

The Essential Plan Employer Mandate: Current Information, Impacts, and Planning

Dial-In Number:
(866) 660-4683

Conference ID #
60039410



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Essential Plan Concepts

- Federal health reform goal: Making coverage more uniform (and affordable) across the U.S.
- Everyone in U.S. should have (and will be required to have) a basic medical benefit plan
 - Employers and insurance carriers must offer at least that basic package
- If everyone has coverage, healthcare providers will be reimbursed for all care, and costs should go down
 - If not everyone is covered, this goal will not be met
- If the medical benefits are uniform and are not overly generous, healthcare providers will not charge as much, so costs should go down
 - If the basic health plan package is too generous, this goal will not be realized

Essential Plan Concepts

- Statute very broadly defines the “**essential health benefits package**” to be offered by an employer as meeting all three of the following standards:
 - Health plan coverage having the essential benefits listed in the law and defined by the Secretary
 - The law as passed by Congress lists very broad coverage categories that are required
 - More later on that list and resulting speculation
 - Health plan coverage limiting cost sharing as required by the statute (and regulations)
 - Health plan coverage providing a bronze, silver, gold, or platinum level of coverage

Essential Plan Concepts

- Rule already impacts plans' annual dollar limits
 - \$750,000, \$1.25 million, \$2 million transition rule
- Federal agencies will be writing a Summary Plan Description (SPD) in the Regulations
 - Scope to equal the benefits provided under a typical employer plan, as determined by the Secretary following a survey of employer-sponsored plans, including union programs
 - Chief actuary of Medicare (CMS) will certify

Essential Plan Concepts

- Probable design unknown, but....Issues the plan likely will address:
 - Copay / deductible maximums, number of visits for certain providers, plan coverage and exclusions, etc.
 - Balance within the plan so benefits are not too heavily weighted toward certain categories
 - No discrimination based on age, disability, expected length of life and no benefits denial for similar factors
 - Design will consider needs of women, children, the disabled, and other segments
- Small employers (under 100 employees) may be limited to a maximum \$2,000 deductible for single / \$4,000 for coverage other than single, as set by statute
 - Impact on Health Savings Accounts – could go either way

Mandate to *OFFER* a Health Plan

- Federal reform mandates an employer to offer essential plan coverage to full-time employees & dependents
 - Applicable at 50 employees (with full-time equivalents)
 - Coverage must provide at least a 60% actuarial value of benefits (bronze) going up 10% each tier, up to a 90% (platinum) value
 - 60% of what? 90% of what?
 - Any implied actuarial certification *may* be waived if 60% benefit level (or higher for each tier) & essential plan guidelines are met
 - Effective plan years starting on or after January 1, 2014
- An employer voluntarily may offer an essential plan to part-timers or may offer a plan even if less than 50 full-time employees, but optional only
- Current out-of-pocket maximums
 - \$5,950 single and \$11,900 family (to be adjusted)

Employers Subject to Essential Plan Mandate

- Applies if employer averaged over 50 full-time employees on business days in *preceding* calendar year
 - Full-time means **works** on average **30 hours** a week in a month (not *scheduled* to work)
 - Count “full-time equivalents” to reach 50
- If employer has “seasonal workers,” exempt if:
 - Exceeds 50 employees on ≤ 120 days in prior calendar year, and
 - Employees in excess of 50 were seasonal workers
- Aggregate (count together employees of) employer groups based on controlled group rules for taxes

Possible “Pay or play” Penalties

- \$2,000 per employee if fail to offer essential health plan to all full-time employees (and dependents) – nondeductible/annual
 - Calculated on FT workers (not PT or FT equivalents), subtracting 30 from number of employees
 - Annual penalty, but measured on a monthly basis
 - On 1,000 full-time employees, penalty = \$1.94 million
- \$3,000 annually per each full-time employee that declines employer plan and who also obtains Exchange coverage
 - Applies when:
 - Cost > certain percent of income (roughly 9.5%), or
 - Plan provides less than 60% value of benefits (not at least bronze)

Exchanges & Essential Plan Rule

- Exchange and the essential benefits package theoretically will enable consumers to make easy, “apple to apples” comparison of health insurance purchases
- Mandated employers (even if self-funded and not using the Exchange) must offer at least the essential package
 - Per statute, federal govt. may give employer “credit” toward the essential coverage value for Health Savings Account contributions
 - A catastrophic plan may be offered for persons under age 30 as of the start of the year (but why offer!?!)
 - 3 primary care visits
 - Out-of-pocket max (\$5,950 single and \$11,900 family; adjusted)
- Four-page mini-SPD / plan summary required of insurance carriers/exchange and employers

Essential Health Plans & the Exchange

- **Insurance carriers on the exchange must offer qualified health plans at four different coverage levels plus child-only**
 - Bronze, silver, gold, and platinum coverage at 60%, 70%, 80%, and 90% benefit payment levels, respectively
 - Each option must provide the essential benefits
 - Insurers must create a corresponding “child only plan” specifically devised for young individuals under age 21

Known Essential Health Plan Provisions

- Ambulatory (outpatient) services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance abuse treatment, including behavioral health treatment
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Wellness & preventive services
- Chronic disease management
- Pediatric services (oral and vision care)

HHS regulations could further expand

So, What is Essential?

Do carriers know? Do plan administrators know?
No, but we have speculation

- MRIs?
 - ✓ Ambulatory
- Counseling/drugs for attention deficit diagnosis?
 - ✓ Behavioral health treatment
- Chiropractic care?
 - ✓ Likely ambulatory/ outpatient care but may have limits on the number of treatments
- Care needed to restore prior function after injury?
 - ✓ Yes, as rehabilitative care
- Care needed to achieve function the average person enjoys?
 - ✓ Yes, as habilitative care

Regulations expected in mid-2012

Employer Reporting Obligation

- Health care reform directs new IRS reporting duties
 - Employers must report whether they offer their full-time employees (and their employees' dependents) the opportunity to enroll in “minimum essential coverage” under an eligible employer-sponsored plan
 - Reporting employers must also provide a related written statement to full-time employees
 - Significant detailed information also will be collected
- Reporting effective for periods starting January 1, 2014
 - Coincides with the start of the employer coverage mandate
 - Tax penalties are applicable, but specific amounts unclear
- What will the reporting document look like?
 - Regulations pending
 - Built on a Form 5500 style model?
 - Possible expansion of Form 5500?

Which Employers Must Report?

- **Applicable Large Employers**
 - Employers subject to pay or play mandate
 - Generally, an employer has an average of at least 50 full-time employees on business days during the preceding calendar year
 - Stated differently, those employers liable for Code § 4980H penalty if they do not provide affordable health insurance to full-time workers (and dependents)
- **Offering Employers**
 - Employers not directly subject to pay or play, but who offer minimum essential coverage
 - Some small ERs will qualify for federal subsidies to offset plan costs
 - Reporting duties are triggered if the employer requires contribution of any worker that exceeds 8% of the wages paid to that employee by the employer
 - Agencies may “fix” the 8% rule

What Information Must Be Reported?

- Report must contain the following information:
 - Employer's name, date, and employer identification number (EIN);
 - Certification of whether the employer offers its full-time employees and their dependents the opportunity to enroll in “minimum essential coverage” under an eligible employer plan
 - Number of full-time employees the employer has for each month during the calendar year;
 - Name, address, and taxpayer identification number (TIN) of each full-time employee employed by the employer during the calendar year and the months (if any) during which the employee and any dependents were covered under a health benefit plan sponsored by the employer during the calendar year; and
 - Any other information required by the agencies as set forth in regulations

What Information Must Be Reported?

- Employers offering “minimum essential coverage” must also report:
 - Months during the calendar year for which coverage under the plan was available
 - Monthly premium charged for the lowest cost option in each of the enrollment categories under the plan
 - Employer's share of the total allowed costs of benefits provided under the plan
 - Length of any waiting period with respect to such coverage
 - Details identifying plan for which the employer pays the largest portion of the cost plus portion of the cost paid by the employer in each of the enrollment categories under such option

Written Statements to Employees

- Employers must also furnish a “written statement” to each full-time employees whose name is required to be included in the IRS report
 - Written statement must include:
 - Name, address, and contact information of the reporting employer; and
 - All information required to be shown on the return with respect to the individual
 - *Similar look and feel to the Summary Annual Report (SAR) that is related to the Form 5500?*
- When must written statement be furnished?
 - By January 31 of the year after the calendar year for which information sent to the IRS
 - Plain English: January 31, 2015 is reporting date for 2014 information

Exchanges Enforcing with Employer Data

- Employers would face penalties because of what the government learns from collected data & Exchanges
- Exchanges Used for Enforcement Against
 - Individuals
 - IRS will Know if Person is Not on an Employer's Report and Not Enrolled Through an Exchange or Government Program
 - Investigation/Penalty Demand Triggered
 - Employers
 - Individual Enrolls on Exchange with Federal Assistance
 - Exchange will Know Individual's Household Income (IRS Data Check) and Whether Employed (Using IRS Information)
 - Investigation/Penalty Demand Triggered
 - HHS directs State Exchanges to report to Feds

Emerging Strategies for Essential Plan

- Employers must offer at least one plan option that contains the essential package
 - Applies to insured and self-funded employers
- Implication is that other health plan options can be offered in addition to the essential plan even if the essential plan standards are not met
- **But** access to such policies is an issue
 - Carriers cannot offer a plan that does not meet basic level of essential plan (or child only or catastrophic coverage)
 - Mini-med plans that operate as insurance should be totally disallowed for 2014 & beyond
 - Annual / lifetime limit rules are 100% effective in 2014

Emerging Strategies for Essential Plan

- Many employers will offer a bronze / 60% plan as the base plan and then allow buy-up to a higher benefit level
 - The cost to employees of the base plan will be “affordable” under reform standards
- Supplements in development by national carriers & local markets
 - Awaiting regulations expected mid-2012
 - Supplements will layer over the essential plan
 - A more complete package for employees
 - An extra benefit to tout for employers with a buy-up philosophy or whose employees use the Exchange
- Indemnity plans can be offered after 2014
 - Do not meet definition of “insurance” because no risk shifting & reimbursements do not depend on billed expense or claim incurred
 - Example: Policy will pay \$X per day of hospitalization
 - Covered person at risk for individual penalty; not “essential” package
 - Mandated employer still must offer essential plan

Lingering Issues Relating to Essential Health Plan and Mandate



Special Concerns



Do We Face a Heightened Audit Risk?

Yes. Compliance Risks Abound in 2014 and Beyond as Federal Budget Needs Drive Enforcement

- Congressional Budget Office: Reform will cost the federal govt. a minimum of \$1.1 Trillion
- Independent studies showing huge Massachusetts reform deficits
- Health Care Reform sets new penalties, hidden taxes, and fees
 - Obvious New “Cadillac” tax (\$10,200 / \$27,500 coverage thresholds)
 - New revenue only produces about 50% of Congressional Budget Office’s own budget estimate
- Federal agencies to hire 80,000+
 - 30,000 new IRS agents for Health Care Reform “enforcement”
- Medicare Secondary Payer program showcases how effective government penalties can be at augmenting revenue
- Fear of health reform compliance put under microscope
 - Assessment of fees and penalties to help augment revenue?

Be Prepared to Address Nondiscrimination SOON

- Fully-Insured Non-Discrimination Rules
 - Delay under IRS non-enforcement period
 - Effective Originally for 10-1-10 Plan Years
 - Delayed until after Guidance is Issued (Probably Mid-2011)
 - **Rule May Become Effective as early as January 1, 2012 Plan Years**
 - Status quo still okay today, but plan sponsors must shift into compliance quickly
- New Rule prohibits Eligibility or Benefits favoring Highly Compensated Employees
 - Top 25% Earners / Owners / Shareholders
 - Class Outs will be Illegal
 - Ineligible Classes will be Illegal
 - Noncompliance Impact: Huge Excise Tax Penalty
 - Beware Loss of Grandfathering
- Determine Impact on Plan / Employer Costs
 - Expands Eligibility & Coverage for Many Plans Prior to 2014

Chart Your Course of Action

- **Prepare to set 3 to 5 year plan strategy now in light of upcoming changes**
- **Follow developments: federal regulations as released, court cases, and Congressional action**
- **Carefully examine eligibility now & under mandate**
- **Know cost impact in 2012 (if fully-insured and impacted by nondiscrimination), and project costs forward for 2014 / later**
- **Model best, expected, and worst case scenarios**
- **Project impact of Cadillac Tax**
- **Model possible plan coverage or cost-shifting changes and impact**
- **Determine impact of eligibility-centered strategies on recruiting and human capital management**
- **Consider impact in mergers / acquisitions well in advance of setting price and purchase terms**
- **Participate in political and public policy process on key issues**

Thank You!



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