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The Supreme Court Has Ruled: What Now For Employer-Sponsored Health Plans?

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EXPAND YOUR EXPECTATIONS℠

General Overview of the Supreme Court's Decision

- **The individual mandate created by the Affordable Care Act ("ACA") was upheld as constitutional.**
  - Tax v. Penalty.
  - The individual mandate requires, over time, that virtually all Americans purchase and maintain health insurance or be subject to a tax.

- **The requirement that States comply with new eligibility requirements for Medicaid or risk losing their federal funding was struck down, in part.**
  - Insofar as the ACA allowed the Secretary of Health and Human Services to withdraw *existing* funds from a State that fails to comply, this provision was unconstitutional.
  - New funding can be withheld for failure to comply, however.

ACA – Why Are Some Employers Panicking?

- Many employers have deferred compliance efforts awaiting the Court's ruling.

- However, all health care reform provisions that apply to group health plans and insurers that sell coverage to group health plans were unaffected by the Court's ruling, so employers must ensure that their health plans comply.

- Many provisions are already in effect, and others are set to roll out (or increase) between 2012 and 2018.

THE BOTTOM LINE:

Delaying Compliance Efforts is No Longer an Option

Expectations of This Presentation

- The law and its requirements are DENSE, and how they will affect employers will vary widely.
- Handouts to cover detailed requirements.

Our Goal

Focus on a selection of the requirements that we see as having important (or fast-approaching) impacts, while outlining the general roadmap of the changing requirements over the next six years.

Roadmap – What Should You Already Be Doing?

- **Mandates Currently In Effect -- Unless the plan is grandfathered***
  - Coverage of adult children up to age 26.
  - Lifetime benefits limited and restricted annual benefit limits.
  - Limited grounds for rescinding coverage.
  - Prohibition of pre-existing conditions exclusions (under age 19).
  - Internal and External claims appeals processes.
  - Mandated coverage of preventive health services.
  - Mandated patient protections.
  - Reasonable break time for nursing mothers.
  - Over-the-counter drug prohibition.
  - HAS and Archer MSA Penalty increase.

Roadmap – What Provisions Are Already Changing or Changing Quickly?

- **Mandates Coming Into Effect 2012-2013**
  - Cost of employer-sponsored health coverage included on W-2s.
  - Restricted annual benefit limits.
  - Uniform summary of benefits and coverage.
  - Extension of non-discrimination rules.
  - Comparative effectiveness fee (patient-centered outcomes research trust fund).
  - Flexible spending account limit to $2,500.
  - Elimination of deduction for expenses allocable to Medicare Part D subsidy.

Roadmap – 2014 and Beyond

- **Mandates Coming Into Effect 2014-2018**
  - Automatic enrollment for large employers offering coverage.
  - Prohibition on annual benefits limits.
  - Prohibition on excessive waiting periods.
  - Play or pay penalties on employers. (Flow Chart Handout Provided)
  - State exchanges.
  - Fair health insurance premiums.
  - Guaranteed availability and renewability of coverage.
  - Non-discrimination based on health status.
  - Non-discrimination in health care providers.
  - Comprehensive health insurance coverage.
  - Coverage of clinical trials.
  - Transparency in coverage.
  - Individual mandate.
  - Increase wellness incentive limit.
  - Reporting of health insurance coverage.
  - Excise tax on "Cadillac Plans" (2018).

Grandfathered Plans – Be Careful!

- **Many employers have a false impression that their health plans will be grandfathered. <u>Generally, a grandfathered plan is one that had at least one participant on March 23, 2010. However, grandfathered status can easily be lost.</u>**

- **Examples of changes that can cause loss of grandfathered status include:**
  - Elimination of Particular Benefit
  - Increase in Coinsurance
  - Increase in Deductible or Out-of-Pocket Maximum
  - Increase in Copayment
  - Decrease in Employer Contribution

- **Employers are subject to special compliance requirements for grandfathered plans, including:**
  - provision of special notices to plan participants,
  - maintenance of records dating back to March 23, 2010 documenting the plan terms, and
  - making plan records available for examination.

2012 To Do List

Five provisions with effective dates between July 1, 2012 and January 31, 2013

2012 To Do List – PREVENTIVE CARE FOR WOMEN

Five items with effective dates between July 1, 2012 and January 31, 2013

- **Provisions:**
  - Plans must cover: (a) well-woman visits; (b) screening for gestational diabetes; (c) human papillomavirus (HPV) testing; (d) counseling for sexually transmitted infections (STIs); (e) counseling and screening for HIV; (f) contraceptive methods, sterilization, and counseling using FDA approved methods; (g) breastfeeding support, supplies, and counseling, and (h) screening and counseling for interpersonal and domestic violence.

- **Financial Impact:**
  - Net costs will vary depending on a plan's current covered benefits, female population, and health care management practices.

2012 To Do List – SUMMARY OF BENEFITS/COVERAGE

Five items with effective dates between July 1, 2012 and January 31, 2013

- **Provisions:**
  - Group Health Plans and health insurance issuers must provide an SBC to enrollees, applicants, and policyholders at specified times, free of charge, or face a possible monetary penalty of up to $1,000 per person involved.

- **Financial Impact:**
  - The cost is administrative and will vary by the complexity of the plan and current plan communication materials.

2012 To Do List – W-2 REPORTING

Five items with effective dates between July 1, 2012 and January 31, 2013

- **Provisions:**
  - The value of the health benefits (net of employee contributions) must be reported on the employee's 2012 W-2 Form due by January 31, 2013.

- **Financial Impact:**
  - Administrative cost of calculating the value and producing the new W-2 forms.

2012 To Do List – FLEXIBLE SPENDING ACCOUNTS

Five items with effective dates between July 1, 2012 and January 31, 2013

- **Provisions:**
  - Maximum salary reduction amount is $2,500.
- **Financial Impact:**
  - Employers will have reduced FICA savings, reduced forfeitures, and increased communication costs which will be slightly offset by reduced claims processing. Individuals who would have contributed more than $2,500 will have an additional tax burden.

$2,500 Limit on Flexible Spending Accounts

- Takes effect 2013, and is effective for plan years starting January 1, and not the taxpayer's tax year. Employers may adopt retroactive amendments to impose the $2,500 limit before December 31, 2014.

- The $2,500 limit applies only to salary reduction contributions under a health FSA and not to employer non-elective contributions (sometimes called flex credits).

- In light of the new limit, the Treasury Department and IRS are seeking comments on whether to modify the annual "use it or lose it" rule, where unused amounts are typically forfeited to the employer at the end of the plan year.

Comments must be submitted by August 17, 2012 via e-mail to Notice.comments@irscounsel.treas.gov. Include "Notice 2012-40" in the subject line.

2012 To Do List – ADDED MEDICARE TAX

Five items with effective dates between July 1, 2012 and January 31, 2013

- **Provisions:**
  - Employers must withhold an additional 0.9% Medicare tax for employees with adjusted gross income over $200,000 ($250,000 for joint filers), increasing the total Medicare tax to 3.8%. These thresholds are not indexed. In addition, these same high earnings individuals will see their investment income taxed an additional 3.8%.

- **Financial Impact:**
  - Administrative costs plus possibly all or part of the 0.9% extra Medicare tax since either the employer or the individual may be picking up the burden via a wage adjustment.

2013 and Beyond

IMPORTANT PROVISIONS THAT WILL TAKE EFFECT IN 2013 AND BEYOND

START PLANNING!

Penalty Provisions for Employers

- Beginning January 1, 2014, employers with more than fifty "full time" or "full time equivalent" employees may be subject to penalties for failing to provide health care coverage to full time employees *or* for providing health care that is "unaffordable."

- **How is the fifty employee headcount figured?**
  - Look at preceding calendar year. *A 2013 headcount could be subject to penalties in 2014.*
  - Must have fifty "full-time" employees for a threshold number of days.
  - Must look month-to month: Total number of FT employees for the month + a number that is equal to the total number of hours worked in a month by PT employees, divided by 120.

What Is The Penalty for "Large" Employers?

- (1) If the employer does not provide coverage and if any employee receives a government healthcare subsidy, the penalty is $2,000 per FT employee ($166.67 per month).
  - The penalty is calculated by multiplying $2,000 times the total number of full time employees, minus 30.

- (2) If the employer provides coverage that is deemed "unaffordable" or does not provide "minimum value", the penalty is: (a) $3,000 per FT employee who receives subsidized individual coverage; or (b) $2,000 per FT employee in entire workforce, whichever is less.

NOTE: Penalties for failure to comply with any of the ACA mandates could also subject an employer to an excise tax of $100 per day per person to whom the failure relates. ERISA's civil enforcement rules also may apply to violations of the provisions.

Exceptions to Penalty Provisions

- "Small" Businesses with 50 or fewer FT or FT-equivalent employees will not be subject to these penalties.
  - Anticipated small business tax credits are expected to help offset employer contributions and encourage small business to nevertheless provide coverage for employees.

- The law includes loophole-closing provisions which would prevent a company from avoiding the penalty by, for example, dividing a 100 employee workforce into two companies.

<u>Decision Points for Employers:</u>

(1) Will it be cheaper to pay the penalty?
(2) Will it be cheaper to self-insure?
(3) How can using part-time employees help?

The Pros and Cons of Part-Time Employees

- The ACA considers employees who work on average 30 hours or more per week to now be full-time employees. Historically, part-time was defined as 32 hours or less.

- **Administrative Changes:**
  - Consider revising the verbiage in your summary plan descriptions to be more in line with the new law's definition.
  - Monitor the hours of part-time employees more regularly to ensure they are not going over the threshold.

- **How will this affect your staffing and firm culture?**
  - Part-time employees who obtain coverage through the exchanges will not trigger penalties.
  - But is there a "cost" associated with potential changes in your firm culture and an employee's sense of investment?

2014 Auto-Enrollment Provisions

- Most employers have already felt the impact of auto-enrollment, due in large part to the mandate already in effect that requires extended eligibility for dependent coverage to employees' children up to age 26.

- The provision that requires employers to automatically enroll newly hired, or newly eligible, full-time employees into a health plan will likely cause enrollment to grow by another 2% on average in 2014, when the provision goes into effect.

- **What exactly does it require of employers?**

Effect of Auto-Enrollment Provisions in 2014

- The rule will require that employers offer "affordable" coverage to all employees working an average of 30 hours or more a week in a month (or be subject to penalties).

- The rule will require auto-enrollment in a default plan. Employers who offer more than one plan for employees are struggling with the administrative headache this is likely to create: Should they auto-enroll in the lowest cost plan, in the standard plan that most of its employees already choose, or create a new "default" plan.

Effect on Collective Bargaining Agreements

- How does an employer handle negotiations on obligations that may not have taken effect yet?

- Consider a "mid-term re-opener" in the collective bargaining agreement that allows the employer, at its option, to reopen the agreement and bargain to address these issues once final regulations are issued.

- Consider an option allowing the employer to opt out of providing health coverage if the employer and union agree to an option that is less expensive or more manageable. What happens if the employer is locked into making contributions for employees who drop out and go into the exchanges?

State-Based Exchanges

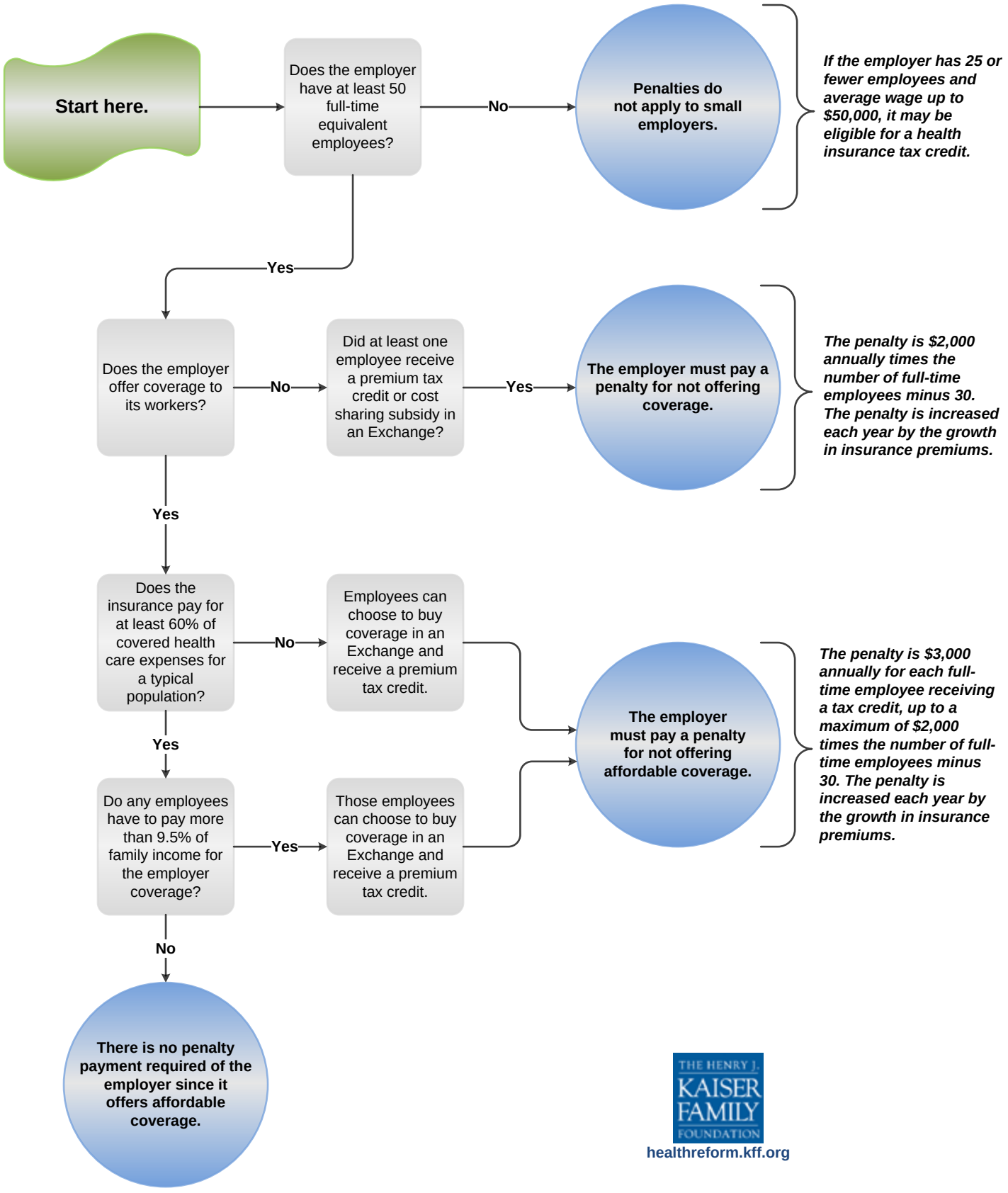
- The State-based exchanges become available in 2014 to individuals and certain "small employers".
- Through these exchanges, each state will develop a temporary reinsurance program for the individual market.
- To help fund the exchanges, health insurance issuers and third party administrators for self-funded group health plans must begin to make payments during 2014, 2015, and 2016 to help support the temporary reinsurance programs.

QUESTIONS?

Summary of Benefits and Coverage (SBC)

Type of Communication *	Effective Date - On or after 9/23/2012
Open Enrollment period with an open enrollment communication mailing	1st day of the Open Enrollment
Open Enrollment period without an open enrollment communication mailing, e.g., auto-enrollment	30 days prior to the earlier of the beginning of the plan or policy year
No Open Enrollment period, i.e., no benefit plan options and cannot opt out	See effective date for other communications
Upon request	Seven (7) business days after the request
New Hire Packet	Earlier of beginning of plan or policy year
COBRA Packet	90 days after COBRA enrollment following the earlier of the beginning of plan or policy year
Summary of Material Modification or Summary of Plan Description	Not required; may include and if so, then must comply with standard location in the packets
Group Health Insurance Application	Seven (7) business days after the earlier of application or issuance date
Group Health Insurance Renewal	Upon distribution of renewal material
Automatic Renewal of Group Health Insurance	30 days prior to policy year
Changes to Group Health Insurance	First day of coverage change

Penalties for Employers Not Offering Affordable Coverage Under the Affordable Care Act Beginning in 2014



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Timeline of ACA Changes for 2013-2018

Effective Date	Key Changes:	
3/1/13	Reporting	Notice to employees about Exchanges including (for families under 400% of FPL, currently $92,200 for a family of four) that they have access to subsidies if their employer does not offer affordable health care - 60% benefit ratio for less than 9.5% of the household income
7/31/13	Tax	Patient-Centered Outcome Research fees of $1 per covered person are due for 2012 plan/policy years ending before October 1, 2013. The fee increases to $2 for the 2013 plan year and is then indexed by the Per Capita National Health Expenditure each year through 2019. After the 2019 plan year, no fees are required. Fees apply to both insured and self-insured plans with Plans that have both components paying twice. Stop-loss, stand alone dental/vision, HSAs, and most FSAs are exempt. HRAs and retiree-only Plans must pay the fees.
1/1/14	Exchanges	Exchanges available for individuals and for employers with less than 50 employees (states may choose to allow participation by employers up to 100 employees)

PYB means Plan Year Beginning on or after. FTE means Full-time Employees

* Grandfathered plans are exempt from this requirement.

** Large Plan Sponsor (LPS) is defined as having 50 or more FTEs on average during the Plan Year. An FTE works 30 or more hours a week.

Timeline of ACA Changes for 2013-2018

Effective Date	Key Changes:	
PYB 1/1/14	Benefits	Wellness Incentive Cap increased from 20% to 30% of cost of health care
PYB 1/1/14	Benefits	Removes Annual Maximum on Essential Health Benefits (phased in) [HHS has until 1/1/2014 to issue regulations on what can be covered under the annual limits.]
PYB 1/1/14	Benefits	Prohibits Pre-existing Limitation for all enrollees
PYB 1/1/14*	Benefits	Applies Maximum Caps on Cost-Sharing (e.g., Ded.: $2,000/$4,000 single/family indexed starting in 2015; OOP Max: $6,050/$12,100 indexed from 2012)
PYB 1/1/14	Eligibility	Requires Auto-Enrollment for employers of 200 or more employees and allows for opt-outs
PYB 1/1/14	Eligibility	Requires New Employee Waiting Period not to exceed 90 days

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Timeline of ACA Changes for 2013-2018

Effective Date	Key Changes:	
PYB 1/1/14*	Eligibility	Prohibits excluding from coverage because of Health Status
PYB 1/1/14*	Eligibility	Prohibits excluding from coverage because of Clinical Trial participation
PYB 1/1/14*	Eligibility	Fully insured plans must provide Guaranteed Availability and Renewability
PYB 1/1/14*	Premiums	Fully insured plans have rating restrictions on age of 3 to 1; on tobacco use of 1.5 to 1
PYB 1/1/14	Tax LPS**	If No Coverage and 1 FTE qualifies, then pay No Coverage Tax which is (#FTE - 30) x $2,000 [No Coverage FTE qualifies if their Household Income (HHI) is at least equal to 100%/133% FPL (depending on that State's Medicaid limit) and is below 400% of the Federal Poverty Level (FPL) AND goes to an Exchange.]
PYB 1/1/14	Tax LPS**	If Limited Coverage and 1 FTE qualifies, then Plan Sponsor must pay Assisted Coverage Tax (assisted #FTE x $3,000), but not greater than No Coverage tax. Limited Covered FTE qualifies for either a Tax Credit if HHI $\geq$100%/133% FPL and < 400% FPL AND goes to an Exchange AND A or B. A) Benefit Ratio on Essential Benefits < 60%; or B) FTE contribution > 9.5% HHI

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Timeline of ACA Changes for 2013-2018

Effective Date	Key Changes:	
PYB 1/1/14	Subsidy	Certain small employers may be eligible for subsidies of up to 50% of premium for up to 2 years if coverage is purchased from exchanges
1/31/15	Reporting	Special IRS Report required by Plan Sponsor on Minimum Essential Coverage
1/31/15	Reporting	Special IRS Report from Large Plan Sponsor3 to IRS and FTE
1/1/16	Exchanges	Exchanges available for employers with up to 100 employees in all states
1/1/17	Exchanges	States may expand exchanges for employers of more than 100 employees
PYB 1/1/18	Tax	Excise Tax on cost of more than $10,200 single / $27,500 family; industry and retiree adjusted

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