Health Care Reform: Ready or Not, Here it Comes!

Presented by:

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Agenda

The Elements of Reform

- Employer Mandates
- Shared Responsibility
- Exchanges
- Taxes & Fees
- Individual Mandate
- DOMA
- The YouToons Get Ready for Obamacare

Taxes and Fees
Insurance Exchanges
Individual Mandate
Employer Mandate

Agenda
Healthcare Reform Timeline

- Benefit coverage changes
  - Preventive care at 100% in network
  - Dependents < age 26
  - No pre-ex < age 19
  - Prohibits rescissions except fraud
  - No lifetime limits/annual limits on essential benefits
  - Patient protections
  - Grievance and appeals updates
- Temporary high-risk pool
- Uniform MLR definition (NAIC)
- HHS web portal

- Guaranteed issue
- Individual coverage mandate
- Individual subsidy
- State individual and small group exchanges operational
- Rating rule changes
- Insurer taxes
- Employer “pay or play” mandate
- Essential health benefits
- Medicaid expansion

- 2010
  - Minimum MLR requirements
  - Medicare Advantage plans begin to have payments frozen
  - Medicare Advantage cost-sharing limits effective
  - Pharmaceutical fee
  - Rate review implementation

- 2011
  - Patient-centered outcomes research fee
  - MLR reporting goes “live”
  - Administrative simplification begins to phase in
  - Uniform summary of coverage

- 2012
  - Medical device fee
  - Exchange coverage notice
  - FSA cap
  - Tax deduction for Medicare Part D subsidy eliminated

- 2013
  - Increased penalties on individual mandate
  - Increased insurer taxes
  - States must allow groups with <100 employees into exchanges (2016)
  - “Cadillac tax” (2018)
Employer Mandates

Effective 2014

- Waiting periods can be no longer than 90 days.
  - California exception: 60 days

- Pre-existing condition exclusions will be eliminated.

- Small Group annual deductibles cannot exceed $2,000 for single coverage and $4,000 for family coverage.

- Out of pocket maximums cannot exceed those applicable to health savings accounts in 2014 (today those limits are $6050/$12100).

- Wellness rewards cannot exceed 30% of the cost of employee only coverage (tobacco cessation: 50%).
Other things to know

• Full time employees now will be 30 hours per week.

• In some cases, employers MAY continue to discriminate in favor of highly compensated employees in either plan design or cost until 105(h) ruling has been decided upon. Still pending with IRS. Seek guidance.

• Carriers will be required to inform all clients of MLR – medical loss ratio. Carriers must report by June and Carriers must refund appropriate dollars – if any – by August. Carriers did refund millions of dollars in 2012 to plan sponsors and individual insureds. Rebates may be “plan assets” under ERISA; employers must distribute according to guidance.
Employer Mandate
“Shared Responsibility”
Pay or Play – Employer Shared Responsibility Rules

Updated per IRS 12.28.12

- Employers must offer coverage to 95% of full time employees to meet coverage requirement of ACA.
- Term dependents refers only to employee’s children under the age of 26 and not spouses.
- Requirements are effective first day of plan year after January 1, 2014.
  - **Delayed until 2015.**
- Allowing for a one time election change in cafeteria plans for employees opting exchange coverage in 2014.
- Controlled group rules apply for purposes of determining whether an employer is a large employer (over 50 full time equivalent employees)
2014: Penalty Triggers for Employers

Trigger #1: Don’t offer medical insurance

- Non-deductible tax penalty of $2,000 per FT minus first 30 employees
  
  \[ 530 \text{ ees} - 30 \text{ ees} = 500 \text{ ees} \times 2,000 = 1,000,000 \]

- Penalties are adjusted annually for inflation beginning 2015.

Trigger #2: Don’t offer quality and affordable medical insurance

- Non-deductible $3,000 for each employee certified for premium assistance
### PPACA Play Or Pay Analysis

Note: This report shows the costs of a healthcare plan by employee vs the cost of taxes if you do not provide a plan. We assume that employees who currently waive offered benefits will not purchase a plan on the exchange. Benefit costs are estimated to match the previous years cost plus a growth percentage (supplied at run time) for employees that currently participate in the benefit plan. For those who are not currently eligible, we assume a default cost of $#,### per year (supplied at run time). At run time, the user also supplies the estimated number of new hires and wait period length before eligibility. Requires more than 50 employees.

<table>
<thead>
<tr>
<th>Employee Name</th>
<th>Plan Option2</th>
<th>Annual Salary</th>
<th>Avg Weekly Hours</th>
<th>Employee Contribution</th>
<th>Employer Contribution</th>
<th>Total Contribution</th>
<th>Mandate Tax</th>
<th>Plus Exchange Tax</th>
<th>Total Tax</th>
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<tr>
<td>Allen, Harvey R.</td>
<td>Family</td>
<td>$62,000.00</td>
<td>40</td>
<td>$1,845</td>
<td>$2,460</td>
<td>$4,305</td>
<td>$2,000</td>
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<td>$3,000</td>
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</table>
Affordable & Credible Coverage

Coverage is "affordable" when:

• The employee cost for single coverage for the employer’s lowest cost plan does not exceed 9.5% of household income (determined based on one of 3 safe harbor tests)

• Contributions toward dependent coverage not part of calculation

Coverage is “credible” when:

• The plan provides "minimum value" (it has at least a 60% actuarial value)
Affordability Safe Harbors

- Form W-2 safe harbor--use Box 1 wages
  - Determined after the end of the calendar year on an employee-by-employee basis
  - For 2014, look at 2014 Form W-2 (issued in January 2015)

- Rate of pay safe harbor
  - Take rate of pay for each eligible hourly employee, multiply that rate by 130 hours, and determine affordability
  - Allows employer to determine affordability prospectively

- Federal poverty line safe harbor
  - Disregard employees whose income qualifies them for Medicaid (cannot receive premium tax credit if earn below 100% of FPL)
  - Determine affordability using FPL for a single individual
Calculating Affordability

- Employee only coverage
- Based on least expensive plan offered
- 9.5% of W-2 earnings
- $132/month is 9.5% of $8 per hour (CA’s min wage)

<table>
<thead>
<tr>
<th>Plan</th>
<th>EE only</th>
<th>EE + SP</th>
<th>EE + CH</th>
<th>EE + SP/CH</th>
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<td>Plan A</td>
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<td>$250</td>
<td>$300</td>
<td>$500</td>
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<tr>
<td>Plan B</td>
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<td>$350</td>
<td>$400</td>
<td>$600</td>
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<td>Plan C</td>
<td>$150</td>
<td>$450</td>
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</table>
**Calculate Employee Contributions**

### PPACA Exception Report

Note: The PPACA requires that employee’s premium not exceed 9.5% of their annual earnings (as reported on their W-2). In 2018, any policy with premiums exceeding $10,200 for an individual or $27,500 for a family is subject to a "Cadillac Tax".

<table>
<thead>
<tr>
<th>Employee Name</th>
<th>Plan Option</th>
<th>Avg Weekly Hours</th>
<th>W-2 Income</th>
<th>Employee Contribution</th>
<th>Employer Contribution</th>
<th>Total Contribution</th>
<th>Employee Contribution %</th>
<th>Notes</th>
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<tbody>
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<td>Allen, Harvey R.</td>
<td>Family</td>
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<td>54,030.85</td>
<td>$738.00</td>
<td>$964.00</td>
<td>$1,722.00</td>
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<td>Ankiel, Richard A.</td>
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<td>101,322.28</td>
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<td>275,224.64</td>
<td>$9,072.00</td>
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<td>This policy will be subject to the Cadillac tax in 2018.</td>
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<td>45,230.38</td>
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<td>$1,006.00</td>
<td>$1,764.00</td>
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<td>14,247.91</td>
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<td>$820.00</td>
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<td>15,929.32</td>
<td>$574.00</td>
<td>$738.00</td>
<td>$1,312.00</td>
<td>3.6%</td>
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<td>39,969.88</td>
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<td>$756.00</td>
<td>$1,344.00</td>
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<td>80,132.85</td>
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<td>$756.00</td>
<td>$1,344.00</td>
<td>0.7%</td>
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<td>$1,764.00</td>
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<td>$964.00</td>
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<td>15,170.00</td>
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<td>3.8%</td>
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<td>Family</td>
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<td>21,856.28</td>
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<td>$756.00</td>
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<td>Summers, Julie</td>
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<td>10,824.00</td>
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<td>The employer premium has exceeded the maximum of 9.5% of W-2 earnings.</td>
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<td>$1,312.00</td>
<td>2.6%</td>
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## 2014 Federal Poverty Levels

<table>
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<tr>
<th>Family Members</th>
<th>100% FPL</th>
<th>133% FPL</th>
<th>250% FPL</th>
<th>400% FPL</th>
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<td>1</td>
<td>$11,735</td>
<td>$15,608</td>
<td>$29,338</td>
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<td>2</td>
<td>$15,896</td>
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<td>3</td>
<td>$20,056</td>
<td>$26,674</td>
<td>$50,140</td>
<td>$80,224</td>
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<td>4</td>
<td>$24,217</td>
<td>$32,209</td>
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<td>8</td>
<td>$40,859</td>
<td>$54,342</td>
<td>$102,148</td>
<td>$163,436</td>
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</tbody>
</table>
To avoid a potential penalty, an employer must provide employees with an effective opportunity to enroll (or decline coverage) at least once each plan year.

An employer cannot render an employee ineligible for a premium tax credit by requiring the employee to enroll in unaffordable coverage.

An employee’s failure to make a timely premium payment may result in termination of coverage without the employer becoming liable for an affordability penalty.
Calculating the Cost

Section 4 - Employer Summary

Summary Table

<table>
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<tr>
<th>Current plans</th>
<th>Current Plans</th>
<th>Scenario 2</th>
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<tbody>
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<td>Employer cost. midpoint estimate of Medicaid eligibles</td>
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<td>Cost of newly eligible individuals</td>
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<td>Cost impact of employer shared responsibility penalty</td>
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<td>Employer Plan Cost</td>
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<td>Employer Penalty</td>
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<td>Additional Compensation</td>
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<td>Employer payroll tax on additional compensation</td>
<td>$20,475</td>
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<tr>
<td>Tax impact of penalty not being tax deductible</td>
<td>$14,000</td>
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</tbody>
</table>
Who Is a Full-time Employee?

- A person employed an average of 30 hours per week
- Regulations treat 130 hours of service as the monthly equivalent of 30 hours of service per week \((52 \times 30) \div 12 = 130\)
- Calculate on a monthly basis, not payroll period
- Hours of service include hours for which employee paid or entitled to be paid, including vacation, holiday, illness, disability, military duty, leave of absence, jury duty, or layoff
Optional look-back measurement period may be used for those with variable hours

For an on-going employee, choose a look-back measurement period of between 3 and 12 months (the “standard measurement period”)

- If worked full-time during the standard measurement period, treat as full-time for the “standard stability period” (which is the greater of 6 months or the length of the standard measurement period)

New non-variable hour and non-seasonal employees expected to work full-time are treated as full-time

If new employee is a variable hour or seasonal employee, may use a look-back measurement period followed by a stability period
Name of the California exchange is “Covered California.”

It must be ready to accept enrollees in October 2013 for coverage beginning January 1, 2014.

Plan designs have been released. Some nuances between individual plans and small business plans. HSA plan is available.

Participating carriers have been selected.

Factors to consider:
- Network availability
- Out-of-pocket costs per tier
- Premiums
### Public exchanges at a glance

#### Individual

- **Who is eligible**
  - US citizen or legal alien
  - Not incarcerated
  - Resident of the state in which exchange is based

- **Available assistance**
  - Access to premium tax credits and cost-sharing subsidies:
    - Tax credit subsidies for those between 133% and 400% of the federal poverty level (FPL) (California, 138% of FPL)
    - Cost sharing subsidies for those between 100% and 250% of the FPL

#### Small Group (SHOP)

- **Who is eligible**
  - FT employees of small businesses with up to 100 employees.
  - States have the option to limit to businesses of 50 or less until 2016 (California).
  - In 2017, states may open the Exchanges to large employers.

- **Available assistance**
  - Business tax credit for employers with up to 25 employees and average income of less than $50,000 a year.
**Products sold on the exchange**

**Metallic exchange products**

A plan will provide a level of coverage that is designed to provide essential benefits that have an **actuarial value** of:

- **Platinum** – 90%
- **Gold** – 80%
- **Silver** – 70%
- **Bronze** – 60%

**Catastrophic plan**

This product is available to individuals under 30 years of age or those exempt from the individual mandate because no affordable plan is available to them or because of a hardship.

**“No wrong door”**

The exchange will inform individuals of eligibility requirements for the Medicaid program, the Children’s Health Insurance Program (CHIP), or any applicable state or local public program.

**Dental plan**

Exchanges may sell stand-alone dental plans if they offer pediatric dental benefits meeting the requirements of the ACA.
Rates may vary based on:
- Individual or family coverage
- Rating area (more geographic regions)
- Age, but cannot vary by more than 3 to 1 for adults
- Tobacco use, but cannot vary by more than 1.5 to 1
  - California exception
- No more risk adjustment factors
- No more health underwriting
Plans may be purchased on-line, through the 800 number, or from a certified insurance agent.

Rolling open enrollment for small employers
- For individual coverage, may only enroll during open enrollment, unless they have a special enrollment event.

Employers choose a metal tier and employees choose a plan
- Employees cannot buy up or down.

Exchange bills employer.

Minimum contribution & participation requirements.
New Taxes and Fees
These taxes and fees will have significant financial impacts on health plans, employers, and other groups.

<table>
<thead>
<tr>
<th>Year</th>
<th>Health Plans</th>
<th>Employers</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
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<tr>
<td>2013</td>
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<td></td>
<td>Medical Device Fee (2013)</td>
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<tr>
<td>2014</td>
<td>Annual Fee on Health Plans (2014)</td>
<td>Pay or Play Mandate (2014)</td>
<td></td>
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</tbody>
</table>

Individual Mandate
**Individual Mandate**

- **Effective 1/1/14**, individuals (US Citizens and legal residents) must have “minimum essential coverage” for themselves and their dependents or pay a penalty (some exceptions apply).

- The penalty is **the greater of**
  - $95 in 2014, $325 in 2015, and $695 in 2016 (capped at 3x the annual flat dollar amount per year) **or**
  - 1% of income for 2014, 2% for 2015, and 2.5% by 2016

- “Minimum essential coverage” includes
  - An eligible employer-sponsored plan
  - A grandfathered health plan
  - An individual health plan
  - Medicare Part A, Medicaid, or CHIP
The Requirement to Buy Coverage Under the Affordable Care Act Beginning in 2014

Start here.

Do any of the following apply?
- You are part of a religion opposed to acceptance of benefits from a health insurance policy.
- You are an undocumented immigrant.
- You are incarcerated.
- You are a member of an Indian tribe.
- Your family income is below the threshold requiring you to file a tax return ($9,350 for an individual, $18,700 for a family in 2010).
- You have to pay more than 8% of your income for health insurance, after taking into account any employer contributions or tax credits.

Yes → There is no penalty for being without health insurance.

No → Were you insured for the whole year through a combination of any of the following sources?
- Medicare.
- Medicaid or the Children’s Health Insurance Program (CHIP).
- TRICARE (for service members, retirees, and their families).
- The veteran’s health program.
- A plan offered by an employer.
- Insurance bought on your own that is at least at the Bronze level.
- A grandfathered health plan in existence before the health reform law was enacted.

Yes → The requirement to have health insurance is satisfied and no penalty is assessed.
More Compliance Obligations
Employers subject to FLSA must notify employees regarding health care coverage

Provide notice to full-time and part-time employees, even if not enrolled in coverage

**Effective date**: October 1, 2013 (new hires within 14 days)

Notice must include information about existence of health benefit exchange, potential eligibility for subsidy under exchange if employer’s share of benefit cost is less than 60 percent, and risk of losing employer contribution if employee buys coverage through an exchange

Model notices issued (and amended COBRA notice)
Reporting of Health Insurance Coverage to IRS (6055)

- Applies to insurers and self-insured employers providing “minimum essential coverage” (including grandfathered plans)
- Must also provide written statement to covered individual

Reporting of Health Insurance Coverage to IRS (6056)

- Applies to large employers who are subject to the play-or-pay penalties
- Must also provide written statement to F/T employees

Penalties will be assessed for failure to comply
Medicare Tax Increase on high income individuals
- **Effective**: January 1, 2013
- **Employer Requirement**: Withhold additional Medicare tax in the pay period in which employer pays employee in excess of $200,000

W-2 Reporting of aggregate cost of health coverage
- **Effective**: Calendar year 2012 - Cost must be reported on the W-2s issued in January 2013—and also reported in subsequent years
- **Small employer Exception**: Those that filed fewer than 250 Forms W-2 for the preceding calendar year are not subject to the reporting requirement for Forms W-2 for the subsequent calendar year

Summary of Benefits & Coverage
- **Effective**: Compliance periods begin on or after September 23, 2012
- Employer Requirement: Distribute according to rules

Health FSAs: Employee FSA contributions are capped at $2,500 (to be indexed)
- **Effective**: First cafeteria plan year after 12/31/12
Awaiting Guidance

- Guidance on delayed implementation of play-or-pay penalties
- Guidance on IRS and other reporting requirements
- Nondiscrimination rules for fully insured plans
- Automatic enrollment rules for employers with 200 or more full-time employees
- More guidance on the Exchange
Same-sex marriage
  • State of celebration
  • Benefits
    • Amend plan documents as necessary
  • Taxes
    • Change in federal and state tax treatment of benefits
    • Pre-tax contributions through cafeteria plans
    • Refunds and adjustments

Domestic partnerships and registered domestic partnerships in California: different rules apply

Wage and Hour Division Fact Sheet No. 28F, “Qualifying Reasons for Leave under the Family and Medical Leave Act”
Questions?
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