Complying with Health Care Reform

April 17, 2013
What Happened?

• In March 2010, Congress passed and the President signed health reform in:
  – The Patient Protection and Affordable Care Act
  – The Health Care and Education Affordability Reconciliation Act of 2010
    ◊ Increases access to health coverage
    ◊ Aims to reduce costs via payment reductions and focus on wellness and prevention
    ◊ Seeks to reward “value-based” care delivery

• Since passage, numerous additional laws have been passed amending portions of original laws, and rules/guidance issued

Impact of the Act:
• Cost: $940 billion/10 years
• Coverage = 32+ million by 2019
The ACA

• Is the law of the land today
• Applies to all businesses in the US, including governments
• Requires almost all individuals to obtain health insurance coverage or pay a penalty
• Establishes health insurance exchanges (state or federal)
• Employers with 50+ FTE employees may have to pay a penalty if they don’t offer full-time employees affordable, minimum level health insurance after 1/1/2014
• Implementation details continue to be outlined through the issuance of new regulations, guidance, and FAQ documents from IRS, HHS, DOL
Variables Effecting Costs for Employers

- State where business is operated & employee resides
  - State vs. Federal Exchange
  - Medicaid Expansion
- Employer premium deductibility vs. non-deductible penalty
- Offer vs. don’t offer health insurance today
- Number of Full-time employees
- % of FT employees who enroll vs. don’t enroll in employer coverage
- Wages of workers
- Employer contribution, if any, toward employee premiums
Reform Summary Timeline

2010

- High risk insurance pools established.
- Small business tax credits for offering employee health insurance established.
- Insurers can no longer deny coverage to children for pre-existing conditions.
- New group and individual plans required to cover preventive services at 100%.
- Dependents coverage expanded to age 26.
- Annual review of insurance premium increases effective.
- Grandfathered plan notification requirements.

2011

- Increased penalty on non-medical distributions from HSAs.
- Insurance administrative simplification begins.
- Medical loss ratios become effective for small group and individual plans.
- New simple cafeteria plans available to small businesses.
- Workplace wellness program grants available for small employers.
- Annual fees assessed on pharmaceutical companies.
- Application of non-discrimination regulations to fully-insured plans.
- OTCs no longer reimbursable under various health spending accounts.

2012

- CLASS Act: National voluntary LTC insurance program established. – ON HOLD
- Summary of Benefits and Coverage
- Health plans to pay per participant fee to pay for Comparative Effectiveness Research.
- Preventive health benefits covered without cost sharing.
- OTCs no longer reimbursable under various health spending accounts.
Reform Summary Timeline (cont’d)

2013

- Large employers disclose health insurance benefits on W-2s
- Health insurers required to begin following administrative simplification regulations.
- Limits placed on flexible spending accounts.
- New 3.8% Medicare Tax for Unearned Income.
- Medicare Earned Income Tax Increases to 2.35% for higher income earners.
- Employer tax deduction for Part D subsidies eliminated.
- Insurance Exchange open enrollment begins

2014

- State and federal insurance exchanges operational.
- Individual penalties imposed for failure to obtain health insurance coverage.
- Insurance industry pays fees based on market share.
- Insurers prohibited from restricting coverage and imposing benefit limits.
- Employer “shared responsibility” penalties imposed.
- Small employers to begin reporting health benefits on W2s.
- Large employers to begin auto-enrolling FT employees into health insurance plan.
- Insurers must guarantee issue and renew plans

2015 - 2018

- Large employers may be able to offer Exchange plan as employer-sponsored coverage (2017)
- Excise tax imposed on “Cadillac” health plans (2018)
- Insurers must guarantee issue and renew plans
2014: Potential Large Employer Penalties

Law does NOT require employers to offer health insurance

- Large employers subject to one of two “shared responsibility” penalties if any FT employee receives Exchange subsidies
  - For employers that own multiple companies, the 50 + employees is determined by control group or affiliated service group


Large employer = 50 or more full-time employee + FTEs

FT employee = avg. 30 or more hours of service per week

FT equivalents = Hours worked in a month by all PT employees divided by 120
Employer “shared responsibility” penalties

Penalty only assessed if a FT employee receives Exchange subsidies. Employees ineligible for subsidies if employer coverage affordable

No Insurance Coverage Penalty

Amount = $2000 x each full-time employee (after first 30 employees)

Unaffordable Employer Coverage Penalty If employer fails to offer coverage that is:

1. Minimum essential coverage -- minimum 60% actuarial value -- offered to employees and their children under age 26.

2. Affordable = Employee premium cost for single coverage < 9.5% of household income.

Amount = $3000 x # of full-time employees who receive exchange subsidies

“Affordable” = the employee premium contribution for single coverage is less than 9.5% of their MAGI household income, or one of three employer safe harbor options exist. (e.g., W-2 wages)

Maximum penalty = no insurance penalty

Inflationary adjustments to penalties begin in 2015

Employer pays no penalty for Medicaid eligible employees
Employer “shared responsibility” penalties

• Unaffordable penalty can be incurred if any of the following occurred:
  – No minimum value plan offered
  – Unaffordable for 1+ FT employees (and employer isn’t protected by safe harbors)
  – Employer offers coverage to 95% not 100% of its full-time employees (and their dependents) AND one or more of those employees not offered coverage receive Exchange subsidies.
Three Employer Safe Harbors: Affordability of Coverage

IRS Notice 2012-58

1. Form W-2 Safe Harbor related to Affordability for Employee: If employee’s premium cost for self-only coverage is less than 9.5% of their W-2 wages for the employer, the health insurance is considered affordable AND

   – The employer will not pay a penalty for that employee
   – The employee may still be eligible for premium tax credits in the Exchange based upon Modified Adjusted Gross Income of Household.
   – Employer is not subject to penalty if employee receives tax credit but later employer-sponsored insurance is determined to be affordable.
   – **Affordability for related individuals**: Employers don’t appear to need to make coverage affordable for dependents (e.g. family coverage, Employee+1)
Three Employer Safe Harbors: Affordability of Coverage

December 2012 proposed regulations

2. Form W-2 Safe Harbor

- Using total amount of wages = Box 1 of Form W-2
  ◊ Box 1 does not include employee elective deferrals
- Can include wages paid to employees by a third party that are reported on the W-2 and reflecting the 3rd party EIN
- Determined at the end of calendar year on per employee basis using the year’s W-2 reportable
- Could be used prospectively to set employee contribution level to < 9.5% of wages
## Employer Health Insurance & Penalty (HIP) Costs

### Impact of Employer Health Insurance Reforms

- **Full-Time Employees**: 154 (140 Insured / 14 Waived)
- **Total Staffed**: 186 (23 PT Insured/9 PT No ESI)
- **2014 PPACA FTEs**: 170

### HEALTH REFORM KEY DRIVERS

- **Today’s Single Coverage Employer Premium Cost**
  - **Average Single Employer Cost**: $4,972
  - **Employer Contribution %**: 87%

- **Medicaid Eligible Employees**
  - **Total FT Medicaid Enrollees**: 7
  - **Employer Estimated Cost Savings**: $64 ($000s)

- **Employer Unaffordable Coverage Penalty**
  - **Subsidy Eligible Full-Time Employees**: 48
  - **Subsidy ($3,000)**: $3
  - **Estimated Subsidy Penalty**: $144 ($000s)
  - **% Total Full-Time Employees**: 31.2%

- **Employer No ESI Insurance Penalty**
  - **Total Full-Time Employees**: 154
  - **Less: 30 Employees**: (30)
  - **Adjusted Full-Time Employees**: 124
  - **No Insurance Penalty ($2,000)**: $2
  - **Estimated Subsidy Penalty**: $248 ($000s)

### HEALTH REFORM SUBSIDIES IMPACT ON HEALTH COSTS

<table>
<thead>
<tr>
<th>ORGANIZATION</th>
<th>Today’s Cost ($000s)</th>
<th>2014 Offer Coverage ($000s)</th>
<th>2014 Drop/Don’t Offer ($000s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baseline Premium Cost</td>
<td>$1,384</td>
<td>$1,384</td>
<td>$1,384</td>
</tr>
<tr>
<td>2012-2014 Premium Increase (9.0% / Yr)</td>
<td>-</td>
<td>260</td>
<td>260</td>
</tr>
<tr>
<td>Pre-Reform Projected Premium Cost</td>
<td>1,384</td>
<td>1,644</td>
<td>1,644</td>
</tr>
<tr>
<td>Tax Adjusted Premium Costs</td>
<td>900</td>
<td>1,069</td>
<td>1,069</td>
</tr>
</tbody>
</table>

**PLUS: Additional Reform Impact**

- **Previously Waived FT Employees**: - 71 -
- **Transitional Exchange Fee**: - 6 -
- **Penalty: Subsidy Eligibles & ESI**: - 144 -

**Health Reform Increased Cost**

- **- 221 -**

**LESS: Previous Premium Liabilities**

- **Medicaid Employee ESI**: - (64) -
- **Subsidy Eligible FT Employees ESI**: - (414) -

**Health Reform Decreased Cost**

- **(478)**

**No Minimal Essential Coverage**

- **Less: 2014 Inflation Adjusted HC Cost**: - - (1,644)
- **Plus: Subsidy Eligible Penalty**: - - 248

**Health Reform No ESI Cost**

- **(1,396)**

**Post Reform HC Costs**

- **$1,384**
- **$1,387**
- **248**

**HC Cost Change to 2014 Projected**

- **$ (257)**
- **$(1,396)**

**% HC Cost Change to 2014 Projected**

- **-16%**
- **-85%**

**Tax Adjusted HC Costs**

- **$900**
- **$948**
- **248**
Employee Exchange Subsidy Eligibility Factors

Exchange Subsidy Eligibility =
Affordability + 133-400% of FPL

In 2014, employer pays penalty when a FT employee is eligible for Exchange Subsidy.
We estimate 42% of your full-time employees will be eligible for Exchange subsidies, 5% for Medicaid, and the remaining 54% enrolled in ESI.
Average Premium Cost Per Employee Perspective

**< 139% FPL**

- **Today:**
  - Employer Share: 1,527
  - Employee Share: 7,637
  - Gov't Subsidy: 9,164

- **2014 Pre Reform:**
  - Employer Share: 1,815
  - Employee Share: 9,073

- **2014 Post Reform:**
  - Employer Share: 1,707
  - Employee Share: 8,536
  - Gov't Subsidy: 10,243

- **2014 Post Reform No ESI:**
  - Employer Share: 2,028
  - Employee Share: 10,141

- **2014 Funded Alternative:**
  - Employer Share: 2,000
  - Employee Share: 2,000

- **Total:**
  - 7/5% Total (7/5% FT Employees + 0/0% Waived Converted)

**139% - 266% FPL**

- **Today:**
  -Employer Share: 2,203
  - Employee Share: 2,203
  - Gov't Subsidy: 14,383

- **2014 Pre Reform:**
  - Employer Share: 2,203
  - Employee Share: 2,203

- **2014 Post Reform:**
  - Employer Share: 13,383
  - Employee Share: 13,383

- **2014 Post Reform No ESI:**
  - Employer Share: 9,180
  - Employee Share: 9,180

- **2014 Funded Alternative:**
  - Employer Share: 2,000
  - Employee Share: 2,000

- **Total:**
  - 18/12% Total (14/10% FT Employees + 4/29% Waived Converted)

**267 - 400% FPL**

- **Today:**
  - Employer Share: 1,532
  - Employee Share: 7,658
  - Gov't Subsidy: 9,190

- **2014 Pre Reform:**
  - Employer Share: 1,820
  - Employee Share: 9,098

- **2014 Post Reform:**
  - Employer Share: 4,305
  - Employee Share: 5,380

- **2014 Post Reform No ESI:**
  - Employer Share: 7,221
  - Employee Share: 3,833

- **2014 Funded Alternative:**
  - Employer Share: 7,221
  - Employee Share: 2,000

- **Total:**
  - 51/33% Total (44/31% FT Employees + 7/50% Waived Converted)

**400% + FPL**

- **Today:**
  - Employer Share: 1,799
  - Employee Share: 9,304

- **2014 Pre Reform:**
  - Employer Share: 2,137
  - Employee Share: 11,054

- **2014 Post Reform:**
  - Employer Share: 2,192
  - Employee Share: 10,824

- **2014 Post Reform No ESI:**
  - Employer Share: 2,000
  - Employee Share: 2,000

- **2014 Funded Alternative:**
  - Employer Share: 5,219
  - Employee Share: 9,810

- **Total:**
  - 78/51% Total (75/54% FT Employees + 3/21% Waived Converted)
Health Insurance and Penalty (HIP) Calculator

www.cliftonlarsonallen.com/HIP
2014: State Health Insurance Exchanges

What is an exchange?
A marketplace for individuals and small businesses to shop for insurance.
- Offer a choice of health plans
- Standardize health plan options
- Allow consumers to compare plans based upon price
- Intended to provide a more competitive market
- Provides consumers with a neutral party to assist with plan enrollment, information and eligibility determination for any subsidies

Who can participate?
- In 2014, small employers can offer an Exchange plan as their employer health plan
- **Individuals**: Includes self-employed or unemployed individuals (2014)
- In 2017, states can allow **large employers** to participate

- Each state must establish a health insurance exchange
- HHS Secretary to establish the rules around exchanges
Types of exchange plans to be offered by insurers

- **Bronze** = 60% actuarial value
- **Silver** = 70% actuarial value
- **Gold** = 80% actuarial value
- **Platinum** = 90% actuarial value
- **Catastrophic plan**
  - Only available to individuals < 30 years old, or those exempted from the individual mandate due to unaffordability or hardship.
  - Plan must cover:
    - “minimum essential benefits”
    - a minimum of three primary care visits per year
- All exchange “metal” plans must cover essential health benefits, limit cost-sharing and have a specified actuarial value
Defining Essential Benefits Package

• ACA specifies:
  – 10 categories of benefits to be included and benefits in a typical employer-sponsored plan.

• Defined by states, choosing from one of three options
  – One of the three largest products in the small group market in the state
  – One of the three largest health plans offered to federal or state employees, or
  – the Health Maintenance Organization (HMO) with the largest commercial enrollment in the state.

• States will need to fill in certain benefits specified by the ACA that are often not included in benefit plans today, such as habilitation and pediatric dental services.
Key Exchange Dates

- **Dec. 14, 2012**: States to submit proposals on their state-based exchanges to federal administration.
- **Feb. 15, 2013**: States to submit federal partnership exchange proposals.
- **Oct. 1, 2013**: Exchange online web portals must be operational for open enrollment.
- **Jan. 1, 2014**: Exchange plan year begins.
Exchanges Select Essential Benefit Benchmark Plans (12-10-12)

Essential Health Benefit (EHB) selections were submitted to HHS by 26 states and DC as of December 10, 2012. The other 24 states did not make a selection; this allowed HHS to assign their "largest small-group plan" as the benchmark.
Making Exchanges self-sustaining

- Regulations issued Dec 7, 2012 indicate that the federally-run exchanges will be financed with a surcharge -- capped at 3.5 percent of monthly premiums in 2014. (per Kaiser health news.)

- State insurance exchanges must be self-sustaining by 2015.
  - Many states considering surcharges on insurers of 2-4% of premiums. This will be passed along to consumers.
2014: Government assistance to help some individuals obtain coverage

- **Medicaid expansion**: Expands eligibility to individuals and families up to 133% of the federal poverty level (FPL) or Modified Adjusted Gross Income (MAGI) of 138% of FPL
  - If cost effective, states can opt to subsidize employer-sponsored premiums for this group

- **Premium and cost share assistance**:
  - Individuals and families with household income of 100 - 400% FPL may be eligible for sliding-scale assistance, such as:
    - Tax credits to help pay premiums; and
    - Out-of-pocket reductions to help with cost sharing (e.g., co-payments and co-insurance)

**138% FPL**
- Individual = $15,414
- Family of 4 = $31,809

**400% FPL**
- Individual = $44,680
- Family of 4 = $92,200
Medicaid Expansion Not Universal (as of 1/3/2013)
Health Insurance Premium Tax Credit

**Eligibility**: Household Income between 100- 400% FPL and NOT eligible for minimum essential coverage

**Credit calculation** = Premium cost for benchmark plan (second lowest silver plan) – taxpayer’s applicable percentage

<table>
<thead>
<tr>
<th>Household Income as a % of Federal Poverty Line (FPL)</th>
<th>Initial Percentage</th>
<th>Final percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 133% FPL</td>
<td>2.0%</td>
<td>2.0%</td>
</tr>
<tr>
<td>133 - 150% FPL</td>
<td>3.0%</td>
<td>4.0%</td>
</tr>
<tr>
<td>150 – 200% FPL</td>
<td>4.0%</td>
<td>6.3%</td>
</tr>
<tr>
<td>200- 250% FPL</td>
<td>6.3%</td>
<td>8.05%</td>
</tr>
<tr>
<td>250 – 300% FPL</td>
<td>8.05%</td>
<td>9.5%</td>
</tr>
<tr>
<td>300 – 400% FPL</td>
<td>9.5%</td>
<td>9.5%</td>
</tr>
</tbody>
</table>
Example: Calculating Premium Assistance Tax Credit

**Inputs**

- **Benchmark premium** = $5,200
- **Household Income (MAGI)** = $27,225 (250% FPL/individual)
- **Applicable %** = 8.05%

**Premium Assistance Tax Credit Calculation**

\[
\text{Credit} = \text{Benchmark premium} - \text{Household Income} = \$5,200 - \$2,192 = \$3,008
\]

- If actual Tax Credit > Advanced Payment, taxpayer receives **income tax refund**.
- If Advanced Payment > Credit, then must re-pay
  - Repayment is capped for those earning < 400%FPL
Cost Sharing Subsidies

• Federal government will pay insurers to reduce the cost sharing for individuals:
  – Enrolled in a silver-level plan through an Exchange and
  – Whose household income is between 100-400% FPL

<table>
<thead>
<tr>
<th>Household income as % of FPL</th>
<th>Cost sharing Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>100-200% FPL</td>
<td>Two-thirds</td>
</tr>
<tr>
<td>200-300% FPL</td>
<td>50%</td>
</tr>
<tr>
<td>300-400% FPL</td>
<td>One-third</td>
</tr>
</tbody>
</table>

• Reductions don’t apply to benefits not included in the federal definition of “essential health benefits”
Identifying full-time employees: 2013 & beyond

• Employee engaged in average of 30 “hours of service” per week or 130 hours in a month.
  – Uses common law definition of employee
    ◊ Does not include: leased employees, sole proprietors, partners in partnership, 2% S-corp shareholder
  – **Hours of service** = hours worked and hours paid but for which no work was performed (e.g., PTO, FMLA, Deployment leaves, disability, etc.)
  – **Salaried workers** use actual hours, or 8 hours/day or 40 hours per week standard.
  – Special rules for employees of **educational institutions**
  – **Seasonal workers**: If 120 days or fewer; or 4 calendar months of work, then excluded from calculation of large employer
Safe harbors: Full-time employee

- IRS Notice 2012-58 and Dec. 2012 IRS/HHS proposed regulations explain a method employers may use to determine full-time status for ongoing employees, new employees expected to work full-time, and variable hour and seasonal workers.

- **Measurement period**: 3 – 12 months (employer determined)

- **Administrative period (Optional)**: Up to 90 days for employee eligibility for coverage determinations, notification and enrollment of employees

- **Stability period**: The greater of 6 months or the duration of the standard measurement period
Key Employee Notification Requirements

1. Notice of grandfathered health plan status
   – Must include a statement describing the health plan benefits and contact information for questions or complaints, as part of plan materials provided to participants (for plans in existence on 3/23/10)

2. Notice of key plan design changes (effective 1/1/11)
   – Annual and lifetime limit changes
   – Eligibility for dependent coverage of adult children
   – Primary care physician designation and OB/GYN self-referral change

3. Summary of medical benefits (starting 9/23/12)

4. Summary of material changes (effective 9/23/12)

5. Notice of eligibility for health insurance exchange (effective 3/1/13)
Summary of Benefits and Coverage Notice to Employees

- Effective for plan years after 9/23/12
- Include with open enrollment materials
- Distribute to newly eligible employees, employees with special enrollment rights, and upon request
- A new SBC must be distributed at least 60 days prior to any mid-year plan changes affecting SBC.
- The Department of Labor six-page SBC template can be found at: http://www.dol.gov/ebsa/pdf/correctedsbctemplate.pdf
Eligibility for Health Insurance Exchange Notice

Effective 3/1/13

- Information about the existence of state/federal exchange, services offered and how to contact

- Employee may be eligible for assistance to purchase insurance via the Exchange

- Employee loses eligibility for employer contribution to health benefits if purchases insurance via the Exchange
Questions?

Deb Freeland, CPA
Partner
Healthcare
Deb.freeland@cliftonlarsonallen.com
317-569-6230

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