

# Issue Brief

## The Election is Over – Where do we Go from Here?

**Issue Date: November 2012**

With the re-election of President Obama, and very little change in the make-up of Congress, the path to full implementation of the Affordable Care Act (ACA) now seems clear. Many employers may have not aggressively acted to address the impact on their employer plans due to the questions about the future of the law and because some of the most significant provisions of the ACA aren't effective until 2014.

Now employers must act quickly to prepare. First, employers must understand how the law effects (or does not affect) them. Then they must implement any of the necessary changes or adjustments to benefit strategies. Fortunately, no matter what you think about the law, we have been studying and planning for its effect on employers for over two years. Now we are prepared to help employers move forward to implement whatever is necessary for each particular employer.

The ACA affects employers in different ways depending on their size, employee demographics, current benefit strategy, and where they are located. Consequently, there is no way to write a single update that is specific to the issues facing any particular employer. This summary is designed to remind employers about important aspects of the ACA that we will all be addressing over the next 12-18 months, and to refocus attention on issues especially important to many employers.

### Issues Employers Must Address In the Short Term

A number of ACA provisions are taking effect now, or in the very near term. The first thing an employer must do is make sure that any of these provisions relevant to that particular employer are addressed as soon as possible.

ACA Provision	Employers Impacted	Effective Date
Summaries of Benefits and Coverage (SBC)	All Employers	Plan years beginning after 10/01/2012
W-2 Health Plan Reporting	Employers filed 250 W-2s or more for 2011 tax year.	2012 tax year
Increase in Medicare tax for individuals earning over \$200,000 (\$250,000 for joint filers).	Employers are required to withhold additional tax for employees whose compensation at that employer exceeds limits.	01/01/2013
\$2500 limit on pre-tax payroll deductions for Section 125 health FSA.		Plan years beginning on or after 01/01/2013

### Additional Regulations and Guidance Expected

With the election over, it is now expected that the regulatory agencies will move forward quickly with the release of additional guidance and regulations. There are a number of ACA issues important to employers where significant questions still exist, and further regulatory guidance is necessary:

- How will the calculation for eligibility for ACA subsidies work for family members with access to employer sponsored coverage?
- Clarification from the IRS related to various full-time employee definition questions.
- Clarification from the IRS on the rule that employers must offer coverage to "substantially all" of their full time employees.
- Questions remain regarding how exactly will the cost sharing limits (\$2000 deductible limit for small groups and out- of-pocket maximums) for group health plans be applied.

## **Individual Subsidies and Individual Mandate Tax Effective 2014**

Some have referred to the ACA's provisions designed to reduce the number of uninsured as the carrot and the stick approach. The "stick" is the individual mandate tax that goes into effect in 2014 for individuals who do not have qualifying health insurance. The "carrot" is made up of subsidies available to low and middle income individuals to help reduce the cost of individual health insurance.

### "Subsidies"

Beginning in 2014 individuals with incomes less than 400% of the federal Poverty Level (FPL) may qualify for a premium tax credit which would be applied toward the cost of purchasing individual health insurance through an Exchange.

It is important for employers, and employees to understand that the tax credit is not available to individuals who are eligible for "affordable" employer sponsored insurance. Affordable is defined as the cost for the employee to participate in employer sponsored coverage that is less than 9.5% of the individual's income. Employers will also be required to send a notice to employees early in 2013 that informs them of the Exchanges and the availability of the tax credit. This is bound to generate many questions from employees.

Employers need to understand how their current benefits affect their employee's eligibility for these subsidies. Employers which already offer qualified "affordable" coverage to employees have an opportunity while informing them that they will not be eligible for the subsidies, to "sell" the fact that it is because the employer already offers good, "affordable", health benefits.

## **Employer Coverage Requirements and Penalties**

Beginning in 2014 the ACA requires employers with more than 50 employees to offer health insurance to all full-time employees or face the possibility of paying a penalty. The impact of the coverage requirement affects employers very differently depending on current employee income demographics, employer plan design, and employer contribution strategy.

As we have studied these rules, and analyzed specific employers, a few trends have become apparent. One of the most important things employers have discovered is that a majority of them face little or no risk of paying a significant ACA penalty related to employee coverage.

- Employers that have employees with average (or above average) incomes, which already offer "affordable" health insurance to their full time employees face little or no risk of paying an employer penalty
- Employers with a large number of very low income employees must carefully analyze the rules, and may need to make changes to strategy depending on the structure of the current health benefits offered, and the goals of the employer.
- Employers that currently do not offer qualifying coverage to all full time employees, or that require employees to pay relatively high contributions, face the greatest challenges. Some industries, such as hospitality, restaurants, and retail, have a greater portion of employers which will need to consider significant changes to employee benefits strategies.

Regardless of the trends, every employer subject to these rules needs to carefully analyze their current benefits structure and strategy to understand clearly how the rules apply to their particular situation. And remember, the ACA coverage requirements and penalties only apply to "applicable large employers" with more than 50 employees. The ACA does not require small employers to offer health insurance to their employees.

## **Decisions Facing States**

Some major provisions of the ACA are greatly impacted by decisions made by individual states. Results of state elections could also affect the direction of the ACA in different states.

### Exchanges

The ACA requires states to set up insurance marketplaces, called Exchanges, where health insurance companies and non-profit organizations will sell individual and small employer health insurance policies. If the state does not set up an Exchange, the Federal Government will operate one in that state.

The ACA defines small employers as less than 100 employees (however, states have the option to define it as less than 50 until 2017). So far, about 20 states have either already developed the infrastructure or are planning to open an exchange. Others have taken a wait and see approach, or have decided not to operate an exchange at all and let the Federal Government move forward in that state.

States have tremendous flexibility in how they set up and operate a state based exchange. As a result, group health insurance options for small employers will vary dramatically from state to state. It is also expected that insurance companies will continue to offer small group products outside the exchange in most states (however, the ACA imposes similar rating, underwriting, and other insurance rules on policies sold inside or outside the exchange, so there may not be large differences between policies in the two markets).

The Federal Government is preparing to offer at least 2 health plans through a Federal Exchange to individuals nationwide. Premiums and benefits for these plans will be negotiated by the United States Office of Personnel Management (OPM), the agency that arranges health benefits for federal employees. These plans will be available to individuals beginning in 2014 in states that choose not to set up a state based exchange. It is unclear at this time if these plans will be offered to small groups.

### Medicaid

Because of the recent Supreme Court decision, states have the option to opt-out of the expanded Medicaid eligibility contained in the ACA. Under the ACA Medicaid eligibility is expanded to include anyone with an income up to 138% of Federal Poverty Level (FPL). Based on the FPL in 2012, a family of 4 with a household income of less than \$31,809 would qualify for Medicaid under the expanded definition. Currently Medicaid eligibility differs significantly from state to state, with many states not offering any Medicaid coverage to adults without children regardless of income.

The Federal Government will cover 100% of the cost of the newly eligible Medicaid individuals through 2016. Beginning in 2017 the Federal contribution to the cost reduces each year until it pays 90% of the costs (with State responsible for 10%) from 2020 forward. We expect many state legislatures to take up and debate this issue early in 2013.

Employers may be surprised to learn that some lower income employees will be eligible for Medicaid in states which adopt the expanded definition. Employers with large numbers of lower income employees will need to prepare for the fact that expanded Medicaid eligibility could affect employee participation rates.

## Summary

It is expected that Congress will make additional changes to the law, and further guidance from the regulatory agencies could affect the way we interpret various provisions. However, the employer related rules in 2014 are likely to look very much like what is currently in place. While the law obviously presents significant challenges to employers as they plan their employee benefits strategies going forward, at least the issues that must be addressed are now clear.

We plan to issue regular updates, information and guidance, not just on details related to regulations, but also practical help for employers to use to implement the policies and procedures required by the ACA.

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