

Understanding the Impact of Health Care Reform in California

Health Care Reform Introductory Overview

**-Employer Penalties-
-Required Coverage by Employers-
-Changes to Your Current Plan-**

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by

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I.

INTRODUCTION

On March 23, 2010, and on March 30, 2010, President Obama signed wide-sweeping and comprehensive health care reform into law. This comprehensive health care reform consists of two separate acts. President Obama first signed the Patient Protection and Affordable Care Act (the “Patient Care Act”) and then the Health Care and Education Reconciliation Act of 2010 (the “Health Care Act”) (collectively, the “2010 Health Care Reform Acts” or “Acts”). As of this date, the Acts remain valid and on track for the implementation timeline, covered in this seminar by Ms. Lizbeth V. Vest.

The 2010 Health Care Reform Acts reportedly expand access to health care for all U.S. legal citizens and residents. The Acts require most people to have health care. They create state-based “American Health Benefit Exchanges” through which people can purchase health insurance coverage. The American Health Benefit Exchanges will offer premium and cost-sharing credits to persons and families with an income level between 133-400% of the federal poverty level. The Acts also expand Medicaid to 133% of the federal poverty level. The Acts will also create additional “Exchanges” through which small businesses can provide their employees insurance coverage.

The Acts require employers to pay penalties for employees who receive tax credits for health insurance through one of the above Exchanges (“Health Care Exchanges”). Small employers enjoy certain exemptions from these penalties. Additionally, the Acts impose a battery of new regulations on health plans in both the Exchanges and in the individual or small group markets.¹

Of note, while President Obama’s signature recently made the Acts law, the Acts have been and continue to be highly controversial. Where most parts of the Acts currently sit idle until 2014, there exists a strong likelihood that the Acts as they exist today will either not exist by 2014 or will look quite different from their current form. Further, because the Acts have yet to acquire the inevitable score of regulations that accompany such legislation. Thus, this selected, introductory overview provides a window’s glimpse of what might lay in store. Employers should pay close attention to what the new Congress does with this.

EMPLOYER PENALTIES

Personal Penalties

The Acts require almost all U.S. citizen and legal residents to obtain some form of health care insurance coverage. Personal monetary penalties apply to individuals that refuse to acquire health care. This likely means that those in 133-400% of the federal poverty level (\$18,310 per annum for a three-person family in 2009) may well take advantage of the coverage offered at a discount through the Health Care Exchanges.

Employer Penalties

Where an employer with 50 or more employees that does not offer health insurance coverage has at least one full-time or full-time equivalent employee who receives a Health Care Exchange tax credit, the government shall assess that employer a penalty of \$2,000 per all its full time employees, every year, excluding the company's first 30 full-time employees from the penalty assessment (e.g., a company with 50 or more full-time workers will pay an amount equal to 51 minus 30 full-time employees). If a 50+ person employer (with at least one full-time employee receiving a premium tax credit) offers health care coverage, the government will assess the employer the lesser penalty of \$3,000 for each full-time employee receiving a premium tax credit or \$2,000 per each full-time employee, excluding the company's first 30 full-time employees.

Caveats

Employers with fewer than 50 employees currently remain exempt from any of the above premium credit penalties. However, employers with over 200 employees must automatically enroll qualifying employees into any health plans offered by the employer. Employees may opt-out of using the employers' coverage (e.g., if their spouse's policy covers them).ⁱⁱ

EMPLOYER COVERAGE REQUIREMENTS

Tacit Coverage Requirements

The above employer penalties result in varying cost-benefit outcomes, depending on an employer's particular circumstances. The varying outcomes each act as an "underground" or tacit coverage requirement with which the employer must comply to ensure the lowest expense possible.

Express Coverage Requirements

Beyond the complex tacit coverage requirements, the Acts set forth specific express requirements. Employers offering full coverage to their employees must also provide "free choice vouchers" to their employees with incomes less than 400% of the federal poverty level, *if* such employees' premium share exceeds 8% but not more than 9.8% of their income, *if* such employees also enroll in an Exchange plan. The voucher amount equals what the employer would pay to provide coverage under the employer's existing health care coverage plan. The vouchers offset the amount the Exchange premium costs in which an applicable employee enrolled. Of note, employers providing free choice vouchers will not find themselves subject to penalties for those full-time employees that received Exchange premium credits.ⁱⁱⁱ

Employers must further provide comprehensive information to employees regarding their insurance options, including the existence of the Exchanges, and requires larger employers to account for their insurance option offerings and recipients. Moreover, employers may not discipline, discharge, or unlawfully discriminate against an employee for receiving a premium tax credit. All employers with 50 or more employees must now provide break times for nursing mothers to express milk.

Additionally, the Acts limit the amount that employers can allow employees to use in flexible spending accounts to \$2,500 per year. The Acts also require employers to offer health insurance coverage for adult-age children up to 26 years-old, and prevents employers from excluding employees with pre-existing conditions from using the employer-sponsored health plans.^{iv}

Preventative Coverage Requirements

Increasing preventative coverage also accompanies implements of the Acts. The Act will provide some type of grants for small employers that establish intra-office wellness programs. Employers will also receive technical assistance and other

resources to evaluate their employer-based wellness programs, which will necessitate the need for a national worksite health policies and programs to survey to assess the efficacy of existing employer-based wellness programs. A related program will allow employers to provide premium credits to employees who participate in employer-sponsored wellness programs.

IV.

CHANGES TO YOUR CURRENT PLAN

Most of the changes effectuated by the Acts pertain to the way health insurance companies and health plan administrators operate and provide coverage. The entire health insurance industry faces an upheaval in the way it operates. A litany of new costs and taxes shall apply to health insurance companies. These insurance companies will almost certainly pass these new expenses on to their clients – just to allow the insurance companies to survive.

Consequently, the changes to whatever plans companies may now have in place will likely create a new paradigm in the world of employer-sponsored health care programs. For example, the Acts will prohibit insurance companies from placing lifetime limits on the dollar value of coverage and prohibit insurance companies from rescinding coverage, except in fraud cases. Changes such as these pervade the insurance industry via the Acts. The results (plan offerings, plan pricing, etc.) for the average employer will almost necessarily follow the changes forced upon the insurance industry.

The one major caveat lies in a grandfather clause that provides individuals the right to maintain their existing coverage in any form of health insurance as it existed on the day of enactment.^v

V.

SUMMARY

The Acts, as they exist prove complex and require diligent study to comprehend; but stay tuned – they may change.

ⁱ The Henry J. Kaiser Family Foundation, “Focus on Health Reform: Summary of New Health Reform Law,” (June 18, 2010), p. 1 (citing the Acts).

ⁱⁱ Patient Care Act, § 1003 (Employer Responsibility); Health Care Act, Subtitles A-C; *see also id.*

ⁱⁱⁱ *Id.*

^{iv} *See* Patient Care Act, § 2301 (Insurance Reforms); Health Care Act, Subtitles A-C.

^v Health Care Act, Part II, § 1251.