employers interact with Exchanges?

- ❖ Open enrollment in Exchanges is scheduled to begin in October 2013.
- ❖ Employees may apply for coverage through the Exchange.
- ❖ If an employee obtains coverage through the Exchange, it may impact the employer.

Employer Penalties

- ❖ Generally, employers with at least 50 full time employees may be liable for a penalty in two situations, if one or more of its full-time employees enroll for coverage in the Exchange and receive a premium subsidy or cost sharing reduction.

Employer Penalties (Cont.)

- ❖ **First**: The large employer fails to offer minimum essential coverage through its eligible employer sponsored plan to at least 95% of its full-time employees (and their dependents).
 - The penalty for a month is equal to $1/12$ of \$3,000 x the total number of full-time employees who received a premium subsidy or cost sharing reduction through the Exchange.

Employer Penalties (Cont.)

- ❖ **Second**: The large employer offers minimum essential coverage to its full-time employees (and their dependents), but the coverage was not affordable or did not provide minimum value.
 - The penalty for a month is equal to $1/12$ of \$3,000 x the total number of full-time employees who received a premium subsidy or cost sharing reduction through the Exchange.

Employer Penalties (Cont.)

- ❖ These penalty provisions were scheduled to become effective January 1, 2014, but in Notice 2013-45 the IRS delayed implementation until January 1, 2015.
- ❖ The Exchange must notify an employer that an employee has been determined eligible for advance payments of the premium tax credit or cost sharing reductions.

The notice must:

- Identify the employee.
- Indicate that the employee has been determined eligible for advance payments of the premium tax credit.
- Indicate that, if the employer has 50 or more full-time employees, the employer may be liable for the payment assessed under section 4980H of the Code.
- Notify the employer of the right to appeal the determination.

Employer Penalties (Cont.)

- ❖ HHS regulations further provide that the IRS will adopt methods to certify to the employer that one or more employees has enrolled for one or more months during a year in a QHP for which a premium tax credit or cost-sharing reduction is allowed or paid.

Exchange Applications and Verification

- ❖ When individuals apply for coverage on the Exchange, they will complete an application that includes questions about employer coverage that may be available to them.

A draft application can be reviewed at:

http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/AttachmentC_042913.pdf

- ❖ Appendix A to the application includes an “Employer Coverage Tool.” HHS encourages employers to make that information available to employees to assist them with the application process.

Exchange Applications and Verification (cont.)

- ❖ Employers are required to provide a notice to employees concerning the Exchange.
 - The notice must be provided to new employees at the time of hire, beginning October 1, 2013; for 2014, providing the notice within 14 days of the employee's start date is considered sufficient.
 - With respect to current employees before October 1, 2013, the notice must be provided no later than October 1, 2013.

Exchange Applications and Verification (cont.)

- ❖ A model notice can be found here:

<http://www.dol.gov/ebsa/healthreform/index.html>

- ❖ Employers have the option of combining the employer coverage tool with the Exchange notice. The draft notices include a section for the information from the employer coverage tool.

Exchange Applications and Verification (cont.)

- ❖ The verification process when an individual applies for coverage with the Exchange includes verification related to eligibility for qualifying coverage in an eligible employer-sponsored plan and verification related to enrollment in an eligible employer-sponsored plan.

Exchange Applications and Verification (cont.)

Generally:

- The Exchange will check its available databases to verify the applicant's information.
- If the Exchange finds incompatible information with that provided by the applicant, it will ask the applicant for additional information to resolve the inconsistency.
- If electronic data is not available to resolve the inconsistency, then the Exchange will select a statistically significant random sample of applications for which it only has the applicant's attestation and contact the employer to verify the information (after providing notice to the applicant).
- The Exchange will rely on the applicant's attestation about employer coverage in situations where the employer does not respond to the verification process and situations where the application is not part of the sample.

Exchange Applications and Verification (cont.)

- ❖ Some states implementing state-based Exchanges planned to rely on HHS to perform this verification, but HHS has indicated that it will not be able to perform this verification procedure for those states until 2015. Therefore, those states will not be required to follow the sampling procedure in 2014; they can rely on the attestations of the applicant concerning the employer coverage.
 - Negligent misrepresentations can result in a \$25,000 fine.
 - Knowing and willful violations can result in a \$250,000 fine.
 - Applicants receiving tax credits for which they are not eligible will have to pay them back when they file their tax returns.

Exchange Applications and Verification (cont.)

- ❖ Exchanges must also verify the income of applicants.
 - Data from tax filings, social security data, and current wage information available electronically will be used.
 - If data on the application cannot be verified using IRS and SSA data, then it is compared with wage information from employers provided by Equifax.
 - If Equifax data does not substantiate the information, the Exchange will request an explanation and documentation from the applicant.

Exchange Applications and Verification (cont.)

- ❖ For 2014 only, a state-based Exchange may elect to verify claimed income for only a statistically valid sample of applicants (instead of all applicants) in only one situation: where the applicant's projected income is more than 10% below IRS and SSA data, Equifax is unavailable, and the individual does not provide a reasonable explanation for the variance.
- ❖ The FFE, however, will verify 100%.

Private Exchanges

- ❖ Insurance carriers are not required to participate in public exchanges.
- ❖ Carriers could participate in both public and private exchanges.
- ❖ Federal subsidies are not available in private exchanges.
- ❖ Private exchanges could be sponsored by insurers, vendors, or associations.