Affordable Care Act
Where Are We Now?
September 19, 2013

Background
3 Years Later

- ACA was signed into law on 3/23/10
- Many provisions have already went into effect
- Some provisions delayed and other repealed or not yet being enforced

Provisions Already in Effect

- Dependent age 26 mandate
- Prohibition on lifetime limits
- Phase-out of annual limits
- First dollar preventive care benefits
- No preexisting conditions on participants < 19
- External reviews
- Patient protections
Individual Mandate

- Individuals must have minimum essential health coverage ("MEC") or pay a tax penalty

- MEC includes the following coverage:
  - Governmental plan coverage (e.g. Medicare, Medicaid, CHIP, TRICARE)
  - Coverage under individual health plan
  - Eligible employer provided coverage
**Individual Mandate – Amount of Tax Penalty**

- Greater of a percentage of AGI or a flat amount

<table>
<thead>
<tr>
<th>Year</th>
<th>% of AGI</th>
<th>Flat $ Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>1%</td>
<td>$95/person</td>
</tr>
<tr>
<td>2015</td>
<td>2%</td>
<td>$325/person</td>
</tr>
<tr>
<td>2016</td>
<td>2.5%</td>
<td>$695/person</td>
</tr>
</tbody>
</table>

- Flat amount is reduced by 50% for individuals under age 18
- Flat amount is capped at 3 times the applicable per person penalty
Individual Mandate – Example

- If in 2016, an uninsured couple with 2 minor children fails to obtain coverage, the penalty is the greater of 2.5% of AGI or flat amount of $2,085 = (2 x $695) + (2 x $695 x 50%)

- If the couple had 4 minor children, the flat amount penalty would still be $2,085 = 3 x $695

Exemptions from Mandate

- Incarcerated individuals
- Illegal aliens
- Certain religions (Amish)
- Native Americans
- Hardship
- Individuals with incomes below filing threshold
- Members of health care sharing ministry
What is an Exchange?

- Established by each state or federal gov’t
- Provides an electronic market for buyers and sellers of health insurance
- Available to individuals and small businesses (no more than 50 employees, 100 employees beginning in 2016)
What is an Exchange?

- Certifies whether individuals are exempt from individual mandate
- Delivers financial assistance to eligible individuals and notifies employers

Status of State Action on Exchanges
What Coverage is Available?

- Every QHP must offer “essential health benefits” (EHB) which consist of 10 categories of care
- Ranked in 4 “metallic tiers” based on “actuarial value” (AV) of costs paid:
  - Bronze (60% AV)
  - Silver (70% AV)
  - Gold (80% AV)
  - Platinum (90% AV)

Cost of Coverage

- Each state will set its own rates
- Some rates are already public
## Example Exchange Rates

### Premium Tax Credit

**January 2014 Rates for Health Insurance Products to be Sold in D.C. Health Link - Individual**

<table>
<thead>
<tr>
<th>Age</th>
<th>Product</th>
<th>Low</th>
<th>High</th>
<th>Average</th>
<th>Low</th>
<th>High</th>
<th>Average</th>
<th>Low</th>
<th>High</th>
<th>Average</th>
<th>Low</th>
<th>High</th>
<th>Average</th>
<th>Low</th>
<th>High</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>Pro</td>
<td>$199.04</td>
<td>$409.88</td>
<td>$200.25</td>
<td>$227.82</td>
<td>$235.05</td>
<td>$252.04</td>
<td>$279.25</td>
<td>$274.25</td>
<td>$279.25</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>45</td>
<td>Pro</td>
<td>$208.58</td>
<td>$170.77</td>
<td>$365.95</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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</tr>
<tr>
<td>55</td>
<td>Pro</td>
<td>$446.95</td>
<td>$435.93</td>
<td>$477.28</td>
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<td>$561.52</td>
<td>$561.51</td>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Graydon Head & Ritchey LLP**

GRAYDON HEAD & RITCHEY LLP
Premium Tax Credit

- To be eligible an individual must:
  - Be a citizen or legal resident
  - Have household income of 100% - 400% of federal poverty level (FPL)
  - Be enrolled in an exchange plan

<table>
<thead>
<tr>
<th>FAMILY SIZE</th>
<th>100% OF FPL</th>
<th>400% OF FPL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,490</td>
<td>$45,960</td>
</tr>
<tr>
<td>2</td>
<td>$15,510</td>
<td>$62,040</td>
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<tr>
<td>3</td>
<td>$19,530</td>
<td>$78,120</td>
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<tr>
<td>4</td>
<td>$23,550</td>
<td>$94,200</td>
</tr>
<tr>
<td>5</td>
<td>$27,570</td>
<td>$110,280</td>
</tr>
<tr>
<td>6</td>
<td>$31,590</td>
<td>$126,360</td>
</tr>
<tr>
<td>7</td>
<td>$35,610</td>
<td>$142,440</td>
</tr>
<tr>
<td>8</td>
<td>$39,630</td>
<td>$158,520</td>
</tr>
</tbody>
</table>
Premium Tax Credit

To be eligible an individual must not:

- Be eligible for Medicare, Medicaid, CHIP, TRICARE, etc.
- Be enrolled in an employer sponsored plan
- Be eligible for an employer plan that is minimum value & affordable

Pay or Play Mandates
Pay or Play Mandates

A large employer must provide minimum value and affordable group health plan coverage to all of its full-time employees and their dependents or pay a penalty if any full-time employee receives a premium tax credit from a federal or state exchange.

Mandate Delayed

- Delayed enforcement until 2015
- CBO estimates this delay will cost the government $10 billion
- Estimate is ~$1 million fewer people will be enrolled in employer coverage in 2014
Threshold Issue: Large Employer

- Employed at least 50 FTEs during preceding calendar year
- Full-time is 30 hours/week
- Part-time hours in month ÷ 120 equals FTEs
- Seasonal employees won’t cause employer to be treated as large employer

No Coverage Penalty
No Coverage Penalty

- If do not offer group health plan coverage to “substantially all” of full-time employees and

- At least one full-time employee enrolls in an exchange plan and receives the Premium Tax Credit

No Coverage Penalty Amount

- Penalty = total number of full-time employees \(-30\) multiplied by $2,000

  Company with 100 employees and no coverage
  \[-100-30 = 70\times$2,000 = $140,000\]
Offer to Substantially All

- Can be avoided by offering coverage to “substantially all” full time employees

- Substantially all is defined as 95% of full-time employees (or, if there are 100 or fewer full-time employees, all but 5 employees)

Dependent Coverage

- Coverage offered must also cover dependent children:
  - Dependent child includes any biological, adopted, step, or foster child who has not attained age 26
  - No coverage offer is required for a spouse or other tax dependents
Application to Controlled Group

- Each member of a controlled group is treated as separate employer

- The 30 employee reduction is allocated to each member based on number of employees

Inadequate Coverage Penalty
Inadequate Coverage Penalty

- If employer offers a plan but:
  - It is not “minimum value” OR
  - It is not “affordable” AND

- At least one full-time employee enrolls in an exchange plan and receives the Premium Tax Credit

Inadequate Coverage Penalty - Amount

- Penalty = number of full-time employees who receive the Premium Tax Credit times $3,000

- Employer offers unaffordable plan and has 50 FT employees
  - 5 employees get PTC
  - Penalty = 5 * $3,000
Meaning of “Minimum Value”

- A plan provides minimum value if it is expected to cover 60% of the allowed costs
- Cost sharing is determined by taking into account deductibles, co-payments and co-insurance

Meaning of “Affordable”

- To be affordable, premium must not exceed 9.5% of household income
  - Employee’s share
  - Self-only coverage
  - Lowest cost plan
- Regardless of the options the employee actually chooses
Affordability Safe Harbors – W-2

- Baseline premium does not exceed 9.5% of the employee’s current year W-2 wages from the employer.
- Box 1 wages – after deductions for premiums, 401(k), 403(b), and FSAs.

Affordability Safe Harbors – Rate of Pay

- Monthly baseline premium does not exceed 9.5% of the employee’s beginning of year hourly rate of pay times 130.
- Cannot use if employee’s wages decrease during calendar year.
Affordability Safe Harbors – Fed. Poverty

- Baseline premium does not exceed 9.5% of the federal poverty level for a single person
- 100% FPL for 2013 is $11,490
- Less than $91 per month

2014 Plan Design Issues
Limit on Annual Deductible

- $2,000 (single) & $4,000 (all other)
- Only applies to employers in the small group market (not to large plans or self-insured)
- Cannot take HRA or FSA contributions into account

Limit on Out-of-Pocket Maximums

- $6,350 (single) & $12,700 (all other)
- Effective 1/1/14
- Includes deductible, coinsurance, copays (including Rx copays)
- Limited transition relief
Coverage of Essential Health Benefits

- All fully-insured plans must cover all EHB

- Law requires coverage of 10 categories, but plans in each state must also cover all benefits covered in state’s base plans

Coverage of Essential Health Benefits

- Self-funded plans can’t have annual or lifetime limits on EHB
  - Must pick a state plan to use as a benchmark plan

- Effective 1/1/14
Ninety Day Waiting Period

- Employers can’t have an eligibility waiting period > 90 days
- Applies to all group health plans besides excepted benefits
- This requirement wasn’t delayed

Automatic Enrollment

- Must automatically enroll new FT employees in group health plan
- Applies to employers >200 FT employees
- Must allow employees to opt out
- Not effective until regulations issued
Wellness Programs

- ACA generally encourages wellness programs

- HIPAA prohibits health plans from charging different premiums to individuals based on “health status-related factor”

- Wellness programs are an exception

Wellness Programs

- Permissible reward goes from 20% to 30% or 50% for tobacco related programs in 2014

- Reward limit based on total cost of coverage (both employer & employee share)

- Can’t use reduced premium for “affordability” test (except tobacco)
Grandfathered Plan Notice

- Must provide statement that plan is grandfathered on all plan materials
- Must include contact information for complaints
- Failure to provide this notice can cause a loss of grandfathered plan status
Summary of Benefits & Coverage (SBC)

- Must accurately describe benefits and coverage under the plan
- In addition to SPD and SMM
- First open enrollment after 9/23/12

SBC – What Plans Must Have an SBC

- Group health plans
  - Major medical plans
  - HRAs (unless excepted benefits)
  - EAPs (if provide counseling or other medical benefits)
  - Wellness programs
SBC – What Plans Must Have an SBC

- Doesn’t apply to excepted benefits
  - Most FSAs
  - HSAs
  - Dental
  - Vision

SBC – What Must It Contain

- Uniform format
- Easily understood language
- Uniform definitions
- Coverage examples
- 4 double-sided page
- DOL provided model
Updated SBC

- Departments issued new Summary of Benefits and Coverage
- Must use beginning with 2014 plan year
- Now contains statement on whether plan provides minimum value and is minimum essential coverage

SBC – When Must It Be Provided

- Open Enrollment (Renewal)
  - Must be included in open enrollment materials
  - No later than date renewal materials are distributed
  - If renewal is automatic, no later than 30 days prior to the first day of the new plan year
SBC – When Must It Be Provided

- **Initial Enrollment**
  - Must be provided with application materials
  - No later than first day eligible to enroll in coverage
  - Must be updated for any changes

- **Special Enrollment**
  - Must be provided to special enrollees
  - No later than 90 days after enrollment due to special enrollment

- **Upon Request**
  - As soon as possible but no later than 7 business days following request
Exchange/Marketplace Notice

- Must provide notice of coverage options to each employee, regardless of enrollment status, full-time, eligible, etc.

- Applies to all employers subject to the FLSA

Exchange/Marketplace Notice

- Must include:
  - Explanation of marketplace
  - Marketplace contact info
  - Availability of premium tax credit
  - Employee will lose employer subsidy if purchase from exchange
Exchange/Marketplace Notice

- Must be provided:
  - At time of hiring – new employees
  - October 1, 2013 – current employees

Exchange/Marketplace Notice

- Can be provided electronically if meet DOL safe harbor
- Automatically and free of charge
- 2 models available at: www.dol.gov/ebsa/healthreform
Minimum Essential Coverage Report

- Proposed rules issued last week
- Requirement delayed until 2016 for 2015 plan year
- Applies to all self-insured plans and insurers

MEC Report – What it Includes

- Name, address, SS# of each person covered by plan
- Dates of coverage
- Whether coverage is QHP
- Any advance in cost-sharing
- Employer contact info
- Premium portion paid by employer
Health Coverage Offer Report

- Proposed rules issued last week
- Requirement delayed until 2016 for 2015 plan year
- Applies to all large employers (≥50)

HCO Report – What it Includes

- Employer info
- Certification on offer of MEC
- Number of FT employees per month
- Name, address, SS# of each FT employee and whether in plan
- Months coverage available
- Monthly premium
Thank you!

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