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The Patient Protection and Affordable Care Act: Health Care Reform Considerations for Employers

On March 23 the Patient Protection and Affordable Care Act (PPACA) was signed into law. That legislation set the stage for sweeping health care reform in the United States. The Act is structured on a model in which most Americans will secure health care coverage for themselves and their families through employer-based insurance plans. Employers have both record-keeping and financial obligations under the Act which begin in 2011. A tax credit for small-businesses that offer health insurance is already available. In addition, employers may find that coverage requirements which are already applicable to insurance carriers may result in rate increases for those seeking to renew current plans or obtain new policies.

While the basic structure and timeline of the Patient Protection and Affordable Care Act is in place, there is much that is not known. Many of the specific regulations for health care reform have not yet been generated, and undoubtedly there will be legislative changes altering some aspects, if not all, of the law. Under the current version of the PPACA, the heavy lifting for employers does not begin until 2014, which is when all citizens and legal residents are required to be covered by medical insurance, most of which will come through employers. Below is a summary of some of the key provisions of the Act, focusing on those which will impact employers.

2010

• **Small Business Tax Credit**: The PPACA includes a tax credit for certain small businesses who offer health insurance for their employees. Starting in 2010, businesses with qualifying plans (generally, those in which the employer pays at least 50% of the premium) and who have fewer than 25 full-time equivalent employees (FTEs) with average wages of less than $50,000 may recoup as much as 35% (25% for non-profit employers) of their health care premium costs in the form of tax credits. In 2010, the potential credit goes up to $50% of premium costs. The determination of the available tax credit for each business is based on a number of factors including the number of hours worked by the employees, the average wages, and the average premium in the employer's market.

• At the moment, there are no new costs or requirements for employers, but there are already several new obligations placed on insurance carriers that could affect rates. The requirements apply to all new insurance plans and employer-based plans that change significantly at the next renewal period.

These include:

- Young Adults up to age 26 can stay on their parents' plan;
- Insurance carriers cannot impose dollar limits on key benefits, such as hospitalization and emergency care;
- Insurance carriers cannot drop someone from a plan except in cases of fraud;
- Preventive care must be offered without a co-pay and not subject to a deductible;
- Well baby care and exams must be offered without a co-pay;
- Child-only policies must accept all who apply;
- Insurance carriers must justify significant increases in monthly premiums.

2011

• **Employer requirement**: Long Term Care becomes available for all on a national, voluntary program. All working adults are automatically enrolled with payments which are made through payroll deductions unless they opt out.

• **Employer requirement**: Employers must start reporting (but not taxing) the value of employer-sponsored health insurance on employees' W-2s.

• Non-prescription drugs no longer qualify as legitimate expenses for pre-tax flexible spending accounts.

• Subsidies and discounts are available for brand name and generic drugs while the Medicare Part D “donut hole” is phased out.

2012

• **Employer requirement**: Insurance premium tax begins -- employers are required to pay $1 per member, per month on their employer-sponsored plans.

• **Employer requirement**: Businesses must issue IRS Form 1099 to any individual or company from which they purchase more than $600 in goods or services in a tax year.

2013

• **Employer requirement**: Insurance premium tax goes up, requiring employers to pay $2 per member, per month on their employer-sponsored plans.

• **Employer requirement**: Employers must notify their employees of the insurance exchanges that will open in 2014.

• High income earners ($200k for individuals, $250k for joint filers) will see Medicare taxes increase by .9%. Unearned income (which may include the sale of a house) is subject to a Medicare tax of 3.8%.

• The threshold for itemized deductions for unreimbursed medical costs is increased from 7.5% AGI to 10% AGI.

2014 (universal coverage begins)

• All citizens and legal residents are required to purchase qualified medical insurance. Premium credits are available to employees who are not eligible for Medicaid or other programs and who are not offered employer coverage. Qualification for the credit will usually require income between 138% and 400% of the federal poverty level.

• Fines will be assessed on individuals who fail to carry insurance (1% of income or $95).

• **Employer requirement**: Employers who do not offer insurance coverage for their employees, resulting in one or more of full-time employees receiving a premium credit to obtain insurance through an exchange, are subject to a penalty equal to the number of full time employees minus 30, times $2000.

- Employers with less than 50 full-time employees are not subject to the penalty

- For purposes of the Act, a full-time employee is one who works thirty (30) hours or more per week

- In determining number of employees, part-time employees are aggregated to equal full-time employees (e.g. 2 part-time employees who each work 15 hours/week count as one employee)

Example: An employer with 50 full-time employees does not offer health care insurance. One or more of those employees obtains coverage through an Exchange and receives a premium credit. The employer must pay $40,000 in penalties:

50 (employees) – 30 = 20
20 x $2000 = $40,000

- **Employer requirement**: Employers who offer insurance coverage, but whose coverage is not "affordable" (i.e. employee's contribution exceeds 9.5% of household income) must give employees a voucher to use in the Exchange instead of participating in the employer-based plan AND if one or more full-time employee receives a premium credit, the employer is subject to a penalty.

In this case, the penalty may be based on the number of employees who actually receive premium credit rather than total employees. The penalty is the lesser of the number of full time employees minus 30, times $2000 (same penalty as no insurance) OR the number of employees receiving credit for exchange coverage times $3000.

Example: An employer with 50 full-time employees offers health care insurance but the employee contribution exceeds 9.5% of household income for 10 employees. Those employees then obtain coverage through the exchange and receive premium credits. The penalty is calculated in two ways:

a) 50 employees – 30 = 20. 20 x $2000 = $40,000;
or
b) 10 employees x $3000 = $30,000

The lesser number applies, therefore the penalty would be $30,000

• **Employer requirement**: Employers must notify their employees of the insurance exchanges and available subsidies.

• **Employer requirement**: New hires cannot have a waiting period greater than 90 days to join the employer's plan.

Substantial taxes are imposed on private health insurance companies (e.g. $8 billion in 2014 and rising each year up to $14.3 billion in 2018). This is likely to drive up premiums.

2018

"Cadillac" tax applies to individuals receiving high-cost health insurance plans.