

THE PATIENT PROTECTION & AFFORDABLE CARE ACT (PPACA) STANDS: NOW WHAT?

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Today's Agenda

- The Supreme Court Decision
- Other Litigation
- Employer Obligations – 2012 / 2013
- The Individual Mandate and Insurance Exchanges – 2014
- The “Play or Pay” Decision for Employers for 2014
- Employer Obligations – 2014 and Later
- Questions & Answers

The Supreme Court Decision

- The Individual Mandate Is Found Constitutional
 - Exceeds Congress' powers under Commerce Clause
 - Within Congress' powers to tax
- Medicaid Expansion Is Found Unconstitutional
 - Unconstitutional exercise of Congress' spending powers because coercive
 - Secretary of HHS can remedy by only withholding new money from States not participating in Medicaid Expansion
 - Thus, States given a choice

Other Litigation

- Whether religious employers must provide contraceptive coverage
- Whether tax on employers that do not meet the Large Employer mandate applies in a State that does not establish its own Exchange

Employer Obligations – 2012 / 2013

- Medical Loss Ratio Rebates
 - Rebates that are plan assets must be put in trust or distributed within 3 months of receipt
- Summary of Benefits and Coverage
 - Templates must be precisely reproduced
 - Distributed with a uniform glossary of terms
 - Electronic delivery rules
 - Specific language for continuation rights and claims appeal must be included
 - Must be provided in alternate languages to residents of certain counties
 - Does not apply to “excepted benefits” or retiree-only plans

Employer Obligations – 2012 / 2013

- Health FSA annual limit of \$2,500 on employee contributions
- Loss of deduction for Medicare Part D subsidy
- FICA Medicare Tax Rate Increase
 - Medicare tax increases from 1.45% to 2.35% on wages over \$250k for married (half if filing separately) or \$200k for single
 - Employers must withhold on wages over \$200k
- W-2 Reporting
 - Currently applies to traditional medical plans; employer contributions to HFSA's; EAPs, on-site clinics & wellness programs if there is a COBRA premium; hospital or illness indemnity coverage paid on a pre-tax basis or by the employer
- Notice of Upcoming State Insurance Exchanges
 - Information regarding availability of Exchange coverage, premium tax credits and cost-sharing subsidy must be provided to employees by March 1, 2013 and thereafter to new hires

2014 - The Individual Mandate

- US residents must have health coverage or pay a tax
- Individuals who are not subject to tax:
 - Cost of basic coverage >8% of their household income
 - Gross income below 1040 filing threshold
 - Members of an Indian tribe
 - Hardship exception (as determined by HHS)
- Tax equals greater of:
 - Percentage of household income in excess of standard deduction + personal exemption
 - 1% in 2014, 2% in 2015, 2.5% thereafter
 - Or, flat dollar amount per number of uncovered household members
 - \$95 in 2014, \$325 in 2015, \$695 in 2016
 - capped at 3x; children charged at ½
- Tax capped at national average premium for bronze level Exchange coverage

2014 - Where Employees Can Get Coverage

- Employer-sponsored coverage
- Insurance Exchanges
- Private Insurance Market
- Medicare
- Medicaid

2014 - Insurance Exchanges

- Types of Exchanges
 - State-run Exchange
 - Federally Facilitated Exchange
 - Hybrid Exchange
 - Regional or Interstate Exchange
- Types of Coverage
 - Individual Coverage Exchange
 - Small Employer (SHOP) Exchange
 - Generally limited to employers with no more than 100 employees
 - For 2014 and 2015, states can lower limit to 50 employees
 - Beginning in 2017, states can expand to larger employers

2014 - Insurance Exchanges (cont.)

Exchanges Must Offer “Qualified Health Plans”

Coverage must meet certain requirements:

- QHPs will be offered in 5 categories –
 - platinum 90% (actuarial value)
 - gold 80% (actuarial value)
 - silver 70% (actuarial value)
 - bronze 60% (actuarial value)
 - catastrophic (for persons < 30 years old, or exempt from individual mandate tax)
- Essential Health Benefits – determined based on “benchmark” plan chosen by Exchange
- Cost-sharing max the same as HDHP
(for 2012 -- \$6,050 individual, \$12,100 multiperson)
- Deductible max of \$2,000 individual, \$4,000 multiperson
(adjusted for inflation)

2014 - Insurance Exchanges (cont.)

Premium Tax Credits and Cost-Sharing Subsidies

- Premium tax credits help pay premiums for Exchange coverage and are graduated based on income
- Individuals with household income of $\geq 100\%$ FPL, but $\leq 400\%$ FPL are eligible
- Not eligible if
 - enrolled in employer-sponsored plan, or
 - eligible for employer-sponsored plan that meets affordability and minimum value requirements
- Cost-sharing subsidies reduce out-of-pocket maximum, deductibles, co-insurance and copays for silver level coverage & vary based on income

2014 - Medicaid Expansion

- States can elect to expand Medicaid coverage to individuals under age 65 with income < 133% FPL
- Federal government will initially pay 100% of the cost of coverage for expanded population, ramping down to 90% in 2020
- Some states may choose not to take expansion because of the additional cost the state would incur
- In states that don't take expansion, there will be individuals who are not eligible for either Medicaid or premium tax credits

2014 – Employer Requirements

- Employer Mandate – “Play or Pay”
- 90-day Limit on Waiting Periods
- Small Business Tax Credits – Second Phase (deduction of up to 50% of premiums)

The “Play or Pay” Mandate

- Effective January 1, 2014
- Applies to “Large Employers” (controlled group basis analysis)
- Penalty Tax (Assessable Payment) applies if:
 - Minimum Essential Coverage under Group Health Plan not offered to ALL Full-time employees (and dependents); or
 - Such coverage is offered to ALL Full-time employees (and dependents), but either is not “affordable” or does not provide “minimum value”

Determining Large Employers

- Apply Controlled Group rules under Internal Revenue Code § 414(b), (c), (m) and (o)
- Employed, on average, 50+ Full-time employees on business days in the prior calendar year
- Count all Full-time employees (30+ hours per week) then add FTEs (divide aggregate hours for Non-full-time employees for the month by 120)
- FTE concept only applies for determining “Large Employer”; do not have to offer coverage to Non-full-time employees; do not use FTE concept for calculating penalties

Determining Large Employers (cont.)

- Exemption if exceed 50 Full-time employees for 120 days or less during the year
- Exemption if the employees in excess of 50 during such 120-day period were Seasonal Workers
- Includes “Predecessor Employers”
- Special rules for a “New” employer

Penalty for No Coverage

- If “No Coverage” for ANY Full-time employee, assessable payment is \$2,000/year for EACH Full-time employee (excluding the first 30), calculated on a monthly basis
- Tax only applies if one or more Full-time employees enrolls in Exchange coverage and receives a premium tax credit

Affordability / Minimum Value Penalty

- If an Employer provides coverage, it must be “affordable” & provide “minimum value”
- “Affordable” – employee’s share of cost of coverage $\leq 9.5\%$ of employee’s household income (proposed safe harbor of self-only coverage and W-2, Box 1 wages)
- “Minimum Value” -- plan must pay at least 60% of actuarially projected cost of covered services (safe harbors being developed)
- If employer provides coverage, but fails to satisfy affordability and minimum value requirements, penalty of:
 - \$3,000/year for each Full-time employee who enrolls in Exchange coverage & gets a premium tax credit (calculated on a monthly basis)
 - Monthly tax amount capped at “No coverage” monthly tax

“Play or Pay” Considerations

- Interplay with 90-day limit on waiting period
- For employers that continue to offer health coverage, what plan design changes are needed to:
 - Meet minimum requirements
 - Encourage certain employees to choose Exchange coverage
- Whether to opt out of employer-purchased group health coverage, and move to a defined contribution model
 - Pay “subsidy” to employees to defray the cost of individual coverage:
 - On an Exchange/Individual Market
 - On private exchange

Additional Employer Considerations

- Workforce demographics
- Current plan design / cost of changes
- Competition to recruit and maintain talent
- Possibility that “Play or Pay” and Affordability/ Minimum Value penalties may not apply in states that do not establish a state Exchange

Employer Obligations - 2014

- Automatic Enrollment for Employers with > 200 FTEs (per IRS Notice 2012-17, not for 2014, will wait for regs)
- 90-Day Limit on Waiting Periods
(plan years beg. January 1, 2014 or later)
- Wellness Program Rewards
(plan year beg. January 1, 2014 or later)
 - Maximum reward increases to 30%; agencies can increase to 50%
 - Does not apply to grandfathered plans or retiree-only plans*
- Cost-Sharing Limitations (plan year beg. January 1, 2014 or later)
 - Same cost-sharing and deductible maximums as Exchange coverage

Employer Obligations – after 2014

- Fully-Insured Non-Discrimination Rule (when final regulations are issued)
 - Currently no discrimination in favor of HCIs in eligibility or benefits permitted in self-insured health coverage
 - Extended to fully-insured coverage when final regs issued
 - HCI is 5 highest paid officers, highest 25% of all employees by compensation, shareholder owning > 10% in value of stock (including by attribution)
 - Penalty is different:
 - for self-insured it is loss of tax advantage for employee
 - for fully-insured it is \$100/day imposed on employer
 - Does not apply to grandfathered coverage, “excepted benefits,” or retiree-only plans

Employer Obligations – after 2014

- The Cadillac-Plan Tax (2018)
 - 40% excise tax on cost of coverage in excess of thresholds
 - \$10,200 individual, \$27,500 multiperson, adjusted for medical inflation
 - Higher thresholds for high-risk professions & demographics (age & gender)
 - Does not apply to separate vision, dental, accident, disability, or long-term care coverage

Q&A