

MICHAEL BEST

& FRIEDRICH LLP



Health Care Reform Legislation Overview

John Barlament
Michael Best & Friedrich LLP
JLBarlament@michaelbest.com
414.225.2793

MICHAEL BEST

& FRIEDRICH LLP

Overview

- How we arrived here
- New options to provide coverage
- Individuals must have coverage
- Employers must “pay or play”
- New taxes and tax credits
- Will reform be repealed or changed?
- Addressed in upcoming sessions:
 - Required plan changes
 - What is a “grandfathered” plan
 - Required administrative changes

2



MICHAEL BEST

& FRIEDRICH LLP

Health Care Reform: Coverage, Cost, Quality Overview of the Challenges

Covering the Uninsured

The number of uninsured and underinsured Americans continues to rise.

In 2007, nearly
46 million
Americans under 65 lacked health insurance.

Paying for Reform

Covering all Americans is estimated to cost **\$1 trillion to \$1.5 trillion** over the next 10 years.

In 2007, health-care spending rose
5.1%
compared with the overall economy, which grew
2.8%

Improving Quality

The U.S. spends more per person than other industrialized nations, but that doesn't necessarily translate into better care.

At least
100,000
Americans die each year from infections acquired in the hospital and
1.5 million
are injured by medication errors.

SOURCES: Centers For Medicare and Medicaid Services, Office of Management and Budget, Kaiser Family Foundation, Alliance for Health Reform, Organization for Economic Co-operation and Development, Senate Finance Committee, Commonwealth Fund – The Washington Post

3

MICHAEL BEST

& FRIEDRICH LLP

New Options for Health Care Coverage

- Exchanges
 - Established by state (multi-state possible with HHS approval)
 - State insurance commissioner reviews plans and approves for sale
 - Available for individuals and small employers; in 2017, large employers can participate
- Multi-State Plan
 - OPM contract with insurers to offer at least two multi-state plans within exchange; at least one must be offered by non-profit
 - Each plan must be licensed in each state in which offered
- State Co-Ops
 - State-approved, non-profit, member-run insurance company eligible for federal start-up funds

4



The Details: Individuals Must Have Coverage

- Starting 1/1/2014, all individuals in U.S. must have “minimum essential coverage” through individual market, employer-provided or certain other coverage (e.g., Medicare or CHIP)
 - Cannot consist of only excepted benefits—e.g., limited scope dental, vision, health FSA
- Individual noncompliance penalties start at \$95 in 2014, phase to \$695 per adult in 2017 (1/2 for child)
 - Some exceptions available (Native American, religious, 8% of gross income, incarcerated)
 - Apparently enforced by IRS, but unclear if enforceable

5

Employers Must “Pay or Play” – Minimum Coverage

- Effective 1/1/2014, if employer employed an average of 50 full-time employees on business days during preceding calendar year, must offer “minimum essential coverage” to full-time employees and dependents
 - “Employee” defined as, for each month, someone working 30+ hours per week
 - Also includes FTE for part-time employees for purposes of counting if have 50 employees but DO NOT have to offer coverage to part-time employees
 - Seasonal workers can be excluded
 - Aggregation rules per Code Section 414; also, a “predecessor” employer
 - New employer: focus on “expected” number of this year’s employees

6

Employers Must “Pay or Play” – Minimum Coverage

- HHS to define “minimum essential coverage”
- Does not include excepted benefits (e.g., health FSA)
- What if we do not offer any health plan? Penalty of \$2,000 per full-time employee
 - When calculating tax due, subtract first 30 full-time employees

7

Employers Must “Pay or Play” – Penalties

- What if employer offers health plan but plan is not very good (“valuable”)? Or what if employer contributes very little so cost is too expensive for low-income employees to afford?
 - Penalty applies if (1) coverage offered to an individual with family income up to 400% of federal poverty level and (2) at least one full-time employee enrolls in a “qualified health plan” and receives a premium tax credit or cost-sharing reduction
 - Employee usually eligible for credit under exchange if plan's share of costs is less than 60% or employee's required premium is greater than 9.5% of household income
 - “Household income” based on who is in “family”—which focuses on individuals for whom taxpayer can take deduction
 - Unclear how domestic partners / older dependents will be treated
 - Penalty is LESSER of: (1) \$2,000 x total number of full-time employees or (2) \$3,000 x number of employees receiving tax subsidy

8

Employers Must “Pay or Play” – Vouchers

- Effective 1/1/2014, employee eligible for “free choice voucher” if (1) employee’s required contribution under employer plan is between 8% and 9.5% of household income; (2) employee does not make more than 400% of federal poverty level; and (3) employee does not enroll in employer plan
- Employee takes employer contribution in lieu of coverage under employer plan—employee uses voucher to purchase under exchange plan
 - If employer offers multiple plans with different contributions, voucher based on plan in which “employer pays the largest portion of the cost of the plan”
 - MBF Comment: Does not seem based on whether employee is actually eligible for that rich plan; could be problematic for certain employers with both union and non-union plans

9

Employers Must “Pay or Play” – Vouchers

- Voucher based on self-only coverage unless employee elects family coverage, apparently under exchange
 - MBF Comment: Will employer know what employee elected? When? Who coordinates this? Opportunity for TPAs / brokers?
- Any excess funds paid to employee (not returned to employer)
- Value of free choice voucher not taxable to employee (excess amount would be); is deductible by employer
- Strategy for Employers: Consider whether to “pay or play” but also consider additional changes noted herein

10

New Taxes on Health Plans, Employers and TPAs

- Comparative Effectiveness Fee: Effective first plan year ending after 9/30/2012, per participant fee payable by plan sponsors
 - Purpose is to fund comparative effectiveness research
 - Fee is \$1 per participant for first plan year, \$2 thereafter (subject to inflation adjustment in 2014; phase-out in 2019)
- Reinsurance Fee: For three years beginning in 2014, a reinsurance fee will be imposed on TPAs and insurers
 - MBF Comment: Entities likely to pass along cost to employers
- Insurer Fee: Insurers must pay \$8B fee (increased each year) based on market share; self-funded plans exempt but fully-insured plans not specifically exempted

11

Other Revenue Provisions

- “Cadillac” Tax – 40% nondeductible tax on “excess benefit” of coverage
 - Excess based on dollar limits: \$10,200 for single coverage, \$27,500 for family
 - If in high-risk profession, limits increase to \$11,850 and \$30,950, respectively
 - All multiemployer coverage based only on family limits
 - Paid by insurer (if fully-insured), employer (for HSA and MSA contributions) and “person that administers plan benefits” for self-funded plan (TPA? Plan administrator?)
 - MBF Comment: If insurer or TPA liable for tax, expect cost to be passed to employer
 - Effective 1/1/2018

12

Other Revenue Provisions

- Medicare Tax – Additional 0.9% Medicare tax for employees (not employers) on wages over \$200,000 (\$250,000 for joint filers), for a total of 2.35%
 - Effective 1/1/2013
- Unearned Income – New 3.8% tax on unearned income (e.g., from interest, dividends, rents, royalties and annuities) if income over \$200,000 (\$250,000 for joint filers)
 - Apparently effective 1/1/2013

13

Other Revenue Provisions

- Medicare Part D Subsidy – If employer received 28% subsidy for retiree drug expenses, employer's allowable deduction for retiree drug expenses must be reduced by amount of subsidy
- HSAs – Excise tax for nonqualified HSA withdrawals increases from 10% to 20%
 - Effective for distributions made after 12/31/2010

14

Tax Credits

- For individuals: Premium assistance credits available if income is between 100% and 400% of federal poverty level
- For small employers: If have up to 25 FTE employees for tax year whose average annual wage equal to or less than \$50,000, credit of: (1) 35% of employer contributions (generally; is a special rule that can alter this based on rating area) if (2) employer contributes at least 50% of premium cost
 - Leased employees are included in counting 25 FTE employees
 - Aggregation rules apply
 - Subsidy is 25% for tax-exempt employer

15

Retiree Subsidy

- Federal government will reimburse eligible plans (including multiemployer plans and VEBAs) 80% of “early retiree” health claims between \$15,000 - \$90,000
 - “Early retiree” must be at least age 55 but not eligible for Medicare
 - Program ceases by 1/1/2014 (also appears could end early if \$5B in funding is exhausted)
 - Formal filing with government required

16

Will Health Reform Be Repealed or Changed?

- Some groups calling for repeal of health law
- Given current Democratic control of Presidency, House and Senate, plus number of votes need to override veto (67%), unlikely in near future
- First legal challenge filed within 7 minutes of President Obama signing law
 - Most consider legal challenge unlikely to succeed (“Commerce Clause” gives federal government broad power)
 - State laws saying they will ignore federal law unlikely to succeed
 - Possible courts will hold that challenges from state attorney generals cannot be brought until 2014 / 2015

17

Will Health Reform Be Repealed or Changed?

- Looking into “crystal ball”, possible to foresee changes designed to bring down “cost curve”
 - Could view this law as “first step”—bring everyone into system; second step—control costs more
- Regulations and other guidance will be needed and will come out in waves

A4043006.ppt

18