

The Patient Protection and Affordable Care Act: Health Care Reform Update

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Today's Topics:

- **Update on What You Should Already Be Doing**
- **Recent Changes, Updates and Delays**
 - **Medical Loss Ratios**
 - **W-2s**
 - **Summary of Benefits and Coverage**
 - **CER Fee**
 - **Taxes**
 - **FSAs**
- **2014 – How to Prepare?**
 - **Exchanges**
 - **Employer Mandate**
 - **Individual Mandate**



What You Should Already Be Doing: Tax and Patient Protections

- Elimination of the preexisting condition exclusion for children under age 19
- Restrictions on rescission
- Dependent coverage for children under age 26
- First-dollar coverage required for certain preventive care
- Tax on distributions from a health savings account is increased from 10% to 20%
- Fee on pharmaceutical manufacturers
 - \$2.5 billion in 2011, increases each year up to \$4.1 billion in 2018, then \$2.8 billion after
- Claims procedures updated



What You Should Already Be Doing: OTC Drugs

- No reimbursement for medications, including a health FSA or an HRA, unless the medicine
 - Requires a prescription,
 - Is available without a prescription (i.e., OTC) but the individual otherwise obtains a prescription, or
 - Is insulin
- Health FSA and HRA debit cards may be used to purchase OTC drugs as long as certain procedures are followed
- Equipment, medical supplies (e.g., bandages), and devices are not subject to the prescription requirements



What You Should Already Be Doing: Lifetime & Annual Limits

- **No lifetime limits for “essential health benefits”**
 - **Proposed definition of EHB 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
- **Proposed rule says EHBs must be equal in scope to a state-specific chosen benchmark plan**



What You Should Already Be Doing: Lifetime & Annual Limits

- Reasonable annual limits related to essential health benefits:
 - \$2.0 million for plan or policy years beginning on or after Sept. 23, 2012, but before Jan. 1, 2014
 - 2014 – annual limits eliminated
- Waiver program closed September 22, 2011
- HRAs: OK if integrated with other coverage
 - Stand-alone HRAs that existed before 9/23/10 automatic waiver until 2014
 - HRAs with no carryover OK (amount available must be less 500% of value of coverage)
 - Retiree medical HRA OK



What You Should Already Be Doing: Medical Loss Ratios

- Insured plans must spend a certain percentage of premium dollars on clinical services and quality activities or else issue rebates to policyholders
- 85% medical loss ratio for large group (more than 50 employees); 80% for small group and individuals
- HDHPs have fewer claims in a year and the typical claim amounts are higher. This lower-frequency / higher-average-cost scenario creates more variability
- How to divide the rebate between the employer and participants



What You Should Already Be Doing For 2013: W-2s

- Beginning with 2012 W-2's (furnished starting in 2013), large employers must disclose cost of employer-provided health benefits
- Employers required to file fewer than 250 W-2s for the preceding calendar year are exempt until at least 2014 and until further guidance issued
 - Aggregation not required under transition relief
- Penalty is \$200 per Form W-2, up to \$3 million
- Coverage includes any insured or self-insured group health plan, including employer-funded health FSAs



What You Should Already Be Doing For 2013: W-2s

- **Reportable cost equals the sum of employer and employee contributions, whether pre or post tax, for all individuals covered as of December 31**
 - **Include costs of dependents and domestic partners**
 - **Don't include discriminatory self-insured coverage or coverage of 2% shareholder of an S corporation**
 - **3 methods for calculating cost**
 - **COBRA Applicable Premium (less 2%)**
 - **For insurance, premium charged**
 - **Modified COBRA premium for subsidized premiums**
 - **Must account for changes in cost or coverage**
 - **For FSA, don't include employee salary reduction**
 - **EAP, wellness program and on-site clinic not reported if no premium charged**



What You Should Be Doing Now: Summary of Benefits and Coverage

- 4 pages (actually 8) plus uniform glossary
- SBC due on the first day of the first open enrollment period that begins on or after September 23, 2012
 - For calendar year plans, SBC is due on January 1, 2013 for those who enroll other than through an open enrollment period (e.g., newly eligible and special enrollees)
- SBCs can be distributed electronically as part of online open enrollment (or through DOL safe harbor for electronic disclosures)
- Applies to insured and self-insured, but not excepted benefits



What You Should Be Doing Now: Summary of Benefits and Coverage

- **Generally, SBC must contain the following:**
 - **Uniform definitions**
 - **Description of coverage with examples**
 - **Exceptions, reductions and limitations of coverage**
 - **Cost sharing, including deductible, coinsurance and copayment obligations**
 - **Renewability and continuation of coverage**
 - **Separate contact information**
- **SBC must contain culturally and linguistically appropriate language**



What You Should Be Doing Now: Summary of Benefits and Coverage

- SBC can be provided either as a stand-alone document or in combination with SPD, so long as:
 - the SBC information is intact and prominently displayed at the beginning of the materials, and
 - the SBC distribution timing rules are satisfied
- Penalties for failure: \$1,000 per failure; state enforcement or an HHS penalty of up to \$100 per day per affected individual; possible breach of fiduciary duty action; IRS and DOL penalties
- If material change to SBC, 60 day advanced notice of change



What You Should Be Doing Now: Comparative Effectiveness Research

- Fee of \$2 per average number of lives to fund comparative effectiveness research
 - Applies to each plan year ending after September 30, 2012, and ending before September 30, 2019
 - \$1 for policy/plan years ending during fiscal year 2013
 - For 2015 to 2019, fee is adjusted for increases in national health expenditures
 - For self-insured plans, the fee is paid by the plan sponsor
 - For insured plans, the fee is paid by the issuer
 - Fees due July 31 following the plan year accessed –
First fee due July 31, 2013 – Form 720



What You Should Be Doing Now: Taxes

- **Additional 0.9% Medicare payroll tax on wages in excess of \$250,000 for joint return filers, and \$200,000 for others**
 - **Also applies to self-employment income over dollar limits**
 - **Employers must withhold on over \$200,000**
 - **If amount withheld is insufficient, employee must report and pay taxes on individual return**
 - **Example: Both spouses make \$150,000**
 - No money withheld, additional taxes on return
 - **Example: Employee makes \$249,000, spouse \$0**
 - Will receive refund on withheld amounts



What You Should Be Doing Now: Taxes

- **Schedule A medical deduction threshold goes from 7.5% to 10% of AGI**
 - **Delayed until 2017 if either spouse turns 65 by year-end**
- **Health insurance premium tax totaling \$87 billion between 2014 and 2019**
- **2.3% tax on medical device makers**



What You Should Be Doing Now: Taxes

- **3.8% Medicare contribution tax on the lesser of:**
 - Net investment income, or
 - **Modified adjusted gross income that exceeds:**
 - \$250,000 for married filing jointly
 - \$200,000 for singles
 - \$120,000 for married filing separately
- **Exceptions:**
 - Active business income
 - IRA and retirement plan withdrawals
 - All self-employment income
 - Tax-exempt income



What You Should Be Doing Now: FSAs

- For plan years that begin after 2012, the maximum amount that can be made available through a health FSA limited to \$2,500, indexed
- \$2,500 limit applies only to salary reduction contributions, not employer non-elective contributions (e.g., flex credits)
- Plans may adopt amendment at any time through the end of calendar year 2014
- Unused salary reduction contributions to the FSA that are carried over into a grace period will not count against the limit for that subsequent year
- Prorating is required for a short plan year



What's Coming Up But *Delayed* : 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?



What's Coming Up but *Delayed*: Automatic Enrollment

- Employers with 200 or more full-time employees
- FAQ states regulations will be issued to provide rules for determining full-time employee status. Until those regulations are issued, employers will not be required to comply with the automatic enrollment requirements.
- Notice describes potential approaches to who is a full-time employee



What's Coming Up in 2014: Exchanges

- **State health exchanges are required to be established for businesses of 100 or fewer employees**
 - **Small Business Health Options Program - SHOP**
 - **Prior to 2016, states can limit this to businesses with up to 50 employees**
 - **Beginning 2017, states can allow the state health exchanges to become available for all employers**
- **Federal exchange if state does not comply**
- **Exchange will have a variety of qualified health plan insurance options to satisfy the new mandates**
- **Employers will have to notify employees of the Exchange**



What's Coming Up in 2014: Individual Mandate

- To avoid penalty, nearly all individuals will be required to have “minimum essential coverage”
- Subsidies (health insurance premium tax credits)
 - Household income up to 400% of federal poverty level (\$44K for an individual/\$92K for a family of 4 in 2012), and
 - If employer coverage is not “affordable”
- Medicaid expanded to 133% of FPL (\$14K for an individual/\$30K for a family of 4 in 2012)
 - States to expand Medicaid with portion federally funded



What's Coming Up in 2014: Individual Mandate

- For 2014, penalty is the greater of:
 - \$95 per uninsured adult (\$47.50 per child), capped at \$285 (3X per person amount for a family), or
 - 1% of household income over 1040 filing threshold
- For 2015, penalty is \$325 or 2% of income
- For 2016, penalty increases to \$695 or 2.5% of income
- After 2016, \$695 is indexed



What's Coming Up in 2014: Employer Mandate

- Law does not require employers to offer coverage
- BUT, large employers may face a penalty if they:
 - Do not *offer* coverage
 - Offer coverage that is *not affordable*, or
 - Offer coverage that does not meet the *minimum essential* standards
- *Large employer* is an employer who has 50 or more full-time employees or full-time equivalents
 - Penalty amount only applies with respect to full-time employees, not full-time equivalents
 - Full-time employees: those that work 30 or more hours a week (130 hours a month), calculated monthly



What's Coming Up in 2014: Employer Mandate

- **How to determine full-time employees**
 - **Common law employees**
 - **Count FTEs hours in each month of preceding year and use this to calculate as FT employees, based upon 120 hours of service equals one FT employee**
 - **If workforce exceeded 50 FT employees for 120 days or fewer, and those in excess were seasonal, not a large employer**
 - **Monthly approach impractical if schedules vary**
 - **IRS released safe harbor to determine who is FT**



What's Coming Up in 2014: Employer Mandate

- **Safe harbors to determine full-time employees**
 - **For ongoing employees,**
 - Look back over a “standard measurement period” to calculate which employees worked at least 30 hrs/wk
 - Standard measurement period: defined by the employer, but must be between 3 and 12 months
 - Those who averaged at least 30 hours per week are full time employees during the “stability period”, regardless of the number of hours they work during the stability period
 - For full-time employees, the stability period must be at least 6 months and no shorter than the standard measurement period
 - For these purposes, an ongoing employee is one who has worked at least one standard measurement period



What's Coming Up in 2014: Employer Mandate

- **Safe harbors to determine full-time employees**
 - For ongoing employees, employer can structure its standard measurement period to end before the stability period begins, to provide an administrative period of up to 90 days during which the employer can determine who to enroll
 - For new employees reasonably expected to work full-time, to avoid a possible penalty, an employer should offer coverage at or before the end of the first three calendar months of employment



What's Coming Up in 2014: Employer Mandate

- **Safe harbors to determine full-time employees**
 - **Seasonal and variable employees**
 - Through 2014, employers can use a reasonable, good faith interpretation of what constitutes a “seasonal employee”
 - Initial measurement period (IMP) plus administrative period cannot extend more than 13 months from hire
 - For employees determined to be full time during the IMP, the stability period must be at least 6 consecutive months, not be shorter than the IMP and begin after the IMP



What's Coming Up in 2014: Employer Mandate

- If full-time employees (and dependents) are not offered minimum essential coverage, penalty applies if at least *one* full-time employee receives federal assistance to purchase through Exchange:
 - Penalty = \$2,000 multiplied by the total number of full-time employees, not taking into account the first 30 employees
 - Additional guidance needed as to how this applies to dependents



What's Coming Up in 2014: Employer Mandate

- **A penalty also applies if the coverage offered is:**
 - **unaffordable because the employee's required contribution is more than 9.5% of employee's household income, or**
 - **the plan 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



What's Coming Up in 2014: Employer Mandate

- **This penalty is equal to:**
 - **At least \$3,000 multiplied by the number of full-time employees receiving assistance**
 - **BUT, no more than \$2,000 multiplied by the number of full-time workers, not taking into account the first 30 employees**



What's Coming Up in 2014: Employer Mandate

- Entities under common control are combined
- An applicable large employer member's number of full-time employees is reduced by that member's allocable share of 30
 - Employer A – 40 full-time employees
 - Employer B – 35 full-time employees
 - A does not sponsor a plan, and one full-time employee receives a subsidy on the Exchange
 - B does sponsor a plan of MEC
 - A is subject to a penalty equal to \$48,000 (40 reduced by 16 (its allocable share of the 30-employee offset $((40/75) \times 30=16)$) x \$2000)



What's Coming Up in 2014: Employer Mandate Reporting

- Insurers and/or employers (if self-funded) who provide minimum essential coverage must report
- If essential health benefits coverage is sponsored by an employer, report that and the portion of the premium paid by the employer
- Must notify individuals whose information is submitted
- Reporting is due on the following January 31
- Additional guidance to come



What's Coming Up in 2014: Minimum Essential Coverage

- **Minimum essential coverage includes**
 - **a government-sponsored program**
 - **an “eligible employer-sponsored plan”**
 - group health plan or group health insurance coverage offered by an employer in a state’s small or large group market, except excepted benefits
 - **a health plan offered in the individual market**
 - **a grandfathered health plan**
 - **other health benefits coverage (such as a State health benefits risk pool) as HHS recognizes**
 - **Don’t confuse it with “essential health benefits”**
- **Minimum essential coverage is required to fulfill the individual mandate and employer mandate**



What's Coming Up in 2014: Patient Protections

- **Elimination of preexisting condition exclusions for all participants**
- **No annual dollar limits**
- **No cost sharing (out-of-pocket maximum and annual deductible) in excess of the limits on high-deductible health plans**
- **Wellness incentive limit raised from 20% to 30%**
 - **Allows an incentive such as premium reduction for achieving a health standard**
 - **Must be alternative means of qualifying**
 - **Up to 50% for wellness programs for tobacco**
 - **Reporting of wellness will be required**



What's Coming Up in 2014: Patient Protections

- **Waiting periods cannot exceed 90 days**
 - **Waiting period is the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of the plan can become effective**
 - **If plan conditions eligibility on an employee regularly working a specified number of hours per period (or working full time), and it cannot be determined that a newly hired employee will work that number of hours, the plan can take a reasonable period of time to determine whether the employee meets the plan's eligibility condition**
 - **Coverage generally must be made effective no later than 13 months from the employee's start date**



What's Coming Up in 2014: Transitional Reinsurance

- **Transitional reinsurance program that insurers and self-funded plans must contribute to for the three year period beginning January 1, 2014**
 - **Contribution determined on a national basis**
 - **Flat per capita amount**
 - **States collect from fully insured plans; HHS collects from self-insured plans**
 - **\$10 billion in 2014, \$6 billion in 2015, \$4 billion in 2016**
 - **Reinsurance contributions will be made to health insurers that cover high-risk individuals in the individual market**
 - **Additional funds to go into U.S. treasury and not insurers: \$2 billion in 2014 and 2015, \$1 billion in 2016**



What's Coming up in 2018

- Cadillac plan tax becomes effective
 - 40% tax on “excess health coverage”
 - Tax imposed on issuers of fully insured plans and on 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
- W-2 reporting will give valuable information regarding this tax



What Happens If a Plan Doesn't Comply? \$100 per Day Excise Tax!

- **Dependent coverage to age 26**
- **No lifetime limits and restricted annual limits on essential health benefits**
- **No rescissions**
- **Appeals and external review**
- **Preexisting condition exclusion for those under 19**
- **Preventive care**
- **Choice of health care professionals and emergency services**
- **Nondiscrimination rules**



Summary of Action Steps...

- **Report the cost of health care on Forms W-2**
- **Update plans, summaries and open enrollment materials to reflect the reduction on health FSA amounts**
- **Withhold the increased Medicare payroll taxes**
- **Individuals need to prepare for the additional Medicare payment tax and Medicare contribution tax**
- **Subsidiaries need to review options for coverage**
- **Exchange notice**



Summary of Action Steps...

- **Summary of Benefits and Coverage**
- **Review CER fee requirements**
- **Identify whether plans are affordable and available**
- **Establish procedures to determine part-time/full-time employees**
- **Encourage an open dialogue with your employees and your employer (as applicable) as 2014 approaches**
- **Determine what actions you will take with respect to the employer mandate**



Summary of Action Steps: Employer Mandate Analysis

- **Current health coverage costs**
 - Number of employees/participants
 - Cost of providing coverage that provides for “minimum essential benefits”
- **Cost of penalty based upon no coverage vs. coverage that is not affordable or does not meet minimum essential standards**
- **Impact of Cadillac Tax**
- **Cost of coverage under the Exchange and type of options available under the Exchange**



Summary of Action Steps: Employer Mandate Analysis

- **Demographics of workforce**
- **Employee expectations**
- **Industry standards**
- **Unions**
- **Survival of health care reform**
- **Increase in the penalties over time for employers and individuals**



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