Health Care Reform – What Employers Need to Know Now

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STEPTOE & JOHNSON LLP

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Overview

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New Health Care Reform Laws

- "Senate Bill" signed into law March 23, 2010 (Patient Protection and Affordable Care Act)
- "Reconciliation bill" signed into law March 30, 2010 (Health Care and Education Affordability Reconciliation Act of 2010)

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Overview

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Key Provisions Affecting Employers

- Employer and Individual Mandates/Subsidies/Credits
- Market Reforms/Plan Design Requirements
- Exchanges
- New Taxes
- New Fees
- New Reporting Obligations
- Changes Regarding Wellness
- Others to Note

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Small Business Tax Credit (1/1/10)

- Who's Eligible? Less than 25 ees & avg. wages < $50K, offer qualified coverage through Exchange (after 2014), pays 50% of premium cost
- How much? Up to 35% of er contribution 2010-2013 and up to 50% starting 2014, depending on firm's size ($25K cap)
- Part of general business credits section of IRC

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Employer Mandate
Issue: Pay or Play?

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Large Employers

- 51+ **FT & FTE** ees*
- No coverage – $2000/**FT** ee penalty (>30 ees)
- Coverage – lesser of: $3000/ **subsidized FT** ees or $2000/total **FT** ees (>30 ees)
- Starting 1/1/2014

*this is the definition for employer size categorization only

Small Employers

exempt

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Individual Mandate/Subsidies

Issue: Adverse Selection in Employer Plans?

- Penalty tax – Failure to maintain “qualifying coverage” – $95/325/695+ (starting 2014)
- Access to er-based coverage? Family Income < 400% FPL and –
  - Premium > 9.5% of income or ee responsible for > 40% of plan’s cost of coverage – Exchange subsidy (and er pays $3000 penalty); or
  - Premium = 8 - 9.5% of income – Free Choice voucher (ee takes er’s contribution and applies it to Exchange plan)

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Market Reforms/Plan Design Changes

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Applicable to Employers That Provide Benefits:

- Non-discrimination in favor of highly compensated employees (effective 2010) (new plans)
- Coverage Summary Disclosure Rules (effective 2012) (all)

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Market Reforms/Plan Design Changes

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Applicable to All Plans:

- No lifetime coverage limits for essential benefits (2010)
- No annual coverage limits on essential benefits (2010, except until 2014 as may be permitted by HHS)
- No pre-existing conditions exclusions (2010 to children younger than 19; in 2014 for all)
- No policy rescissions except in cases of fraud (2010)
- Extension of dependent coverage until the dependent turns 26 years old (2010/2014)
- No plan participation waiting periods > 90 days (2014)

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Market Reforms/Plan Design Changes

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Applicable to All Non-"Grandfathered" Plans:

- Free preventative services (2010)
- Primary care physician designation right (2010)
- Mandatory appeals process rights/notice (2010)
- Premium increase reviews (does not apply to self-insured plans at all) (2011)
- Plan quality reporting obligation to enrollees/HHS (2012)
- Out of pocket limitations (= HDHP out-of-pocket limits for HSAs) (2014)
- Clinical trial participation right (2014)

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Market Reforms/Plan Design Changes

Applicable to All Non-"Grandfathered" "Small Group" Plans (< 100 Ees):

- Essential benefits/minimum plan value (2014)
- Community rating/no medical underwriting (2014)

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Market Reforms/Plan Design – Timeline

- Auto-enrollment (as soon as rules are issued)
- Most market reforms effective for plan years starting after September 23, 2010
- Most Exchange-related provisions start 2014

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Market Reforms/Plan Design – Highlights

Minimum Medical Loss Ratios

- Do not apply to self-insured plans
- A minimum % of premium revenues must be spent on clinical services and "activities to improve health care quality"
- Most details (e.g., which costs fall on the "good" side?) must be addressed in rulemaking that will involve both HHS and the NAIC
- Failure to meet minimum MLR triggers rebates to policyholders

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Exchanges

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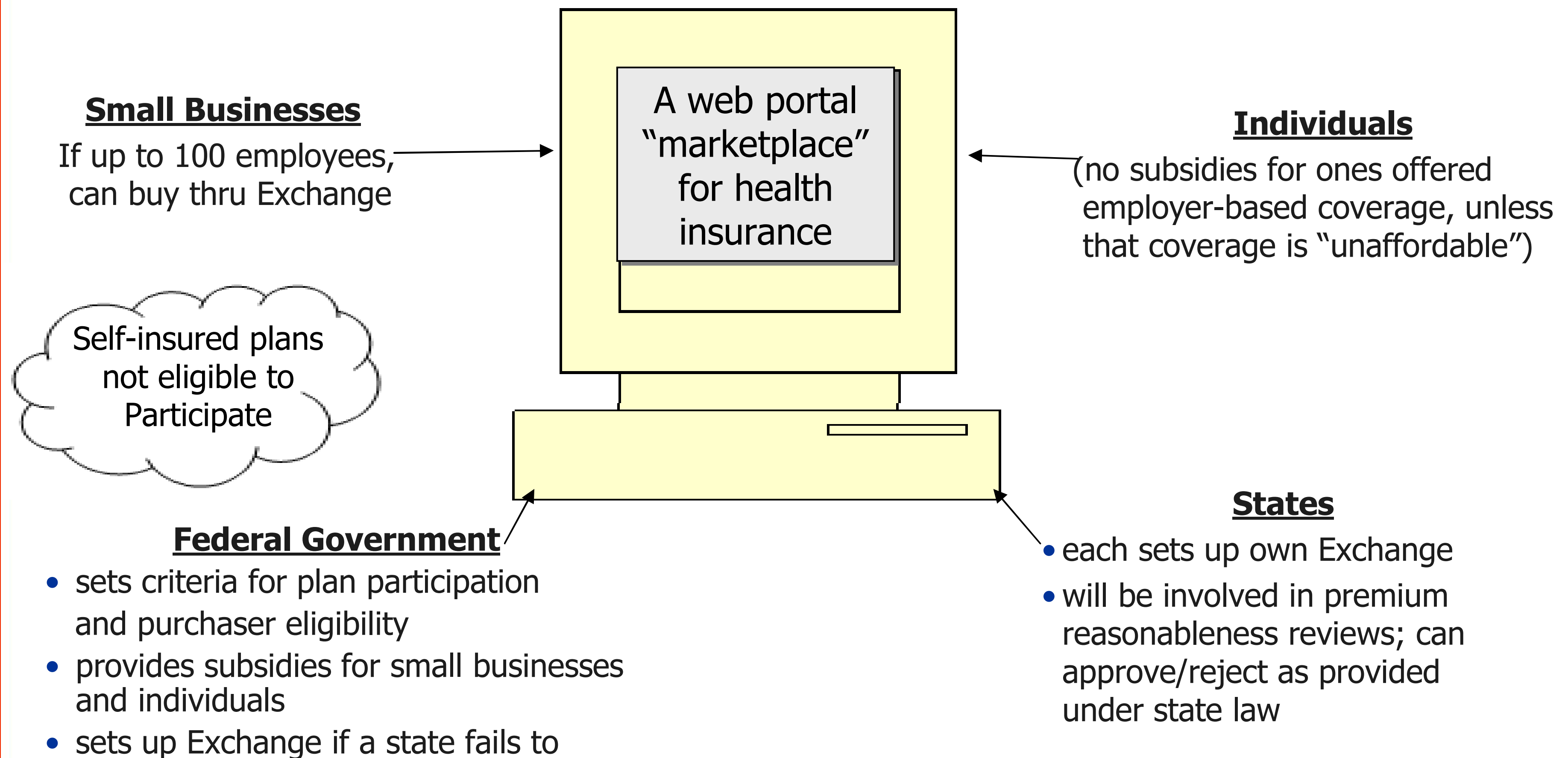

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Exchanges

Other Potential Plans in the Marketplace

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Multi-State Plan

- Replaces public option
- OPM – establish at least 2 multi-state plans for offer through each state Exchange
- Federal government – negotiates MLRs, profit margins, premiums, T&C. Will not bear risk or subsidize

CO-OPs

- Non-profit, member-run health insurance companies
- All 50 states, DC
- $6 billion federal grants, loans
- Eligibility for government assistance – "no insurance industry involvement and interference"

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New Taxes/Tax Changes – Overview

- Non-discrimination rule change (2010)
- Medicare Part D Subsidy – Er Tax Deduction Eliminated (2013)
- "Cadillac Tax" (2018)
- Tax-advantaged accounts (HSAs, FSAs, HRAs)
  - Reimburse only for prescribed drugs (2011)
  - Penalty for using HSAs for non-qualified expenses increased to 20% (2011)
  - Limit Health FSA contributions to $2500/yr (2013)
- High-income earners (individuals with income > $200K; couples > $250K) (2013)
  - increased Medicare wage tax
  - new Medicare tax on investments

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New Taxes/Tax Changes – Highlights

Non-Discrimination Rule Change (2010)

- A plan discriminates in favor of highly paid ees if they are disproportionately eligible to participate, or if the plan provides special types of benefits to them.
- The rules currently applicable to self-insured plans (taxing "excess benefits" paid to highly compensated ees if plans discriminate in their favor) may apply to insured plans or may subject the plan to penalties.
- New insured arrangements for rank-and-file may have to be reviewed for nondiscrimination compliance.
- Simple Cafeteria Plan Safe Harbor (<100 Ees).

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New Taxes/Tax Changes – Highlights

Medicare Part D Subsidy – Er Tax Deduction Eliminated (2013)

- Ers providing prescription drug plans for Medicare-eligible retirees may qualify for a Federal subsidy based on the cost of the prescription drugs ("Retiree Drug Subsidy").
- Currently, the subsidy is not counted as income for the er **and** er can deduct the cost of its contributions to the plan.
- Effective 2013, er's deduction for retiree medical plan contribution is reduced by the amount of subsidy received = $$ in additional tax burden.
- Due to accounting rule requirements, affected ers must immediately account for the change in NPV of their projected retiree expenses = detrimental impact on reported earnings.

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New Taxes/Tax Changes – Highlights

Cadillac Tax (2018)

- Applies to self-insured and group plans
- Tax imposed on issuer of policy/provider of benefit
- Tax = 40% of coverage costs above thresholds ($10,200/indiv; $27,500/family)
- "Coverage" = aggregate $ paid for medical, FSAs, HSAs, HRAs; but not stand-alone dental or vision, or "excepted benefits"
- Employer responsible for calculating value of benefits and tax amounts, and notifying each carrier/provider of its share of the tax

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New Fees

May Prompt Higher Premiums

- TPAs/Carriers – $25 B (3 yr High Risk Reins. Program)
- SIPs/Carriers – $2/beneficiary (Comparative Effectiveness Research)
- Carriers – $8B - $14.3B+ /yr
- Pharmaceutical manufacturers – $2.5B+/yr
- Medical device manufacturers – 2.3% Per Sale Excise Tax

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New Reporting Obligations – Employers

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- W-2s – Health Insurance Value (2011)
- Ees & New Hires – Exchange & Subsidies Notice (3/1/2013)
- Treasury Department – Comprehensive Info Re Coverage Provided & Who Is Covered (2014)
- Cadillac Taxes – Report Amounts To Carriers & HHS (2018)

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New Reporting Obligations – SIPs/Carriers

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- To Enrollees: Summary of Coverage (1/1/12)
- To Enrollees: 60 days Advance Notice of Material Changes To Plan (eff. date unclear, likely no later 1/1/11)
- To Enrollees: Plan's Appeals Process & State Consumer Assistance Office (9/23/10) (No GF)
- To Enrollees & HHS: Quality of Care Measures/Wellness Programs (2012) (No GF)
- To HHS: Cost Data for MLRs (Informational for SIPs) (9/23/10)
- To HHS/State/Internet: "Unreasonable" Premium Increases Notice/Justification (3/23/10) (No GF)
- To HHS: Net Premiums Written (by 2014) (Carriers Only)
- To HHS/States: Claims Payment Policies/Rating Practices/Others (2014)
- Certification to HHS: HIT Data, Systems, & Payment Req. Compliance (Only in 2013 & 2015)

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Wellness

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- HHS New Wellness Program Grants (<100 ees working > 25 hrs/wk)
- Wellness Program Participation Premium Discounts/Rewards – up to 30% (HHS may ↑ 50%)
- CDC Technical Assistance to Ers (e.g., increasing participation; evaluation)

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Others to Note

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Reinsurance for Early Retiree (Age 55-64) Coverage

- Employer-based plans reimbursement program
- 80% of "costs of claims" of $15K-$90K
- Plans must implement programs/procedures to generate cost savings
- HHS will develop rules and run program
- Plan must apply for this subsidy
- Subsidy must be used to reduce retiree coverage costs
- Applications Available June 2010; Program Ends 1/1/2014/$5 Billion

Long Term Care (CLASS Act)

- HHS creates national long term care insurance program by 2012
- Enrollment & premiums – thru voluntarily participating ers
- HHS establishes enrollment & payment process for ees of non-participating ers

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Contact Information:

AmWINS Group Benefits

Please contact your AmWINS Group Benefits Sales Representative.

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Please Note:

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