March 23, 2010
President Obama Signed the
Patient Protection and Affordable Care Act
Overview

- The Patient Protection and Affordable Care Act and the Health Care and Health Care Education Reconciliation Act (both Acts collectively “ACA”) were enacted in March 2010.
- School districts are “employers” under health care reform, and are subject to its provisions.
- ACA phases in over several years.

Overview

3 Fundamental Pillars to ACA

- Health care exchanges
- Individual mandate
- Employer mandate
  (Effective January 1, 2014)

Overview

- **Health Care Exchange**
  - State-wide marketplaces for eligible individuals/employers to purchase insurance
- **Individual Mandate**
  - Individuals will be subject to tax penalties if they do not have health insurance
- **Employer Mandate**
  - Employers subject to Employer Responsibility Payments if they do not provide employees with minimum coverage, minimum value and affordable health insurance
Federal Law

- ACA regulated by Three Agencies:
  1. Department of Health and Human Services ("HHS")
  2. Department of Labor ("DOL")
  3. Department of the Treasury ("IRS")

- Federal regulations to provide implementation details

Federal Law

- On June 28, 2012, the U.S. Supreme Court upheld the constitutionality of most of PPACA in the case National Federation of Independent Business v. Sebelius.
California

Summary—California passed law in 2010
- AB 1602 establishes the California Health Benefits Exchange where eligible individuals and small businesses can claim their federal premium cost sharing subsidies and tax credits.
- SB 900 established the Exchange and its governing board.

Overview—California

Covered California
- State-wide insurance marketplace for individuals and small business (50 FTE or less)

Now online
www.CoveredCA.com
Consumers make informed decisions about premiums vs. copays

<table>
<thead>
<tr>
<th>Premium</th>
<th>Coverage Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLATINUM</td>
<td>80% vs. 10%</td>
</tr>
<tr>
<td>GOLD</td>
<td>60% vs. 20%</td>
</tr>
<tr>
<td>SILVER</td>
<td>50% vs. 30%</td>
</tr>
<tr>
<td>BRONZE</td>
<td>20% vs. 80%</td>
</tr>
</tbody>
</table>

Covered California’s 2014 standard plans for individuals — Key benefits

Covered California’s 2014 Sliding Scale Plans - Family of 4

*Eligible for Federal Subsidy
## Covered California’s 2014 standard plans for individuals — Key benefits

<table>
<thead>
<tr>
<th></th>
<th>Platinum</th>
<th>Gold</th>
<th>Silver (Lower Cost Sharing Available on Sliding Scale)</th>
<th>Bronze</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deductible (if any)</strong></td>
<td>No Deductible</td>
<td>No Deductible</td>
<td>$2,000 Medical Deductible</td>
<td>$5,000 Deductible for Medical and Drugs</td>
</tr>
<tr>
<td><strong>Preventive Care Copay</strong></td>
<td>No Cost — 1 annual visit</td>
<td>No Cost — 1 annual visit</td>
<td>No Cost — 1 annual visit</td>
<td>No Cost — 1 annual visit</td>
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<tr>
<td><strong>Primary Care Visit Copay</strong></td>
<td>$25</td>
<td>$45</td>
<td>$45</td>
<td>$60 for 3 visits per year</td>
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<tr>
<td><strong>Specialty Care Visit Copay</strong></td>
<td>$50</td>
<td>$65</td>
<td>$65</td>
<td>$70</td>
</tr>
<tr>
<td><strong>Urgent Care Visit Copay</strong></td>
<td>$50</td>
<td>$100</td>
<td>$100</td>
<td>$120</td>
</tr>
<tr>
<td><strong>Generic Medication Copay</strong></td>
<td>$5</td>
<td>$25</td>
<td>$25</td>
<td>$25</td>
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<tr>
<td><strong>Lab Testing Copay</strong></td>
<td>$25</td>
<td>$45</td>
<td>$45</td>
<td>30%</td>
</tr>
<tr>
<td><strong>X-Ray Copay</strong></td>
<td>$40</td>
<td>$65</td>
<td>$65</td>
<td>30%</td>
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<tr>
<td><strong>Emergency Room Copay</strong></td>
<td>$150</td>
<td>$250</td>
<td>$250</td>
<td>$250</td>
</tr>
<tr>
<td><strong>High cost and infrequent services</strong></td>
<td><strong>HMO Hospital — $250 per day up to 5 days PPO 10%</strong></td>
<td><strong>HMO Hospital — $600 per day up to 5 days PPO 20%</strong></td>
<td>20% of your plan’s negotiated rate</td>
<td>30% of your plan’s negotiated rate</td>
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<tr>
<td><strong>Brand medications may be subject to Annual Drug Deductible before you pay the copay</strong></td>
<td>No Deductible</td>
<td>No Deductible</td>
<td>$500 Drug Deductible then you pay the Copay Amount</td>
<td>No separate Drug Deductible</td>
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<tr>
<td><strong>Preferred brand copay after Drug Deductible (if any)</strong></td>
<td>$15</td>
<td>$50</td>
<td>$50</td>
<td>$50</td>
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<tr>
<td><strong>MAXIMUM OUT-OF-POCKET FOR ONE</strong></td>
<td>$4,000</td>
<td>$6,400</td>
<td>$6,480</td>
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<tr>
<td><strong>MAXIMUM OUT-OF-POCKET FOR FAMILY</strong></td>
<td>$8,000</td>
<td>$12,800</td>
<td>$12,800</td>
<td>$12,800</td>
</tr>
</tbody>
</table>
Covered California’s 2014 Sliding Scale Plans - Family of 4

<table>
<thead>
<tr>
<th>Annual Income</th>
<th>$23,500 - $35,525</th>
<th>$39,118 - $51,118</th>
<th>$58,775 - $94,000</th>
<th>$101,000 - $147,100</th>
<th>$237,000 - $337,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits In Plan Before Subject To Annual Deductible</td>
<td>$45</td>
<td>$45</td>
<td>$45</td>
<td>$45</td>
<td>$45</td>
</tr>
<tr>
<td>Benefits In Plan Before Subject To Annual Deductible</td>
<td>$45</td>
<td>$45</td>
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</tr>
</tbody>
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*Eligible for Federal Subsidy

Covered California The State's Affordable Health Care Program
Covered California

California Health Benefit Exchange
- Determine qualifications for existing public insurance programs or federal credits and subsidies
- Tax credits/subsidies available for individuals who meet certain income requirements and do not have access to affordable, minimum essential and minimum value health insurance through their employer
  - Eligibility based on the "federal poverty level"
  - Individuals and families who make between 138 percent and 400 percent of the federal poverty level may be eligible.
  - An individual earning up to $44,680 and a family of four making up to $92,200 may be eligible for a tax credit.

Impact on School Districts
- Health care is a mandatory subject of bargaining (Govt. Code 3543.2(a))
  - Districts cannot unilaterally implement changes to health care benefits
Key Changes that May Impact School Districts

- New Health Plan Design Requirements
- Large Employers Must Offer Health Insurance to 30 hour or more employees that meet ACA Standards or pay Employer Responsibility Payments
- New Reporting and Notice Requirements
- New Nondiscrimination Provisions

Key Changes-New Standards

- Minimum Essential Coverage-Health Benefits:
  - Ambulatory patient services
  - Emergency service
  - Hospitalization
  - Maternity and newborn care
  - Mental health and substance abuse disorder treatment
  - Prescription drugs
  - Rehabilitation and habilitation services and devices
  - Lab services
  - Preventative and wellness services and chronic disease support
  - Pediatric services, including dental and vision care

Key Changes

- Dependent Coverage
  - Effective since 2010, dependants can stay on parents’ health plan until 26 years old
Grandfathered Plans
- Plans entered into prior to ACA in 2010
  - Must have no changes in benefits provided, conditions covered, and employee premium contributions
- Grandfathered plans exempt from many aspects of ACA
  - But, not exempt from certain employer mandate penalties
- Check group plans to determine whether any plans have been grandfathered

Key Changes
Employer Reporting on W-2 Forms
- Effective 2012 tax year employer-provided health care coverage reported on W-2 forms.
- For employers with 250 or more employees
- Excludes retirees, unless given a W-2
- Reporting does not include long-term care insurance, accident or disability insurance, or Employee Assistance Plans

FlexCare Amount Cap
- Effective January 1, 2013
- Tax free contributions to employee’s Health Flexible Spending Account (“FSA”) limited to $2,500
- Review collective bargaining agreements to check FSA contribution amounts
Key Changes

Medicare Tax Increase
• Effective January 1, 2013
• Medicare tax increase to income over $200,000 (filing single) or $250,000 (filing joint)

Key Changes

Written Notice to Employees (Current and At Hiring)
• Information regarding Exchanges
• If Employer’s plan provides less than 60 percent of coverage, that employees may be eligible for premium tax credits/subsidies if the employee purchases a health plan through the Exchange
• Employees will lose employer premium contributions if employee obtains a plan through an exchange
• Deadline for Employers to Comply With Notice Requirements were extended

Key Changes

Exchanges-Less that 50 FTE Employers
• While federal law allows employers with less than 100 employees to participate in the exchange, states may cap this amount at 50 employees
  – California has capped it at 50 employees
Key Changes

Exchanges
- Individuals may be eligible for a federal subsidy for purchasing insurance through the exchange
- Subsidies available for individuals who:
  • Earn less than four times the federal poverty level.
  • Either are not offered insurance by their employer, or the offered insurance is not affordable.

Key Changes
- ACA expanded access to any family making less than 133% of FPL (States can opt out under the U.S. Supreme Court decision but California has opted in.)

Key Changes
Employer Responsibility Payments
- Large employers who offer health insurance will be penalized if at least 1 full-time employee enrolls in the exchange and receives federal assistance
**Employer Mandate**

- **Large Employers**
  - Employer mandate and ERP only apply to large employers
  - Large employers are those with **50 or more** full-time employees.

**Employer Mandate**

**Pay or Play**
- Effective January 1, 2014, employers must offer health insurance to full-time employees or will be subject to Employer Responsibility Payments (aka penalties)

**Employer Mandate**

- Employer Responsibility Payments due if:
  - Does not provide minimum essential coverage and minimum value coverage to **all** full-time employees and dependents, or
  - Provides coverage but fails to provide minimum essential/value coverage at an **affordable cost**.
Three Employer Mandates

- **Minimum Essential Coverage**
  Ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, behavioral health treatment, prescription drugs, rehabilitative and habilitation services and devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric services, including dental and vision care

- **Minimum Value**
  Employer's plan must pay at least 60% of the allowed costs for services under the health care plan

- **Affordable Coverage**
  Offered insurance plan cannot cost more than 9.5% of the employee’s household income (as determined by employee’s W-2, through 2014)

Waiting Period for New Employees

- An employer is not penalized if it does not offer health coverage to a new employee within the first three months of employment

Full-Time Employees

- Full-time employees are defined by the ACA = 30 hours or more per week
- Calculation of Number of FTEs to meet 50 FTE threshold = Total number of part-time employees’ hours in a month divided by 120 hours
• Safe Harbor Method used to determine whether employee is “full-time”
• IRS issued guidance, effective until 2014
  – For newly hired employees
  – For ongoing employees

Safe Harbor Method
• Guidance issued for newly hired variable hour and seasonal employees
• “Variable hour employee”
  – If it cannot be determined at the beginning of employment if the employee is reasonably expected to work an average of 30 hours per week.
• “Seasonal employee”
  – Has not yet been completely defined
  – Until 2014, employers can use a good faith interpretation.

Safe Harbor Method
New Variable Hour & Seasonal Employees
• "Initial measurement period” used to determine full-time status
• Employers can also use an administrative period of up to 90 days
• Both measurements combined cannot exceed 13 months
• Subsequent stability period afterwards
Safe Harbor Method

Ongoing Employees
- An ongoing employee has been employed for a minimum of one complete standard measurement period
  - Standard measurement period is uniform for certain categories of employees
- Employers can “look back” at the standard measurement period
- Administrative period may be used

Safe Harbor Method-Affordable

Affordability Safe Harbor
- Allows testing the employee’s W-2 income (instead of household income) to determine the affordability of the employer’s health care plan.
- If the employee’s required contribution to a plan that meets all other ACA standards is not over 9.5% of the employee’s W-2 wages, then the employer will not be subject to certain Employer Responsibility Payments.

Employer Responsibility Payments
- If the employer fails to provide minimum essential, or minimum value or affordable coverage to full time employees and those working at least 30 hours a week on average, it will be subject to penalties.
  - Penalty: the lesser of approximately $2,000 multiplied by all full-time employees (minus 30 employees) or $3,000 per full-time employee who receives subsidized insurance coverage.
**Additional ACA Issues**

**Automatic Enrollment**
- Employers with more than 200 full-time employees must automatically enroll new full-time employees in the employer’s health care plan
  - Subject to any authorized waiting period
- Continuous enrollment
- Notice of enrollment & opportunity to opt out
- Employers do not need to comply yet...
- Stay tuned for implementing regulations

**Non-Discrimination & Highly Compensated Employees**
- Prohibited to discriminate between highly compensated individuals and lower paid employees in terms of health care coverage
- Penalties apply for violating non-discrimination law
- The law does not apply to grandfathered plans

**Cadillac Tax**
- Effective 2018
- 40% excise tax on health insurance providers with high premiums
  - For monthly premiums of $10,200 for individuals or $27,500 for families
  - Adjusted for inflation
How Districts Should Prepare

- Remember, the regulations are incomplete
  - Do not agree to long-term contract changes to health benefits without reopeners

How Districts Should Prepare

- Analyze current health insurance coverage and eligibility for full-time employees (30 hour average or more) to ensure minimum essential coverage, minimum value and affordability requirements are met

How Districts Should Prepare

- Consider negotiating different insurance plan designs, coverage levels, and eligibility options:
  - Plan Design Modifications (example: Offer additional Lower Cost 60/40 plans)
  - Eligibility based on 30 Hours ACA standard

- Calculate costs v. benefits of having employees purchase through the exchange (taking into account Employer Responsibility Payments)
How Should Districts Prepare

- Communicate, Communicate, Communications with All District Stakeholders!

How Districts Should Prepare

- If no Employer paid health care premiums contributions are provided, estimate and budget for possible Employer Responsibility Payments
- If only a portion of premium costs are paid, calculate the number of employees likely to be eligible for the Exchange based upon W-2 Income and Employee Percentage Contribution levels

How Districts Should Prepare

- Evaluate any potential future highly compensated employee discrimination issues.
- Pending IRS Regulations: If an employer sponsors a plan that discriminates in favor of highly compensated individuals the employer is subject to at least a $100 per day penalty multiplied by the number of those individuals “discriminated against.”
How Districts Should Prepare

- Highly Compensated Discrimination:
- Who is considered a “higher wage employee” for purposes of the non-discrimination provision?
- The ACA regulations have not yet defined who is considered a higher wage employee for purposes of this provision. Regulations will be forthcoming. However, the IRS has defined high wage earners in the self-funded context as a highly compensated individual who is: (1) one of the five highest paid officers; (2) a shareholder who owns more than 10 percent of the stock of the employer; or (3) among the highest paid 25 percent of all employees. (See §105(h)(5) of the Internal Revenue Code)

How District’s Should Prepare

- Consider impact and plan to address any offered health care plan design that exceeds the “Cadillac Tax” premium thresholds

Stay Tuned

Federal
- Federal Agencies still adopting interim and ongoing regulations
- Possible future court challenges

California
- Covered California-1st Exchange
- Practical Implications
Karen Rezendes is a Partner in Lozano Smith’s Walnut Creek office. She specializes in the areas of employment law, labor negotiations, student issues, special education and general school law. Before joining the firm, Ms. Rezendes worked for one of the largest employment law firms in the state of California, primarily assisting school districts and other public entities with employment and labor relations matters. Deciding to specialize in school law, she then joined School Legal Counsel as Associate General Counsel.

Additional Experience
In addition to her work as an attorney, Ms. Rezendes has experience as a school administrator, hearing officer, and "pro tem" Superior Court Judge. Ms. Rezendes also served as Director of Human Resources and legal counsel for a County Office of Education, and was an executive cabinet member of a K-12 school district in Northern California. A significant portion of her practice is devoted to advising and assisting administrators, personnel commission members and board members regarding preventative measures to social disruption, ensure excellent business practices, knowledge and legal labor relations, and meet the diverse needs of the community.

Articles
In addition to writing several of the firm’s Client News Briefs, Ms. Rezendes has also written numerous, significant articles, including “The Next Chapter in Temporary Teacher Classification Laws” published by School Services of California, Inc., August 2012.

Education
In 1989, Ms. Rezendes received her J.D. from Santa Clara University School of Law and was admitted to the California State Bar. In 1984, she received her B.A. in Business Administration from California State University, Hayward.