

Health Reform 101 – What You Need to Know

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Health Reform is Here ... But Not the Reform We Asked For

- The debate did not end the way we wanted, but as of the end of March 2010, health care reform is the law of the land.
- President Obama and Congress should be congratulated on their political feat ... but business won't celebrate this bad policy.
- The opportunity for genuine reform has been lost so far.

What Went Wrong?

- Politics trumped policy
- Ideology trumped bipartisanship.
- Expansion of coverage trumped more affordable care and coverage.
- Provider groups (doctors, hospitals) and big PhRMA trumped employer concerns.

Key Problems

- The new law is deficient in at least two key respects:
 - **The mandate on employers is both punitive and anti-job** – and ultimately hazardous to our economy.
 - **Efforts to reduce the cost of medical care** – the primary driver of insurance premiums – **are tentative and insufficient.**

Next Steps

- NRF will work to encourage the positive elements, will work to fix what we can through the regulatory process and will also work to repeal or modify provisions hostile to retail.
- Questions as to how open the Obama Administration will be to outside input, but note stated desire [re parity regulations] for a compliance-oriented approach.

A Key Year to be Wary of:

2014

Why 2014?

- Employer, individual mandates become effective.
- Limits on waiting periods (90 days) effective.
- Auto-enrollment for 200 or more employees effective – though rumors indicate that lawmakers and/or regulators may seek an earlier effective date.
- Massive insurance market reform in all markets becomes effective.

Mandates

- Every American citizen and legal resident must purchase qualified coverage.
- Employers with more than 50 full-time employees who do not offer qualified coverage to full-time employees are subject to penalties and may also be penalized if coverage is deemed “unaffordable” to an employee.
- Employees must accept coverage but can opt out in designated low income categories.

Coverage Threshold

- Applies to employers with 50 or more full-time employees.
- Full-time employee is defined as working an average of 30 hours per week per month.
- Part-time employees count toward this threshold [total part-time hours per month divided by 120 = full-time equivalents].
- Seasonal workers (holidays) are not included in threshold counts **unless** they work more than 120 days in a calendar year. Temporary workers may also count toward threshold.

Covered Employers Who Don't Offer to Full-Time

- Penalized for the 31st uncovered full-time employee (first 30 are exempt) @ \$2,000 per if one covered employee is eligible for an exchange credit by income (more than 9.5% of family income).
- Penalty is monthly – charge for employees 31 to X is \$166.67 per uncovered employee.
- Penalty is nondeductible.

Employers Who Offer Unaffordable Coverage

- Full-time employees whose cost exceeds 9.5% of their family income can opt out of their employer's plan and receive subsidized coverage in the Exchange.
- Employers are penalized the lesser of \$3,000 per subsidy-eligible employee or \$2,000 times every full-time employee.
- Penalty is monthly -- \$250 per subsidy-eligible employee per month.
- Penalty is not tax deductible.

Employee Right to Opt Out

- Employees offered qualified coverage must accept – unless:
- Cost to them exceeds 9.5% of family income – Exchange subsidy results in a \$3,000 penalty.
- If cost to them exceeds 8% but is less than 9.8% [note possible drafting error], the employee may opt out to obtain alternative coverage.
- The opt-out employee takes the employer contribution and may keep any surplus between contribution and cost of coverage.

Example 1 – 100 Full-Time Employees

100 Employees [70 effective]	\$2,000 penalty	\$140,000
25 eligible for subsidy	\$3,000 penalty	\$75,000
50 eligible for subsidy	\$3,000 penalty	\$150,000
75 eligible for subsidy	\$3,000 penalty	\$225,00 [\$200,000 cap]

Example 2 – 100,000 Full-Time Employees

100,000 Employees [99,970 effective]	\$2,000 penalty	\$199.940 million
25,000 eligible for subsidy	\$3,000 penalty	\$75 million
50,000 eligible for subsidy	\$3,000 penalty	\$150 million
75,000 eligible for subsidy	\$3,000 penalty	\$225 million [\$200 million cap]

Health Care Reform

Year-by-Year

Effective Now

- Employer group plans that wish to keep their current policy (Grandfather Status) can do so only if the only plan changes are made to add or delete new employees or dependents or are part of a collective bargaining agreement.
- Consumer protection provisions (later 2010) will not impact grandfathered status but may increase cost.

Effective Now

- Eligible small businesses are eligible for phase one of the small business premium tax credit.
 - Small employers with less than 25 employees may be eligible for a tax credit on a sliding scale based on number of employees and average payroll, of up to 50% of premiums for up to 2 years if the employer contributes at least 50% of the total premium cost.
 - Average salary must be \$50,000 or less.
 - Businesses with no tax liability and non-profits are eligible for the credit.

Effective Later 2010

- Lifetime limits on the dollar value of benefits for any participant or beneficiary for all groups (fully or self-insured) are prohibited.
- Annual limits subject to severe limitations and prohibited by 2014.
- All group plans must comply with nondiscrimination rules [IRS 105(h)] that prohibit discrimination in favor of highly compensated individuals.

Effective Later 2010

- All group plans must cover dependents up to age 26.
- Grandfathered plans must only cover dependents without access to other employer-sponsored coverage until 2015.
- Dependents could be married and would be eligible for the group health insurance income tax exclusion.

Effective Later 2010

- All group plans must cover preexisting conditions for children 19 and under.
- Mandatory coverage of preventative services without cost-sharing.
- Emergency services must be covered as in-network regardless of provider.

Effective Later 2010

- High-risk pool coverage for people who cannot obtain current individual coverage due to preexisting conditions. Employers and insurers cannot “dump” individuals into pool.
- Temporary reinsurance for retiree health plans that cover employees over age 55.
- Deductibility for Part D (Medicare drug) subsidies eliminated in 2013 but this results in an immediate accounting impact.

Effective 2011

- OTC drugs no longer reimbursable under HSAs, FSAs, HRAs and Archer MSAs unless prescribed by a doctor.
- Creates new public long-term care program (Class Act) and strongly encourages employers to enroll all employees unless the employee elects to opt out. HHS alternative scheme for enrollment.
- Tax on HSA distributions not used for qualified medical expenses increases from 10% to 20%.

Effective 2012

- Employers must include on W2s the aggregate cost of employer-sponsored benefits.
 - If employee receives health insurance coverage from multiple plans, the employer must disclose the aggregate value of all such coverage.
- Group health plans must report to HHS whether benefits provided meet specified criteria on health outcomes, medical errors, wellness and health promotion activities.

Effective 2013

- New Medicare taxes
 - Medicare payroll tax of 0.9% on individuals with incomes above \$200,000 (\$250,000 families).
 - New 3.8% Medicare tax on unearned income for individuals (and Subchapter S small businesses).

Effective 2013

- Threshold for itemized deductions for unreimbursed medical expenses increases from 7.5% to 10% of AGI for tax purposes.
- \$2,500 annual cap on Medical FSA contributions.

Effective 2014

- Employer, individual mandates
- A new federal tax on all group plans to fund federal comparative effectiveness research - \$2 per enrollee annually.
- Annual tax on private health insurers, medical device manufacturers, pharmaceutical manufacturers – certain to be passed on in coverage costs.
- State-based Exchanges (health insurance purchasing cooperative)

Effective in 2014

- Essential benefits packages are defined
 - Based on actuarial equivalents
 - Defines cost-sharing, mandates, and minimum covered benefits
- Multiple levels available based on actuarial equivalents
- Self-funded plans may not be subject to all requirements, but may not meet employer mandate requirements if they don't comply
- Allows catastrophic-only policies for those 30 and younger.

Effective 2014

- Coverage must be offered on a guarantee issue basis in **all** markets and be guaranteed renewable.
- Exclusions based on preexisting conditions would be prohibited in all markets.
- Full prohibition on any annual limits or lifetime limits in all group (even self-funded plans) or individual plans.
- Redefines small group coverage as 1-100 employees.
 - States may also elect to reduce this number to 50 for plan years prior to January 1, 2016.

Effective 2014

- All individual health insurance policies and all fully insured group policies 100 lives and under (and larger groups purchasing coverage through the exchanges) must abide by strict modified community rating standards
- Premium variations only allowed for age (3:1), tobacco use (1.5:1), family composition and geography
- Geographic regions to be defined by the states and experience rating would be prohibited.
- Wellness discounts are allowed for group plans under specific circumstances.

Effective 2014

- Requires all American citizens and legal residents to purchase qualified health insurance coverage. Exceptions are provided for :
 - religious objectors,
 - individuals not lawfully present
 - incarcerated individuals,
 - taxpayers with income under 100 percent of poverty, and those who have a hardship waiver
 - members of Indian tribes,
 - those who were not covered for a period of less than three months during the year
 - People with no income tax liability

Effective 2014

- Penalty for non compliance to either a flat dollar amount per person or a percentage of the individual's income, whichever is higher.
 - Capped at the value of a bronze-level premium in the Exchange
- In 2014 the percentage of income determining the fine amount will be 1%, then 2% in 2015, with the maximum fine of 2.5% of taxable (gross) household income capped at the average bronze-level insurance premium (60% actuarial) rate for the person's family beginning in 2016.
- The alternative is a fixed dollar amount that phases in beginning with \$325 per person in 2015 to \$695 in 2016.

Effective 2018

- 40% excise tax on insurers of employer-sponsored health plans with aggregate values that exceed \$10,200 for singles and from \$27,500 for families takes effect in 2018.
 - Transition relief would be provided for 17 identified high-cost states.
 - Values of health plans include reimbursements from FSAs, HRAs and employer contributions to HSAs.
 - Stand-alone vision and dental are excluded from the calculation.
 - Premium values are indexed to CPI
 - Allows plans to take into account age, gender and certain other factors that impact premium costs

Issues for Future Consideration

Is There an “Exit Strategy”
Available?

Key Future Considerations

- NRF sought relief from high health care and coverage costs – and received little or no relief. What now? Will Congress act?
- The retail and restaurant industries are particularly vulnerable to the new reform – shortened waiting periods, punitive mandates.
- Will retailers and other businesses opt for the lesser cost of the penalty mandate over providing care after 2014?

Key Considerations (Cont'd)

- What are the publicity ramifications of not providing coverage?
- Will Congress and the Obama Administration increase future penalties or apply a hard, percentage of payroll mandate?
- Could failure of the employer-based health care system lead to a future single-payer health system with a VAT tax to fund it?

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Q & A

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