

Federal Healthcare Reform: Top Ten Employer Concerns

Dial-In Number:
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Conference ID #
60037954



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Group Health Plan

Document & Operational Changes

Benefit Impacts

- No Pre-Ex Exclusions < Age 19
- No Pre-Ex Exclusions
- No Lifetime or Annual Limits
- FSA -- OTC and \$2,500 Cap
- 100% Minimum Preventive Care
- Wellness Benefits
- Emergency Room Access
- Provider Access Rules (ob-gyn, pediatric, etc.)
- Clinical Trial Coverage
- Insured: Nondiscrimination & MLR

Plan Sponsor Impacts (Over 50 Ees)

- Essential Plan Mandate
- Penalties / Costs
- Cadillac Tax Projections

Eligibility Impacts

- Full-time Employees (30 Hours)
- Children Covered to Age 26
- Max. 90-Day Waiting Period
- Automatic Enrollment (over 200 employees)
- No Pre-ex; Guaranteed Issue; Rates

Administrative Impacts

- Reporting on Plan Information
- Four-page Mini Summary
- Revised Appeals Process
- MEWA Registration
- Plan Document Revisions
- 60-Day Prior Notice of Plan Changes
- W-2 Reporting of Value
- *Mechanics* of Automatic Enrollment (over 200 employees)

List of Top Ten Issues Concerning Employers

- Audits
- Auto-enrollment
- Non-Health Plan Mandates (LTC)
- Mini-SPDs & 60-Day Prior Notice of Plan Changes
- Employee Education
- Cadillac Tax
- Exchanges
- Nondiscrimination
- Grandfathering & Its Loss
- 2014 Advance Planning

**Plus Extra Bonus
Concern**

Do We Face a Heightened Audit Risk?

Yes. The Federal Government Needs Revenue (and Wants to Push Compliance).

- CBO: Reform will cost \$1.1 Trillion
 - History of state reforms causing red ink
- HCR law contains new and additional taxes and fees (next slide)
 - New revenue only produces about 50% of CBO budget estimate
- Washington, D.C. is hiring!
- Lessons Learned: Medicare Secondary Payer program showcases how effective CMS and government penalties can be at augmenting revenue
- Employers rightly fear HCR compliance will be put under microscope
 - Assessment of fees and penalties will augment revenue
 - Look for low-hanging fruit: Audits of *Grandfathered Status* are already planned

Summary of New PPACA Taxes Affecting Employers

- Excise Tax on Charitable Hospitals (01-2010)
- Drug Maker Profit Tax (01-2010)
- OTC reimbursement restrictions (01-2011)
- 20% HSA Withdrawal Penalty (01-2011)
- Medicare Payroll Tax (01-2013)
- Flexible Spending Account \$2500 Reimbursement cap (01-2013)
- Per-participant fee on employers for *Comparative Effectiveness Research* (01-2013)
- Tax on Medical Device Manufacturers (01-2013)
- Form 1040 / Medical Itemized Deduction jumps from 7.5% to 10% of AGI (01-2013)
- Elimination of tax deduction for Medicare Part D (01-2013)
- Reinsurance Fees for TPAs and Insurers (01-2014)
- Tax on Health Insurers (01-2014)
- Individual Mandate Penalty/Tax (01-2014)
- Employer Mandate Penalty/Tax (01-2014)
 - \$2,000 not offered/\$3,000 unaffordable
- “Cadillac Excise Tax” (01-2018)

Do We Know How Automatic Enrollment Affects Us?

We know enough to plan. Not everything is known, but we are following rule-making closely.

- Affects employers with over 200 employees in 2014
- Numerous open questions
 - Conflict with state law wage withholding statutes?
 - Auto-enroll worker only, or all family members too?
 - Which level of coverage will the enrollment require?
 - Should we offer two plan options?
 - Union employees issue: Do we have to auto-enroll union employees in our plan, even though they have a collective bargaining agreement and a separate union-provided health plan?

Do We Know How Automatic Enrollment Affects Us? (Contin.)

As we said, HUB is following the issue closely:

- DOL is Soliciting Employer Feedback
 - Regulations likely not ready this year
 - Seeking public input on big picture issues: How should full-time employee be defined?
 - Pressure is put on DOL to issue a model notice
 - Any relief in sight?
 - Seemed sympathetic to only enrolling EE (not family)
 - Seemed sympathetic to defaulting to lowest cost plan

Must an Employer Provide Long Term Care Insurance?

No. An employer is not required to offer the government long term care program (CLASS) or any other long term care product.

- Class Act is a government run voluntary long term care (LTC) program (participating is entirely optional for employers)
 - Beware statements that LTC coverage is “mandatory” – it is not
 - CLASS Flaws:
 - Employer choosing CLASS must
 - Communicate with and educate workers
 - Provide related forms for employee opt-out
 - Automatically enroll all employees (who still may opt out)
 - Facilitate payroll deductions for relatively expensive premiums
 - Limited benefits (\$50 per day) after a five-year vesting period
 - Observers suggest CLASS was added to HCR as a revenue raiser

When is the “Mini-SPD” Required? What about 60-Day Advance Notice?

These are disclosure requirements starting April 2012:

- Four-Page Mini Plan Summary is mini-SPD, minimum 12 point font
- Delivered at initial enrollment and then at least annually
- HHS to develop “standards” for disclosure of cost sharing details and “exceptions, reductions and coverage limitations.”
 - *Insured plans* – health insurer will be required to provide
 - *Self-insured plans* – plan sponsor (ER) must provide the summary
 - \$1,000 penalty per enrollee for failure
 - New Challenge: SPD obligation continues as 60-day advance notice provided before any plan change in mini-SPD information
- Need more details (perhaps by next March) on new Uniform Explanation of Coverage
 - Meaning of “culturally and linguistically appropriate manner”
 - Fitting information on covered benefits, exclusions, cost savings, continuation
 - Identification and meaning of 20+ definitions of insurance and health plan terms

How Can We Comply with the 60-Day Advance Notice of Changes to the “Mini-SPD”?

- Notify of material changes at least 60 days in advance of effective date
 - Employer must put renewals, marketing and plan design changes to bed well in advance of start of plan year
 - In RFPs, require carriers to provide renewals 120 days in advance of renewal / plan year
 - If employer cannot meet deadline, the group must roll out plan change to take effect 60-days from notice date
 - Uncertain how 60-day rule will apply when requirement first takes effect
 - Possibly delayed until just prior to 2013 plan years
- Contrast with Current ERISA rules
 - Summary of Material Modification (SMM): disclosure by 210 days AFTER conclusion of plan year; or
 - Material reduction in covered services or benefits: disclosure within 60 AFTER date reduction in health plan benefits is adopted

Do We Really have to Educate All Employees about the State Insurance Exchange?

Yes. An employer must begin that education process for all employees as of March 1, 2013 (and for later new hires) by providing a new “Notice of Exchange Coverage.”

- Which Employers Are Subject to the Notice Requirement? Any exemptions?
 - Employers subject to the FLSA must comply. Exemptions are rare.
- What Information must Employers Provide?
 - Option for coverage in State Exchanges
 - Whether plan is in compliance (Essential)
 - Availability of federal tax credit
 - Strategic Approach: More or Less...and Why?
 - Unclear whether DOL can / will provide model notice
 - Exchanges are state-created and their rules may vary

Do We Know How the Cadillac Tax Operates? Will the Tax Apply to Us?

Yes, we know enough detail to do an advance projection of your specific plan's expected value and potential tax liability even though the tax is not in effect until 2018.

- 40% *nondeductible* excise (penalty) tax on value of employer-sponsored medical benefits in excess of limits:
 - \$10,200 for individual coverage
 - \$27,500 for family coverage
 - High risk occupations* and retirees
 - \$11,850 individual
 - \$30,950 more than individual
 - Indexed 1% in 2019, CPI thereafter (not indexed by real medical trend)
 - Tax applies to coverage received by active and retired employees

*High risk occupations: longshoreman, repair or install electrical or telecommunicating lines, law enforcement, fire protection, EMT, construction, agriculture (not food processing), forestry and fishing.

More Detail & Qs on the Cadillac tax

Effective in 2018 – Cadillac Plans

- Detailed anticipated guidance pending
- Critical revenue raiser for HCR; expect broad, comprehensive rules
- *Must be paid by the employer or carrier / cannot be charged to participants*
 - Passed through, though, eventually
- COBRA determination amount offers useful “yardstick”
- We anticipate that “value” includes
 - All medical coverage
 - Group medical
 - EAP
 - HSAs, FSAs, HRAs
 - Employer-paid
 - Employee-paid
 - Pre-tax
 - After-tax
 - Not applicable to disability, life, or stand-alone dental or vision coverage

Addressing the Cadillac tax

Effective in 2018 – Cadillac Plans

- Goal of Law: Congressional intent was to force employer plans to be less generous and provide a value of coverage under the dollar threshold
 - Concept – Health care providers will charge less if they know plans will not provide such rich benefits
- Strategies to Consider
 - Project now to determine whether subject to the tax
 - Reduce benefits? Which ones?
 - Reduce account-based plans?
 - Eliminate non-core coverage?
 - Implement targeted ROI-based wellness?
 - Shift to self-funding from fully-insured?

Do We Need to Care About Exchanges & How They Operate?

Yes. You may face penalties because of what the government learns in the Exchange.

- Employer Reporting Requirement
 - Names, SSNs, Home Address of Employee & *Dependents*
 - Month-by-Month on Whether Each Person is Covered or Not
- 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 Govt. 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
 - State Exchanges will Report to Feds

How Do TBD Non-Discrimination Rules Impact My Plan? What is Allowed?

We know enough about the non-discrimination rules for advance planning for their effective date, expected for 2012 plan years.

- The key will be to offer a plan design that is non-discriminatory on its face
 - No eligibility rules or benefits that favor highly compensated employees
 - Can distinguish among the general population
 - Goal: Make the auditor go away
 - Testing possibly required
- How to appease the highly compensated – when law is effective and future hires
- What if the plan is grandfathered?
 - 2014 eliminates your ability to avoid the nondiscrimination rules
- Self-reported penalty is \$100/day for each day of noncompliance X number of affected (meaning the non-highly compensated people)

Is it a Big Deal if We Lose Grandfathered Status?

No, with one huge exception: you have a discriminatory health plan that favors higher paid employees, owners and shareholders.

- Price insurance coverage and plan costs both ways
- Be careful not to lose mid-year or accidentally
 - Restrictions allow only 1X changes, not annual changes
 - Note nondiscrimination penalty
- When it is *just not possible* to give up grandfathering?
- Know how long it will protect you – only until 2014!

Can We Possibly Plan for 2014?

Yes, you can and should plan *now* for 2014.

- What are an employer's obligations?
- What are employer's biggest concerns?
- What strategies are legally possible that will reduce the cost impact:
 - To our claim costs?
 - To our premium / employer contribution budgets?
 - Of any penalties for not offering *any* essential coverage?
 - Of any penalties for not offering *affordable* coverage?

What do I Need to Do in 2013?

You will have a number of tasks and decisions to make before 2014, but we do not suggest waiting until 2013

Sample List (non-exhaustive):

- Determine whether subject to law (over 50 full-time employees in 2013)
- Decision on maintaining employee is full-time versus part-time roles
- Determine whether you will use the maximum 90-day waiting period
- Track all hours worked, especially for any employee at less than 30 hours per week on average in a month
- Evaluation of cost impact of essential plan mandate
- Prior selection of plan options (number and type)
- Budgeting and pricing for expanded coverage / eligibility / enrollment with assumptions for best, expected, and worst case scenario
- Preparation and advance communication for automatic enrollment (if over 200 employees)
- Selection of default plan for automatic enrollment (if over 200 employees)
- Modeling of participant contributions for affordability
- Coordination with vendors / carriers for delegation of administrative tasks
- Make required and desired 2013 employee disclosures
- Be prepared to file reports with federal agency on who is covered
- Make all necessary and desired enrollment form and benefit guide revisions

Emerging Strategies

Focus on Affordability:

- Backing into employer contribution amounts for 2014 while considering employee pay levels from Plan Sponsor
 - Somewhat avoid affordability penalties
- **Capping employee cost for health insurance premiums at a certain percentage of employee income from Plan Sponsor**
 - **Payroll deduction of 9.4% for lower paid workers**
 - **Payroll-tax-like approach**
 - **Most popular approach**
 - ***Will it pass IRS review?***
- Continuing current contribution schedules & anticipating \$3000 affordability penalty bills

Emerging Strategies

Focus on Who is Eligible:

- Managing down full-time status with scheduling
- Staying under 50 full-time employees
- Using independent contractors/outside service providers
 - Caution because IRS audit area
 - Complaints will trigger audit
- Eliminating eligibility altogether -- dropping coverage
 - Not popular: 8% will not offer a plan and pay \$2,000
- Dividing ownership among current principals or sell off portions of company / franchise
 - Achieve non-controlled group status, and
 - Reduce number of employees

Emerging Strategies

Focus on Proper Positioning, Benchmarking, and Total Rewards:

- Arguing against carrier's renewal/quote pricing
 - Wide variation
 - Create proper position for renewal negotiations
 - Example:
 - No pre-ex in current
 - So, no cost impact of change in law in 2014
- Evaluating current health plans and those of competitors
 - Impact on business competition
 - Impact on employee attraction
- Adjusting employee compensation downward to make up employer cost for premiums / penalties
 - Lower wages / salaries will be more common as 2014 nears

What Am I Missing?

You Should Be Asking How to Avoid Other Penalties:

- Make sure you are ready to report and disclose all required items on time
- Employers must re-pay any claims incurred in high risk pool by person “incented” to opt out of employer plan
 - High audit with approach based as MSP enforcement
 - No protection / coverage by insurance policies
- How are Healthcare Providers in our location(s) Reacting?
- How are local/national insurance carriers reacting? Should I self-fund?
- How will essential plan affect my plan design? What about Consumer Driven Health Plans / High Deductible Plans?

Finally, the Engagement Question:

What Can I Do to Impact and Shape Public Policy?

Thank You!



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