



The Patient Protection and Affordable Care Act of 2010
Employer Obligations and the Exchanges after the 2016 Election

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I. BACKGROUND

a. Market Reforms – Group Health Plans

- i. Children may remain on parent's plan until age 26
- ii. No annual or lifetime limits for essential health benefits
- iii. No cost sharing for immunizations and preventative services, including contraceptive methods and counseling for women
- iv. No rescission of coverage absent fraud or misrepresentation
- v. No pre-existing condition limitations
- vi. Medical Loss Ratio requirement – insurers required to spend a minimum percentage of premium dollars on claims
- vii. No waiting periods in excess of 90 days
- viii. Out-of-pocket limits may be no greater than the limits for high-deductible health plans (those designed to be paired with Health Savings Accounts)
- ix. Nondiscrimination
 1. Highly Compensated Employees
 - a. Prohibits discrimination in coverage or benefits in favor of highly compensated employees
 - b. Delayed indefinitely for regs – never implemented

2. Other

- a. Plan may not discriminate based on health status, medical condition, claims experience, genetic information, disability, etc.

b. Employer Obligations

- i. All employers offering group health plan must offer plan that complies with market reforms
- ii. Large (50+) employers subject to “pay or play” penalties
 - 1. Must offer “minimum essential coverage” that is “affordable” to all “full-time employees” (30+) or be subject to a penalty
 - 2. Penalty applies if at least one full-time employee enrolls in an Exchange plan (see below) and receives a subsidy
 - 3. Penalty amounts:
 - a. If employer offers no coverage, penalty is \$2,000/employee, except first 30 employees don’t count
 - b. If employer offers coverage, but it doesn’t meet affordability and value tests, penalty is \$3,000 for each employee who receives subsidized coverage through the Exchange
 - 4. Employers subject to various notice, tracking and compliance requirements

c. Individual Mandate

- d. Individual mandate requires most individuals to have compliant health insurance coverage or pay a tax penalty

e. Health Insurance Exchanges

- i. Online Marketplace in each state where individuals and small (under 50) employers may purchase health insurance from participating insurers
- ii. Plans must offer specified “essential benefits”
- iii. Coverage levels available:
 - 1. Bronze (60/40)
 - 2. Silver (70/10)
 - 3. Gold (80/20)
 - 4. Platinum (90/10)
- iv. Allows for “apples-to-apples” comparison of plans
- v. Tax credits and/or subsidies available to those with income less than 400% of the Federal Poverty Level who do not have affordable/minimum value coverage offered by employer

f. Medicaid Expansion

- i. Separate from Exchanges
- ii. Not all states chose to expand
- iii. Adults with income up to 138% of the FPL eligible for Medicaid

II. PREDICTIONS

(or – your guess is as good as mine)

- a. Complete “repeal and replace” would be difficult
 - i. Republicans don’t have enough votes in Senate to overcome filibuster by Democrats

- ii. Estimated 22 million people could be without coverage (those with coverage through Exchange or Medicaid expansion)

Note: Open enrollment for Exchange coverage began November 1 for 2016. 100,000 people signed up the day after the election.

- iii. Insurers are contractually obligated through 2017, although may be able to back out of Exchange if subsidies end. State law would also be a factor.
- iv. Possible pressure from providers, especially hospitals, who would have to deal with a larger uninsured population.
- v. Complex area of law with many moving and interrelated parts. Unclear what “replacement” would look like.

- b. Republicans may use “budget reconciliation” process to target specific provisions of the law

- c. Provisions most likely to survive:

- i. Prohibition on pre-existing conditions
- ii. Eligibility for parent’s plan to age 26

- d. Other popular provisions (based on surveys of general public)

- i. No out-of-pocket expenses for preventative care
- ii. Subsidies for low and middle-income people to buy insurance
- iii. Medical Loss Ratio

- e. Provisions likely to go away

- i. Employer mandate
- ii. Individual mandate
- iii. Contraceptive mandate

- iv. If an employer mandate remains, definition of “full-time employee” likely to be changed from 30 hours/week to 40

III. CLOSING THOUGHTS

- a. ACA remains the law for now, although the degree of future enforcement is questionable
- b. The law is complex with many interrelated parts; change will likely result in uncertainty and instability beyond 2017
- c. Employers and their attorneys should closely monitor