Health Care Reform: The Good, The Bad, The Ugly

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By the Numbers

• 48 million uninsured Americans
Affordable Care Act (ACA 2010)
New Law Basics

- Mandates: Individuals/Employers
- Creates State Based Exchanges
- Insurance Market Regulations
- Medicare Changes
- Revenue Generating Provisions
- Other Provisions
The Good
The Good

- Guarantee Issue, no pre-x limitations
- Elimination of annual and lifetime max
- No rescission of coverage
- Dependent children covered to age 26
- Imposes mandatory loss ratios
Prevention

• Preventive Care covered at 100%
• As long as the services are coded correctly.
## Individual Mandates

**Beginning in 2014**
- 2014: $95 or up to 1% of income
- 2015: $325 or up to 2% of income
- 2016: $695 or up to 2.5% of income

**Low income subsidies**
- Below 133% of Federal poverty level
- Tax Credits
- Expansion of Medicaid
- Between 133% and 400% of FPL
- Premium subsidies (only available through exchanges)

**Grandfather provision**
- Allows individuals to keep current coverage
- Subject to some notable exceptions
Revenue Generating Provisions

- **Cadillac Plan Tax**
  - 40% Excise Tax
  - Aggregate value over $10,200 individual/ $27,500 family
  - $11,850 individual/ $30,950 family for retirees

- **High Income Tax - $200(k)/$250(k)**
  - 0.5% increase in FICA Tax
  - 0.9% increase in Medicare tax on wages
  - 3.8% Medicare tax on unearned income

- **HSA, MSA and FSAs**
  - 20% for non-qualified distribution
  - FSA contributions limited to $2,500 per year
  - OTC drugs no longer eligible for HSAs

- **Healthcare Industry**
  - $2.3 billion annual fee – pharmaceutical industry
  - 2.3 excise tax on medical device manufacturers
  - $58.8 billion on all health insurers for 5 years
  - 10% sales tax on tanning services

- **Taxation of Retiree Drug Subsidy**
  - Eliminates tax-free status
  - Fees associated with filing are no longer tax deductible
Small Business Tax Credit

- Employers that pay at least 50% of the employee cost and have fewer than 25 employees with an average salary of less than $50,000 may be eligible for a premium tax credit of up to 50% of paid premiums

- Only available when purchasing group insurance thru the SHOP plan
What It Means for Senior Members

• **Effective in 2010:**
  – $250 rebate to offset the Part D “donut hole”
    • Coinsurance rate phases down to 25% by 2020

• **Effective in 2011:**
  – Reductions to Medicare Advantage program payments, which may result in reduced benefits and/or increase member cost-sharing
  – Cost-sharing for preventive services in Medicare eliminated
  – Discounts on prescriptions in the Medicare Part D “donut hole” begin to phase in
What It Means for Small Groups

• **Effective in 2010:**
  – New product requirements for renewals after 9/23/10
  – Tax credits for certain employers

• **Effective in 2011:**
  – Grants for wellness programs
  – Employees automatically enrolled in Community Living Assistance Services and Supports (CLASS) long-term care program, unless they opt out

• **Effective in 2013:**
  – Limits Flexible Spending Account (FSA) contributions to $2,500 per year

• **Effective in 2014:**
  – Elimination of premium rate variables may result in a significant premium increase or reduction
  – New product requirements, prohibition on deductibles over $2,000/$4,000
  – New taxes built into premium costs

• **Effective in 2018:**
  – High-cost insurance tax – 40% on Single coverage over $10,2000 and family coverage over $27,500
2014 Individual Health Exchange Numbers
The ACA sets caps on the amount that eligible exchange enrollees must spend on premiums.

<table>
<thead>
<tr>
<th>Income (% Federal Poverty Level)</th>
<th>Annual Salary (household of one)</th>
<th>Premium cap (as % of income)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0% - 100%</td>
<td>$0 - $11,490</td>
<td>No Cap</td>
</tr>
<tr>
<td>100% - 133%</td>
<td>$11,490 - $15,282</td>
<td>2%</td>
</tr>
<tr>
<td>133% - 150%</td>
<td>$15,282 - $17,235</td>
<td>3% - 4%</td>
</tr>
<tr>
<td>150% - 200%</td>
<td>$17,235 - $22,980</td>
<td>4% - 6.3%</td>
</tr>
<tr>
<td>200% - 250%</td>
<td>$22,980 - $28,725</td>
<td>6.3% - 8.05%</td>
</tr>
<tr>
<td>250% - 300%</td>
<td>$28,725 - $34,470</td>
<td>8.05% - 9.5%</td>
</tr>
<tr>
<td>300% - 400%</td>
<td>$34,470 - $45,960</td>
<td>9.5%</td>
</tr>
<tr>
<td>&gt;400%</td>
<td>&gt;$45,960</td>
<td>No Cap</td>
</tr>
</tbody>
</table>

Note: The Federal Poverty Level (FPL) was $11,490 for an individual and $23,550 for a family of four through 2013. For more information, please see the Department of Human and Health Services Poverty Guidelines, available at [http://aspe.hhs.gov/poverty/13poverty.cfm](http://aspe.hhs.gov/poverty/13poverty.cfm)

Notes: Under the ACA, individuals making up to 400% FPL may be eligible for subsidies in the form of premium tax credits. The amount of tax credit the enrollee receives varies with income such that the premium a person would have to pay for the second-lowest cost ("benchmark") silver plan would not exceed a specified percentage of their income. The above table indicates the premium cap of an individual within different income brackets.
What Americans pay for a silver plan on the exchanges

40-year-old making $51,705 per year (450% of Poverty), with no financial assistance

Notes: Premiums indicate the amount a 40-year-old would need to spend on the second-lowest cost silver plan in a given county or region. Source: Premiums for state-based exchanges were obtained through a Kaiser Family Foundation review of insurer rate filings to state regulators. Premiums for federally-facilitated and partnership exchanges were obtained from data published by HealthCare.gov, as of January 22, 2014, available at https://www.healthcare.gov/health-plan-information/.
By the Numbers

- 9.5 million enrolled in state based exchanges
By the Numbers

- 385,000 Virginians enrolled
- 276,000 of enrollees received a premium tax subsidy
The Bad
A Glossary of Terms...
Minimum Value

• The ACA requires large employers to cover at least 60% of an employee’s total healthcare costs - not just premiums, but deductibles, co-insurance.

• If coverage does not meet the minimum value test, the employee could be eligible for the exchange and you get stuck with a $3,000 penalty.
Affordable

• Affordable – employer based coverage is considered affordable if the lowest single coverage option is less than 9.5% of employee’s W2 wages.

• If unaffordable, the employee can access the Exchange and you get stuck with a $3,000 penalty.
Employer Shared Responsibility

- Large employers subject to “Pay or Play” rule (100+)
  - Offer coverage of a certain quality or possibly pay a penalty
  - Applies January 1, 2015

- Applies to employers with 50 or more full-time equivalent employees in prior calendar year
  - FT employee: employed for an average of at least 30 hours of service per week, Delayed until 2016!

- Penalties apply if:
  - Employer does not provide coverage to all FT employees and any FT employee gets subsidized coverage through exchange OR
  - Employer does provide coverage and any FT employee still gets subsidized coverage through exchange
## Employer Penalties

### “A” Penalty
- Minimum essential coverage
- 95% of FTs are eligible
- $2000/FT equivalent – 30 employees
- Includes all employees on Medicare, Medicaid, or other group plans

### “B” Penalty
- Affordable
- Minimum actuarial value
- $3000/FTE who gets APTC
- Excludes Medicare, Medicaid, and other group plans
### 9.5% Danger Zone

<table>
<thead>
<tr>
<th>Hourly Rate</th>
<th>30 Hours</th>
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<tbody>
<tr>
<td>$8.00/hr</td>
<td>$98/month</td>
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<tr>
<td>$12.00/hr</td>
<td>$148/month</td>
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Maximum monthly employer contribution to avoid excise taxes.
Full – Time Equivalents

• A full time employee is anyone who works 30 or more hours per week.

• You must include all part-timers in your FTE calculations. Add up all part time hours per month and divide by 120. Add all Part –timers to your full timers to confirm Full –Time Equivalents
Look Back Provision

• An employee’s status as a full-timer is determined by looking back in 2014 as a period of at least 3 months but no more than 12 months.

• If you need to make adjustments, you must do the planning NOW!
Common Control

• No, you can’t break your 60-person business into two 30-person companies

• ERISA Common Control rules apply
What will small employers consider?

• Many small employers will terminate coverage and let the government subsidize health care premiums

• STRATEGY??
Choices for Employers

- Self Insure
- Defined Benefit
- Defined Contribution
- Pay or Play
Should I Stay or Should I Go?

- Drop entire group coverage
- Drop some employees by reducing FTs to PTs
- Discourage some FTs by paying penalties
- Push PTs to public exchange
## Defined Contribution

<table>
<thead>
<tr>
<th><strong>Pros</strong></th>
<th><strong>Cons</strong></th>
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<tbody>
<tr>
<td>Budget stability</td>
<td>Impact on employees</td>
</tr>
<tr>
<td>Accurate pricing</td>
<td>Affordability requirements</td>
</tr>
<tr>
<td>between options</td>
<td></td>
</tr>
<tr>
<td>Forcing employees</td>
<td>Staying competitive</td>
</tr>
<tr>
<td>to make own decision</td>
<td></td>
</tr>
<tr>
<td>Advance premium tax</td>
<td>Public option will be more expensive for some</td>
</tr>
<tr>
<td>subsidies (APTS)</td>
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</table>
105(h) Nondiscrimination Rules for DC Plans

• Awaiting Guidance regarding non discrimination rules for Defined Contributions

• Tread with caution
The Ugly
The Ugly – Long-term Health Care Cost
Unintended Consequences

• Higher premiums

• Deterioration of employer market
  – Unlimited provision
  – Cheaper to pay fine

• More firms eliminating retiree coverage
  – RDS
  – Availability of exchanges

• Shift towards self-funded plans

• People electing to not be part of the system
Market Consolidation

- Aetna purchased Humana for $38 billion
- Anthem purchased Cigna for $47 billion
Updates on Specific ACA Items

• Change in small group definition for 2016
  – Per ACA, small group definition to be uniform 100 (FT + FTE)
  – This change has significant impact on applicable rates; age banded community rating applies outside of grandfathered status or “keep your plan” exception (“grandmother” status)

• New 2016 rules on cost-sharing limits & embedded deductibles
  – All group health insurance plans must apply an embedded individual deductible for all employee + 1 or more coverage levels (even HDHP designs)
  – 2 recent FAQs on topic

• 2018 Tax on High Cost Health Benefits (“Cadillac Tax”)
  – 2 items of preliminary guidance issued recently
  – Probably 50/50 whether it transpires, but would have significant impact on employers and providers
Play-or-Pay: The 4 Key Questions

• **#1:** Is the employer subject to the mandate?

• **#2:** If so, on what date must the employer comply to avoid penalties?

• **#3:** What are the potential penalties and how do we protect against them?

• **#4:** How many full-time (30+ hour) employees must be offered coverage?
Employer Mandate: Play-or-Pay

• Effective beginning 1/1/15

• Applicable in 2015 for employers with 100 or more fulltime employees, including equivalents. Applicable in 2016 for employers with 50 or more FT + FTE.
  – IRS 414 controlled group rules apply to entities with common ownership; total EEs combined for mandate eligibility only

• – Employers who have not done so need to clarify status
  – 100+ employers: confirm 2015 effective date & compliance
  – <50 employers: confirm exemption from penalties & reporting
Employer Mandate: 100+ Groups

2015 items for 100+ employers

- Ensure that all 30+ hour employees have been identified

- If no plan or a carve-out plan for 1+ months during 2015, understand application of penalty reduction number (80)
  - Any 4980H(a) penalty (“sledgehammer”) assessed for 2015 would be: # of full-time employees in each month, minus 80, times $167/month

- If offering skinny plan (“MEC”) or mid-tier MVP plan, assess all scenarios

- Affordability analysis (9.56%) & applicable safe harbors

- Consider whether 3-month grace period rule for first year of Applicable Large Employer status may help
Play-or-Pay for 50-99 Groups

One-year exemption from penalties in 2015

- IRS final guidance provides one-year exemption from penalties (not reporting) for employers < 100 FT + FTE
  - Exemption applies if: (1) employer under 100 FT + FTE based on 6+ consecutive months in 2014; (2) employer did not materially reduce workforce from 2/10/14 to 12/31/14 to get under 100; and (3) employer did not terminate or materially reduce group health coverage from 2/10/14 to 12/31/14.

- Certification requirement
  - Final guidance requires certification to confirm exemption – will be done as part of the employer’s first annual reporting

- Line 22 (box C) and Line 23 (column E, Code “A”) on IRS Form 1094-C
Play-or-Pay: 50-99 Groups

2016 planning items

• Confirm effective date of Play-or-Pay
  – 1/1/16 is default; non-calendar renewal date if transition rule met

• Ensure that all 30+ hour employees have been identified

• Affordability analysis & applicable safe harbors

• If no plan or a carve-out plan for 1+ months during 2016, understand application of penalty reduction number (30)
  – Any 4980H(a) penalty (“sledgehammer”) assessed for 2016 would be: # of full-time employees in each month, minus 30, times $167/month

• If considering skinny plan (MEC) or MVP plan without hospitalization, assess all scenarios
Determining Eligible Employees

- Once mandate applies, standard for eligibility is 130 hours per month (30 hours per week)

- There are effectively 3 categories of employees:
  - Full-time (clearly eligible)
  - Part-time (clearly eligible)
  - Variable hour (to be tracked/measured to determine eligibility)

- Only employees designated at variable hour will be tracked though a measurement period (see next slide) either at the time of hire, or for ongoing employees, based on a standard measurement period set prior to initial effective date
Determining Eligible Employees

IRS Measurement Period Analysis

• Many EEs may not need to be formally measured. Measurement applies only to variable hour employees.

• For variable hour EEs, IRS guidance specifies two options for employers to determine eligibility – (1) monthly measurement or (2) “look-back measurement”
  – Measurement period: 3-12 month look-back period during which averages are calculated for “hours of service:
  – Administrative period: 0-3 month period designed for enrollment management; follows measurement period
  – Stability period: coverage period of 6-12 months that first begins on effective date (1/1/15 or otherwise)
    • The longer of 6 months or the length of measurement period
Section 6056

• Takes effect on January 1, 2016
• For all employers with 50 or more full time equivalents
Self-funded plan sponsors that are ALEs must report under both sections, but will use a combined reporting method

<table>
<thead>
<tr>
<th>Reporting Overview</th>
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<tr>
<td><strong>Applies to:</strong></td>
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<tr>
<td>Section 6055</td>
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<tr>
<td>Section 6056</td>
</tr>
<tr>
<td><strong>Requires reporting entities to:</strong></td>
</tr>
</tbody>
</table>
| Section 6055     | • File information with the IRS  
|                  | • Provide statements to covered individuals |
| Section 6056     | • File information with the IRS  
|                  | • Provide statements to full-time employees |
| **Purpose is to help:** |
| Section 6055     | • IRS administer the individual mandate and determine eligibility for subsidies  
|                  | • Individuals show compliance with the individual mandate |
| Section 6056     | • IRS administer the employer shared responsibility rules |
Reporting Deadlines

**Rules effective for 2015 coverage**

- 2015 coverage information will be reported in 2016
- Employers must collect information during 2015

**IRS Returns**

- **Annual Deadline**: Feb. 28 (March 31, if filed electronically)
- **For 2015**: Feb. 29, 2016 (March 31, if filed electronically)

**Individual Statements**

- **Annual Deadline**: Jan. 31
- **For 2015**: Feb. 1, 2016
- May be furnished electronically if requirements are met
Who Reports What?

6055:
Self-insured non-ALEs report information about all covered individuals

6056:
ALEs report information about all full-time employees

6055 & 6056:
Self-insured ALEs report information about all full-time employees AND covered individuals
Case Studies
Case Study #1

- Lumber yard in Shenandoah Valley
- 25 full time employees
- Majority Hispanic legal workers
- Employer paid 80% of employee premium
- No dependent participation
Case Study #1 Results

- Received a 63% increase in costs
- Terminated group health insurance
- Increased pay
- Drove employees to state exchange
- Increased dependent participation by 80%
- Average subsidy $480
Case Study #2

- Auto Mechanic in Southwest Virginia
- No current coverage
- Average wages $42,000
- Concerned about their employees
- Do I pay or play?
Case Study #2 Results

- Employer purchased group health insurance thru the SHOP exchange
- Paid 75% of the employee cost
- Received a 50% tax credit on premiums
- Instituted a Section 125 plan
- Enrolled all 5 uninsured employees
The Good
- Not as bad as it could have been
- Prevention, No Pre-ex, Medicare Part D
- The New Health Insurance Marketplace
- All employers must do something

The Bad
- Premium Increases
- Pay or Play Penalty
- Mandates and requirements

The Ugly
- Long-term Health care costs not addressed
- Mandatory Loss Ratios (MLR)
- Industry impact
- Section 6056
Questions?

Thank you!

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