HEALTH CARE REFORM:
Two Years Down and Seven to Go (Maybe)

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Today’s Topics

• Timeline of Health Care Reform Provisions
• Changes, Updates and Delays
• Legal Challenges/Supreme Court Review
• Next Steps for Employers
Introduction

• Two years ago the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act of 2010 were signed into law on March 23, 2010 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

• Health care reform impacts everyone, but today we will be focusing on the impact on employers, employees and employee health benefit plans
TIMELINE: 2010

- 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)
TIMELINE: 2011

• 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
TIMELINE: 2011

- 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
- W-2 reporting regarding employer provided health benefits (delayed)
TIMELINE: 2012

- 1099 reporting requirements expanded (repealed)
- Report health care quality and wellness initiatives to HHS
- Summary of Benefits and Coverage (SBC)/Uniform Glossary (effective for open enrollment periods that begin on or after September 23, 2012)
- 60-day advanced notice of material modifications to the SBC
- Fees of $2 per average number of enrollees/lives assessed ($1 for policy/plan years ending during fiscal year 2013) (sunsets 2019). Effective for plan years ending after September 30, 2012
TIMELINE: 2013

- Additional 0.9% Medicare tax on wages in excess of $250,000 for joint return filers ($200,000 for others)
- 3.8% 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
TIMELINE: 2014

- 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
TIMELINE: 2014

- 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
TIMELINE: 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
Changes, Updates and Delays

• The IRS delayed the W-2 reporting requirements. Employers generally required to report the cost of employer-sponsored group health coverage on Forms W-2 issued in 2013 (for 2012). Exceptions for small employers further delay this requirement until 2014.

• The nondiscrimination rules that were to apply to fully-insured non-grandfathered plans have been delayed pending the release of additional guidance.
Changes, Updates and Delays

- IRS changed its position and will allow participants in FSA plans to use debit cards to purchase OTC drugs with a prescription
- Delays regarding the internal claims and appeals procedures
- Relief has been granted for grandfathered plans that change insurance carriers
- The new 1099 reporting requirements have been repealed
- Requirement to make “Free Choice Vouchers” available to low income employees has been repealed
Legal Court Challenges / Supreme Court Review

- Supreme Court will hear 5½ hours of arguments spread over three days – March 26-28, 2012 and a ruling is expected in June 2012
- The Supreme Court will address four issues:
  - Whether, under the Anti-Injunction Act, the challenges are barred prior to the provisions becoming effective
  - Constitutionality of the “individual mandate” under the Commerce Clause
  - If the individual mandate is ruled unconstitutional, is the entire law void or is the individual mandate “severable”
  - Can states be forced to expand their Medicaid costs or risk losing Federal funding
Legal Court Challenges / Supreme Court Review

• Over 136 amicus briefs have been filed with the Supreme Court
• Various predictions appear to indicate that the Supreme Court will ultimately hold that the individual mandate is constitutional
Employer Next Steps

• Summary of Benefits and Coverage/Uniform Glossary
• W-2 Reporting Requirements
  – W-2 Reporting Requirements/ Exceptions
• Prepare for 2013 requirements
• Evaluate 2014 Options – play or pay
2014 Decision Time: Provide Coverage or Pay Penalty?

- Individual and Employer Mandates
- Economic Considerations
- Non-Economic Considerations
- Unknown Factors
Provide Coverage or Pay Penalty?
State Exchanges

• January 1, 2014: State health exchanges are required to be established for individuals and small businesses of 100 or fewer employees
  – 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

• 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
Provide Coverage or Pay Penalty? 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 $95/uninsured adult or 1% of household income over filing threshold
• For 2015, penalty is $325 or 2%
• For 2016 and after, penalty increases to $695* or 2.5%
Provide Coverage or Pay Penalty? 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
Provide Coverage or Pay Penalty? 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
Provide Coverage or Pay Penalty? Employer Mandate—Penalties

• 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 an Exchange:
  – Penalty is equal to $2,000 multiplied by the total number of full-time employees not taking into account the first 30 employees
Provide Coverage or Pay Penalty? Employer Mandate—Penalties

• Penalty also applies if the health coverage offered is either:
  – 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
Provide Coverage or Pay Penalty?
Employer Mandate—Penalties

- 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; and
  - Other information about the cost of the plan
Provide Coverage or Pay Penalty? Employer Mandate—Penalties

• If employer coverage is not affordable the 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, but not taking into account the first 30 employees
Provide Coverage or Pay Penalty? Economic Considerations

• Current insurance costs vs. penalty cost
  – Number of employees/participants
  – Cost of insurance coverage
  – Level of benefits offered
  – Cost of providing coverage that provides for “minimum essential benefits”
  – Cadillac Tax

• Cost of coverage under the Exchange
Provide Coverage or Pay Penalty?
Non-Economic Considerations

- Employee Expectations
- Industry Standards
- Unions
- Types of coverage options available through the Exchange
- Demographics of workforce
Provide Coverage or Pay Penalty? Unknowns

- Survival of health care reform
- Costs of coverage under the Exchange
- Increase in the penalties over time for employers and individuals
Wrap Up

• Continue to monitor costs
• Discuss options with consultants, legal advisors and/or insurers
• Do not lose sight of other requirements such as HIPAA privacy
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