Clearing the Confusion with Employee Health Insurance under Health Reform

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MN Home Care Association
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Objectives
• Overview and current status of health reform
• Highlight year-by-year changes coming between now and through 2014 that will effect employer sponsored health insurance including the role of the health insurance exchanges.
• Discussion of recently proposed rules and the implications for the employer

What Happened?
• In March 2010, Congress passed and the President signed health reform in:
  – The Patient Protection and Affordable Care Act
    ◦ Increases access to health coverage
    ◦ Aims to reduce costs via payment reductions and focus on wellness and prevention
    ◦ Seeks to reward “value-based” care delivery
• Since passage, numerous additional laws have been passed amending portions of original laws, and rules/guidance issued.

Impact of the Act:
• Cost: $940 billion/ 10 yrs
• Coverage: 32+ million by 2019
Is Health Reform Here to Stay?

- **Congressional Repeal of Health Reform**
  - House passed, Senate said, “No”
  - Death by a thousand cuts or repeals of pieces of reform
    - Repeals as of April 2011: 1099s, Free choice vouchers

- **The Courts - Litigation Challenges to Reform**
  - Three district courts upheld, two courts say unconstitutional
  - Appellate court action:
    - 4th Circuit: Threw out both cases
    - 6th circuit & DC circuit: Upheld law
    - 11th Circuit: Mandate unconstitutional but rest of law stands
  - Supreme Court: 5 of 6 requests to expedite pending; Announcement anticipated 11/14/11, 10a ET

- **Administrative Agencies’ Action**
  - Continue to issue implementation rules and guidance

Reform Summary Timeline

- **High risk insurance pools** established.
- **Small business tax credits for offering employee health insurance established.**
- **Insurers can no longer deny coverage to children for pre-existing conditions.**

2010

- **New group and individual plans required to cover preventive services at 100%.**
- **Dependent coverage expanded to age 26.**
- **Annual review of insurance premium increases effective.**
- **Grandfathered plan notification requirements.**

2011

- **New small group and individual plans available to small businesses.**
- **Workplace wellness program grants available for small employers.**
- **Annual fees assessed on pharmaceutical companies.**
- **Application of non-discrimination regulations to fully-insured plans.**
- **OTCs no longer reimbursable under various health spending accounts.**

2012

- **Employees to disclose health insurance benefits on W-2s.**
- **CLASS Act: National voluntary LTC insurance program established.**

2013

- **Large employers disclose health insurance benefits on W-2s.**
- **Health Insurers required to begin following new administrative simplification regulations.**
- **Limits placed on flexible spending accounts.**
- **New 2.3% Medicare Tax for Unearned Income.**

2014

- **State insurance exchanges operational.**
- **Individual penalties imposed for failure to obtain health insurance coverage.**
- **Insurance industry gap fees based on market share.**
- **Insurers prohibited from restricting coverage and imposing benefit limits.**

2015 - 2018

- **Large employers may be able to offer Exchange plan as employer-sponsored coverage (2017)**
- **Excise tax imposed on “Cadillac” health plans (2016)**

Reform Summary Timeline (cont’d)

- **Medicare Earned Income Tax Increases to 2.35% for higher income earners.**
- **Employer tax deduction for Part D subsidies eliminated.**
- **Insurance Exchange open enrollment begins.**

2015

- **Employer "shared responsibility" penalties imposed.**
- **Small employers to begin reporting health benefits on W-2s.**
- **Large employers to begin auto-enrolling FT employees into health insurance plan.**
- **Insurers must guarantee issue and renew plans.**
2011: Cafeteria Plan Changes

• OTCs no longer reimbursable under employer-provided FSAs, MRPs, HRAs, HSAs, and Archer MSAs.
  – Removes over-the-counter drugs (OTCs) from the list of qualified medical expenses for reimbursement through these accounts.
  – Exception for OTCs that are prescribed.
  – Tax-free reimbursements remain for prescription drugs and insulin.

2011: HSAs and MLRs

• Increased penalty for withdrawing funds from Health Savings Account for non-medical expenses
  – from 10% to 20% penalty in 2011
  – Similar change for Archer MSAs

• Minimum medical loss ratio (MLR) limits imposed
  – Medical Loss Ratio: Amount of premiums spent on medical care and quality improvement vs. plan administrative costs
    ◦ Large group plans = at least 85%
    ◦ Individuals and small group plans = at least 80%
    ◦ Insurers must issue rebates to consumers if MLR not met.

Key Employee Notification Requirements

1. Notice of grandfathered health plan status
   – Must include a statement describing the health plan benefits and contact information for questions or complaints, as part of plan materials provided to participants (for plans in existence on 3/23/10)

2. Notice of key plan design changes (effective 1/1/11)
   – Annual and lifetime limit changes
   – Eligibility for dependent coverage of adult children
   – Primary care physician designation and OB/GYN self-referral change

3. Summary of medical benefits (starting 3/23/12)

4. Summary of material changes (effective 3/23/12)

5. Summary of plan’s care management process (effective 3/23/12)

6. Notice of eligibility for health insurance exchange (effective 3/1/13)
2011: W-2 Disclosure of Health Coverage Cost

- IRS delayed W-2 disclosure employer-provided health benefits costs for 2011 [IRC Sec. 6051(a)]
  - Includes medical insurance, dental and vision plans (unless separate plans), and self-insured arrangements
  - No reporting for employee salary-reduction FSAs or employer HSA or Archer MSA funding
  - Include family coverage amount, if applicable
- Reporting begins for most employers for 2012 expenses

2012: W-2 Disclosure of Health Coverage Cost

- W-2 reporting of health care costs applies to W-2s issued for 2012 benefits.
- Small Employers – fewer than 250 W-2s in 2011
  - Disclosure is optional for 2012 and until further guidance is issued, at least until January 2014.

Additional Resources

2011: Fully-insured plans can no longer discriminate

- Expands the nondiscrimination rules to cover fully-insured group health plans (IRS Code Section 105(h), which already applies to self-insured)
  - Also includes HRAs or stand-alone Medical Reimbursement Plans (MRPs)
  - Affects non-grandfathered plans for plan years beginning on or after 9/23/10
- Penalties
  - An employer who sponsors a discriminatory insured group health plan will be subject to an excise tax liability of $100 per day per employee affected with a maximum penalty of $500,000
  - As of 12/27/2010, compliance has been delayed until guidance/rules issued
  - Additional comment period on proposed guidance closed 3/11/11
    - See IRS Notice 2011-1
2012: Community Living Assistance Services and Supports (CLASS) Act

A national, voluntary, self-funded long term care insurance program that provides per diem cash benefit in the event an individual suffers a functional—physical or cognitive—limitation.

HHS Secretary to release program details by October 1, 2012 – Delayed until 2013
- Sign up is expected sometime after this date.
- Premiums are expected to vary based upon age at sign up.
- Premium-supported program: law prohibits any taxpayer funding.

Employer Role
- Decide whether to participate in the program
- If participate, then:
  - Auto-enroll employees, unless they affirmatively opt out
  - Make payroll deductions for the program premiums for participating employees
  - Does not require employer contribution.
  - Program also available to self-employed and workers whose employers opt not to participate.

Health Plan Fees/Taxes

Comparative Effectiveness Research Plan Fee (2012)
- Effective for plan years ending after 9-30-2012, health insurance and self-insured plans must pay a per participant fee
  - If self-insured, employer pays fee.
- Fee
  - Year 1: $1/participant
  - Year 2: $2/participant
  - 2014: Inflation adjusted rate
  - 9/30/2019: Phased out

Cadillac Plan Tax (2018)
- 40% excise tax assessed on health insurer or plan administrator offering “high-cost” health coverage
  - “High cost” = annual premium > $10,200 single coverage or $27,500 family coverage

IRS Notice 2011-35: Proposed guidance, seeking comment

2013: Contribution Limits on Flexible Spending Accounts

- Places an annual limit on employee’s FSA contributions to $2500.
  - Current law imposes no limit.
  - The limit will be indexed for inflation beginning in 2013.
2014: Individual Mandate

- **Individual mandate to obtain health coverage**: Beginning in 2014, most individuals must obtain a minimum-level of health insurance coverage or pay a penalty.

- **Minimum essential coverage includes**:
  - Medicare, Medicaid, TRICARE
  - Insurance purchased through an Exchange, on the individual market
  - Employer-sponsored coverage that is affordable & provides minimum value
  - Grandfathered plans (group plan in effect on 3/23/2010)

- **Penalties for failure to obtain coverage**:
  - In 2014: greater of $95 or 1.0% of income
  - In 2015: greater of $325 or 2.0% of income
  - In 2016: greater of $695 or 2.5% of income
  - Penalty is capped at three times the per person amount for a family
  - Assessed penalty for dependents is half the individual rate

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2014: Government assistance to help some individuals obtain coverage

- **Medicaid expansion**: Expands eligibility to individuals and families up to 133 % of the federal poverty level (FPL)
  - If cost effective, states can opt to subsidize employer-sponsored premiums for this group

- **Premium and cost share assistance**:
  - Individuals and families with household income of 100 - 400 % FPL may be eligible for sliding-scale assistance in the form of:
    - Tax credits to help pay premiums; and
    - Out-of-pocket reductions to help with cost sharing (e.g., co-payments and co-insurance)

  **133% FPL**
  - Individual = $14,484
  - Family of 4 = $29,726

  **400% FPL**
  - Individual = $43,560
  - Family of 4 = $89,400

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Health Insurance Premium Tax Credit

**Eligibility**: Household Income between 100- 400% FPL and NOT eligible for minimum essential coverage

**Credit calculation** = Premium cost for benchmark plan (second lowest silver plan) – taxpayer’s applicable percentage

<table>
<thead>
<tr>
<th>Household Income as a % of Federal Poverty Line (FPL)</th>
<th>Initial Percentage</th>
<th>Final percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 133% FPL</td>
<td>2.0%</td>
<td>2.0%</td>
</tr>
<tr>
<td>133 - 150% FPL</td>
<td>3.0%</td>
<td>4.0%</td>
</tr>
<tr>
<td>150 – 200 % FPL</td>
<td>4.0%</td>
<td>6.3%</td>
</tr>
<tr>
<td>200-250% FPL</td>
<td>6.3%</td>
<td>8.06%</td>
</tr>
<tr>
<td>250 – 300 % FPL</td>
<td>8.06%</td>
<td>9.5%</td>
</tr>
<tr>
<td>300 – 400% FPL</td>
<td>9.5%</td>
<td>9.5%</td>
</tr>
</tbody>
</table>
Example:
Calculating Premium Assistance Tax Credit

**Inputs**
- Benchmark premium = $5,200
- Household Income (MAGI) = $27,225 (250% FPL/individual)
- Applicable % = 8.05%

**Premium Assistance Tax Credit Calculation**

\[
\text{Calculation} = \frac{5,200 - 2,192}{3,008}
\]

- If actual Tax Credit > Advanced Payment, taxpayer receives income tax refund.
- If Advanced Payment > Credit, then must re-pay
  - Repayment is capped for those earning < 400% FPL.

Cost Sharing Subsidies

- Federal government will pay insurers to reduce the cost sharing for individuals:
  - Enrolled in a silver-level plan through an Exchange AND
  - Whose household income is between 100-400% FPL

<table>
<thead>
<tr>
<th>Household income as % of FPL</th>
<th>Cost sharing Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>100-200% FPL</td>
<td>Two-thirds</td>
</tr>
<tr>
<td>200-300% FPL</td>
<td>50%</td>
</tr>
<tr>
<td>300-400% FPL</td>
<td>One-third</td>
</tr>
</tbody>
</table>

- Reductions don’t apply to benefits not included in the federal definition of “essential health benefits”

2014: State Health Insurance Exchanges

**What is an exchange?**
A marketplace for individuals and small businesses to shop for insurance:
- Offer a choice of health plans
- Standardize health plan options
- Allow consumers to compare plans based upon price
- Intended to provide a more competitive market
- Provides consumers with a neutral party to assist with plan enrollment, information and eligibility determination for any subsidies

**Who can participate?**

- In 2014, small employers can offer an Exchange plan as their employer health plan
- **Individuals:** Includes self-employed or unemployed individuals (2014)
  - In 2017, states can allow large employers to participate
    - Each state must establish a health insurance exchange
    - HHS Secretary to establish the rules around exchanges
2014: Exchange Plans

Types of exchange plans to be offered by insurers
- **Bronze** = 60% actuarial value
- **Silver** = 70% actuarial value
- **Gold** = 80% actuarial value
- **Platinum** = 90% actuarial value

- **Catastrophic plan**
  - Only available to individuals < 30 years old, or those exempted from the individual mandate due to unaffordability or hardship.
  - Plan must cover:
    - "minimum essential benefits"
    - a minimum of three primary care visits per year
- All exchange "metal" plans must cover essential health benefits, limit cost-sharing and have a specified actuarial value.

Small Employers

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Employers must have one of these to allow employees to deduct their health premiums pre-tax</td>
<td>• $200 M available, FY2011 - 15</td>
<td>• Eligibility:</td>
</tr>
<tr>
<td>• Exempt from non-discrimination test</td>
<td>• Only for new workplace wellness programs/no previous program</td>
<td>- 25 or fewer employees with average wages of &lt; $50,000</td>
</tr>
<tr>
<td>• Template anticipated, increasing ease of implementation</td>
<td>• HHS to issue guidance on program requirements and instructions for applying</td>
<td>- Contributing at least 50% of total premium cost.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Maximum tax credit = 35% of premiums in 2010; 50% in 2014 +</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Nonprofits also eligible</td>
</tr>
</tbody>
</table>

2014: Potential Large Employer Penalties

Law does NOT require employers to offer health insurance

- Beginning in 2014, employers with 50+ FTEs must pay a "shared responsibility" penalty if any FT employee receives Exchange subsidies
  - Different penalties whether or not employer offers affordable, "minimum essential coverage" to employees
  - Minimum essential coverage = Plan with 60% actuarial value
  - Affordable = Employee premium cost < 9.5% of household income

<table>
<thead>
<tr>
<th>FTE = FT employees</th>
<th>FT equivalents</th>
</tr>
</thead>
<tbody>
<tr>
<td>FT employees = works avg. 30 or more hours per week</td>
<td></td>
</tr>
<tr>
<td>FT equivalents = hours worked in a month by all PT employees divided by 120</td>
<td></td>
</tr>
</tbody>
</table>
Employer “shared responsibility” penalty

Penalty only assessed if a FT employee receives Exchange subsidies.

- **No or Inadequate Insurance Penalty**
  - $2000 x each full-time worker (after first 30 workers)

- **Unaffordable Employer Coverage Penalty**
  - At least $3000 x # of full-time employees who receive exchange subsidies
  - Maximum penalty = $2000 x each full-time employee (except for first 30 full-time workers) penalty
  - No penalty for Medicaid eligible employees

Employees are not eligible for Exchange subsidies if their employer coverage is deemed “affordable”

“Affordable” means the employee premium contribution under the employer plan is less than 9.5% of their household income

Key Provisions of Aug. 12 Proposed Rules

- **Affordability for Employee:** If employee’s premium cost for self-only coverage is less than 9.5% of their W-2 wages for the employer, the health insurance is considered affordable even if they have a family and take family coverage
  - It appears that if coverage is affordable for employee but not their family, the employer will not pay a penalty.
  - Employer’s not subject to penalty if employee receives tax credit but later employer-sponsored insurance is determined to be affordable.
  - **Affordability for related individuals:** For premium tax credits eligibility, cost of self-only coverage related to household income; for the individual mandate penalty, family coverage premiums in proportion to household income.

- **Must file tax return:** All individuals receiving an advanced premium tax credit must file an income tax return, regardless if they are otherwise required to file.

Key Future Anticipated Regulations

- Anticipated to provide employer safe harbor from penalty assessment if they meet certain requirements
- Employer large group plans will not be required to cover all of the essential benefits or 10 categories of benefits.
- May provide some transition relief with respect to meeting the “minimum value” requirement for plans
### Employer Health Insurance & Penalty (HIP) Costs

<table>
<thead>
<tr>
<th>Health Insurance Affordability</th>
<th>Eligible</th>
<th>1,379</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.0% - 0.8%</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>0.8% - 1.6%</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>1.6% - 2.4%</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>2.4% - 3.2%</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>3.2% - 4.0%</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>4.0% - 4.8%</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>4.8% - 5.6%</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>5.6% - 6.4%</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>6.4% - 7.2%</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>7.2% - 8.0%</td>
<td>87</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Household Income (HHI) % Above FPL</th>
<th>Eligible</th>
<th>827</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;100%</td>
<td>187</td>
<td></td>
</tr>
<tr>
<td>100% - 133%</td>
<td>647</td>
<td></td>
</tr>
<tr>
<td>133% - 166%</td>
<td>822</td>
<td></td>
</tr>
<tr>
<td>166% - 200%</td>
<td>822</td>
<td></td>
</tr>
<tr>
<td>200% - 233%</td>
<td>822</td>
<td></td>
</tr>
<tr>
<td>233% - 266%</td>
<td>822</td>
<td></td>
</tr>
<tr>
<td>266% - 300%</td>
<td>822</td>
<td></td>
</tr>
<tr>
<td>&gt;300%</td>
<td>822</td>
<td></td>
</tr>
</tbody>
</table>

**Employee Exchange Subsidy Eligibility Factors**

<table>
<thead>
<tr>
<th>Exchange Subsidy Eligibility =</th>
<th>Affordability + 133-400% of FPL</th>
</tr>
</thead>
</table>

In 2014, employer pays penalty when a FT employee is eligible for Exchange Subsidy.
We estimate that 3% of your full-time employees will be eligible for Exchange subsidies, while 86% will continue to be covered by your current ESI.

### Per Employee Cost Perspective

<table>
<thead>
<tr>
<th>Coverage Type</th>
<th>EMPLOYER</th>
<th>EMPLOYEE</th>
<th>SUBSIDY</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Waived Converted Today</td>
<td>$5,826</td>
<td>$2,008</td>
<td>$0</td>
<td>$7,834</td>
</tr>
<tr>
<td>Single Silver Exchange Premium (Current Avg)</td>
<td>$5,940</td>
<td>$2,701</td>
<td>$736</td>
<td>$13,088</td>
</tr>
<tr>
<td>60% Premium Funded ($30,000-$340,000 Wages)</td>
<td>$6,700</td>
<td>$3,341</td>
<td>$6,652</td>
<td>$16,693</td>
</tr>
</tbody>
</table>

### Average Premium Cost Per Employee

<table>
<thead>
<tr>
<th>FPL</th>
<th>Employer Share</th>
<th>Employee Share</th>
<th>Gov't Subsidy</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 134% FPL</td>
<td>$4,000</td>
<td>$6,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>134-266% FPL</td>
<td>$7,000</td>
<td>$3,000</td>
<td>$3,000</td>
</tr>
<tr>
<td>267-400% FPL</td>
<td>$7,000</td>
<td>$3,000</td>
<td>$3,000</td>
</tr>
<tr>
<td>&gt;400% FPL</td>
<td>$7,000</td>
<td>$3,000</td>
<td>$3,000</td>
</tr>
</tbody>
</table>

### Health Insurance and Penalty (HIP) Calculator

[www.larsonallen.com/HIP](http://www.larsonallen.com/HIP)
Resources

- For updated guidance, proposed rules and other information about PPACA implementation issues:
  http://www.irs.gov/newsroom/article/0,,id=220809,00.html

- Proposed rule on the Health Insurance Premium Tax Credit:

Questions?

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Thank you!

For more information on health reform, go to LarsonAllen’s Health Care Reform Center:
www.larsonallen.com/healthreform

Appendix
### State and National Health Premium Averages

- Kaiser Health Insurance Premium data
  - [http://www.statehealthfacts.org](http://www.statehealthfacts.org)

<table>
<thead>
<tr>
<th>COVERAGE</th>
<th>MINNESOTA</th>
<th>US</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Employer</td>
<td>Employee</td>
</tr>
<tr>
<td>Single Coverage $584</td>
<td>3,606</td>
<td>994</td>
</tr>
<tr>
<td>Single Coverage %</td>
<td>.78%</td>
<td>22%</td>
</tr>
<tr>
<td>Employee Plus One $584</td>
<td>$6,426</td>
<td>$2,259</td>
</tr>
<tr>
<td>Employee Plus One %</td>
<td>74%</td>
<td>26%</td>
</tr>
<tr>
<td>Family $584</td>
<td>$9,490</td>
<td>3,712</td>
</tr>
<tr>
<td>Family %</td>
<td>73%</td>
<td>28%</td>
</tr>
</tbody>
</table>

* - Source: Kaiser Family Foundation, www.statehealthfacts.org, 2009 data

- **Average vs. Median** ➤ Experience shows wide variability between average and actual experience
- We’ve seen based off our initial study and from Kaiser premium trends, a continued premium shift onto employees in cases where family coverage is chosen