

HEALTH CARE REFORM:

Countdown to the Supreme Court Decision

Presented by

Kirsten Vignec, Shareholder

Hill Ward Henderson



HILL WARD HENDERSON
ATTORNEYS AT LAW

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Introduction

- On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Affordability Reconciliation Act of 2010 were signed into law and have become known simply as “Health Care Reform”
- The implementation of Health Care Reform takes place over nine years beginning in 2010 and ending in 2018



Introduction

- Health Care Reform impacts everyone, but today we will be focusing on the impact on employee health benefit plans with respect to employers, employees and individuals
 - Health Care Reform Provisions
 - Supreme Court Decision
 - Possible Supreme Court Decisions and the Effect



2010 Requirements

- Small business tax credit available to employers
- Early retiree reinsurance
- Recognition of taxation of retiree drug subsidy
- Nursing mothers
- State high risk pools
- Automatic enrollment (delayed)



2011 Requirements

- Adult child coverage through age 26
- No pre-existing condition for individuals under 19
- Reasonable annual limits (limited waivers available)
- No lifetime caps
- OTC changes for FSA plans
- Simple cafeteria plan
- No rescissions
- 80% of premiums used for claims



2011 Requirements

- Changes to the appeals process (partially delayed)
- First dollar coverage for preventive care
- Patient protections regarding primary care physicians, pediatricians, OB/GYN services and emergency services
- Adoption assistance limits increased
- Nondiscrimination requirements applied to fully insured plans (enforcement delayed)



2012 Requirements

- Report health care quality and wellness initiatives to Health and Human Services (HHS)
- Form W-2 Reporting of health care costs (delayed from 2011)
- Summary of Benefits and Coverage (SBC)/Uniform Glossary and 60-day advance notice of changes to the SBC
- CER fees of \$2 per average number of enrollees/lives assessed (\$1 for policy/plan years ending during fiscal year 2013)



2012 Requirements

W-2 Reporting

- As part of the Health Care Reform, the cost of employer-sponsored health coverage must be reported on Form W-2 for the 2012 calendar year (reported in January 2013)
- The cost is generally based on the COBRA rate
- Transitional relief for 2012 for certain small employers who file fewer than 250 Forms W-2 in 2011
- Special rules for terminated employees



2012 Requirements

W-2 Reporting

- Certain health care costs are exempt from these new reporting requirements:
 - Dental and/or vision coverage that is not integrated into a group health plan
 - Most health FSAs—required to report employer contributions to a health FSA
 - Contributions to a health savings account (HSA)
 - Health reimbursement arrangement (HRA)
 - Independent hospital indemnity or fixed indemnity coverage paid for on an after tax basis by the employee
 - EAPs, on-site clinics and wellness programs that do not charge a COBRA premium



2012 Requirements

Summary of Benefits and Coverage (SBC)

- SBCs must be provided to current participants on the first day of the first open enrollment period that begins on or after September 23, 2012
- The SBC requirements apply to new enrollees on the first day of the first plan year that begins on or after September 23, 2012
- For group and individual health insurance coverage, the new requirements apply to health insurance issuers beginning on September 23, 2012



2012 Requirements

Summary of Benefits and Coverage (SBC)

- An SBC must be provided with respect to each benefit package for which the participant or beneficiary is eligible, except upon renewal, a new SBC is required only with respect to the benefit package in which the participant or beneficiary is enrolled
- SBCs are not required for certain excepted benefits (i.e., stand-alone dental or vision plans or a health FSA)



2012 Requirements

Summary of Benefits and Coverage (SBC)

- Generally the SBC must be provided with any written/electronic enrollment materials
 - Special enrollment – 90 days after enrollment
 - Automatic reenrollment – 30 days before
 - SBC may be provided in hard copy or electronically so long as certain conditions are met
- 60-day notice requirement of material modifications
 - Notice is required when material changes are made to the SBC at times other than renewal



2012 Requirements

Summary of Benefits and Coverage (SBC)

- In general, the SBC must contain the following content:
 - Uniform definitions of standard insurance and medical terms
 - Description of coverage
 - Exceptions, reductions and limitations of coverage
 - Cost sharing, including deductible, coinsurance and copayment obligations
 - Renewability and continuation of coverage



2012 Requirements

Summary of Benefits and Coverage (SBC)

- In general, the SBC must contain the following content (con't):
 - Coverage examples (additional guidance to be issued)
 - Statement that the SBC is only a summary and that the plan document or insurance contract must be consulted for full coverage terms and provisions
 - Separate contact information for questions



2012 Requirements

Summary of Benefits and Coverage (SBC)

- The SBC must be presented in a uniform format:
 - use terminology understandable by the average enrollee
 - not exceed four double sided pages in length and
 - not include print smaller than 12-point font
- The SBC must contain culturally and linguistically appropriate language



2012 Requirements

CER Fees

- Comparative Effectiveness Research fees (“CER fees”) are required to fund the Patient-Centered Outcomes Research Institute, the purpose of which is to advance comparative effectiveness research and help patients, clinicians, purchasers and policy-makers make informed health decisions
- Employers required to pay for the CER fees associated with self insured plans
- Insurers pay the CER fees associated with fully insured plans



2013 Requirements

- Additional 0.9% Medicare payroll tax on wages in excess of \$250,000 for joint return filers (\$200,000 for others)
- 3.8% Medicare contribution tax on unearned income for joint filers with modified AGI in excess of \$250,000, \$200,000 for singles, \$120,000 for married filing separately
- Health flexible spending account limited to \$2,500, indexed
- Employer notice provided to employees beginning on March 1, 2013 regarding exchanges



2013 Requirements

Medicare Payroll Tax

- Employers will be responsible for collecting and remitting the additional 0.9% tax on wages that exceed \$200,000 without regards to the wages of a married employee's spouse
- If the amount withheld from wages is insufficient, the individual employee will be required to report
- the additional 0.9% tax applies to self-employment income that exceeds the dollar amounts above (reduced, though, by any wages subject to FICA tax)



2013 Requirements

Medicare Contribution Tax

- The tax is equal to 3.8% of the lesser of:
 - net investment income (generally, net income from interest, dividends, annuities, royalties and rents, and capital gains, as well as income from a business that is considered a passive activity or a business that trades financial instruments or commodities), or
 - modified adjusted gross income (basically, adjusted gross income increased by any foreign earned income exclusion) that exceeds \$200,000 (\$250,000 if married filing a joint federal income tax return, \$125,000 if married filing a separate return)



2014 Requirements

- Elimination of pre-existing condition exclusions for all participants
- No annual dollar limits
- Waiting periods cannot exceed 90 days
- No cost sharing in excess of the limits on high deductible health plans
- Limit on wellness incentives is increased from 20% to 30%
- Cover routine costs of patients who are part of clinical trials



2014 Requirements

- Establishment of state health insurance exchanges for individuals and small businesses with 100 or less employees
- Individual mandate requiring all individuals to have health insurance
- Employer mandate regarding coverage



2014 Requirements State Exchanges

- January 1, 2014: State health exchanges are required to be established
- Exchanges will have a variety of insurance options to satisfy the new mandates
- If States fail to open an exchange, federal government has the option to step in and establish an exchange



2014 Requirements

Individual Mandate

- Beginning in 2014, to avoid penalty, individuals will be required to have “minimum essential coverage:”
 - Subsidies for those up to 400% of Federal Poverty Level, or if employer coverage is not “affordable”
 - Medicaid will be expanded
- For 2014, penalty is the greater of \$95/uninsured adult or 1% of household income over filing threshold
- For 2015, penalty is the greater of \$325 or 2%
- For 2016 and after, penalty increases to the greater of \$695 or 2.5%



2014 Requirements Employer Mandate

- Law does not require employers to offer health coverage to their employees
- However, large employers will be subject to a penalty beginning in 2014 if they:
 - Do NOT offer coverage
 - Offer coverage that is NOT affordable, or
 - Offer coverage that DOES NOT meet the minimum essential standards



2014 Requirements Employer Mandate

- For purposes of the penalty, a *large employer* is an employer who has 50 or more full-time employees or full-time equivalents
 - Full-time employees: those that work 30 or more hours a week calculated on a monthly basis
 - Full-time equivalents are also counted in the determination of whether an employer is a large employer for purposes of the penalty
 - The penalty only applies with respect to full-time employees



2014 Requirements Employer Mandate

- **Employers must report annually:**
 - Whether they offer health coverage to their full-time employees and dependents
 - The total number and names of full-time employees receiving health coverage
 - The length of any waiting period;
 - Other information about the cost of the coverage



2014 Requirements

Employer “Pay or Play” Analysis

- Financial Implications
- Employee Expectations
- Industry Standards
- Unions
- Types of coverage options available through the exchange
- Demographics of workforce



2018 Requirements

- Cadillac plan tax becomes effective
 - 40% tax on “excess health coverage”
 - Tax imposed on issuers of fully-insured plans and on plan administrators with respect to self-funded plans
 - \$10,200 for single and \$27,500 for family
 - Retirees and high risk professions: \$11,850 for single and \$30,950 for families
 - Adjusted for inflation



Supreme Court Decision

- The Supreme Court heard oral arguments in March regarding the constitutionality of Health Care Reform
- A ruling is expected from the Supreme Court in June 2012
- How did we get here? Five federal district courts ruled on PPACA on the merits, three sided with the law's constitutionality and two sided against it. There have been two federal appeals court rulings split one to one – a third federal appeals court refused to hear the case as it determined that the case was premature



Supreme Court Decision

- The arguments presented to the Supreme Court addressed four issues:
 - Whether the challenges are barred prior to the individual mandate provisions becoming effective
 - Constitutionality of the “individual mandate” under the Commerce Clause
 - If the individual mandate is ruled unconstitutional, is all or a portion of the law void or is the individual mandate “severable”
 - Can states be forced to expand their Medicaid costs or risk losing Federal funding



Possible Supreme Court Decisions and the Effect

- No decision because the individual mandate is not yet effective
 - If this were to occur, the uncertainty will continue until 2014
 - Employers, Individuals and Government will be required to comply with current and future Health Care Reform requirements
- Individual mandate is constitutional
 - The legal challenges end but the political battles likely to continue



Possible Supreme Court Decisions and the Effect

- Individual mandate is unconstitutional, but is severable
 - If this were to occur the law remains in place without the individual mandate
 - Employers would have to move forward and comply with the requirements of Health Care Reform
 - Congress would be left to determine whether to overturn or keep the remainder of the law
 - Without the individual mandate, additional concerns arise with respect to the remaining provisions of the law



Possible Supreme Court Decisions and the Effect

- **Individual mandate is unconstitutional and not severable**
 - If this occurs then the entire law would be struck down
 - Employers (and insurance companies) would need to decide whether to keep the current provisions and reforms in the plans
- **Individual mandate is unconstitutional and partially severable**
 - Portions of the law considered related to the individual mandate would be struck down
 - Ongoing decisions for the employers (and insurance companies) would depend on the portions that are considered unconstitutional



Summary

- The status of Health Care Reform remains in question
- Look for additional information on your 2012 Form W-2
- Prepare for reduction on health FSA amounts
- Potential increase in Medicare payroll taxes
- Encourage an open dialogue with your employer as 2014 approaches



Q & A



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