



# Health Care Reform – What Employers Need to Know Now



**THE COUNCIL**  
of INSURANCE  
AGENTS & BROKERS  
Count on THE COUNCIL™

STEPTOE & JOHNSON LLP

**Joel Kopperud**

**Scott A. Sinder**

May 26, 2010

© 2010 Steptoe & Johnson LLP



# Overview

## 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)

# Overview



## 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

# Employer Mandate

## Issue: Pay or Play?



### 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

# Employer Mandate Issue: Pay or Play?



## 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

# 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)

# Market Reforms/Plan Design Changes



## 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)

# Market Reforms/Plan Design Changes



## 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)



# Market Reforms/Plan Design Changes

## 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)

# 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)

# 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

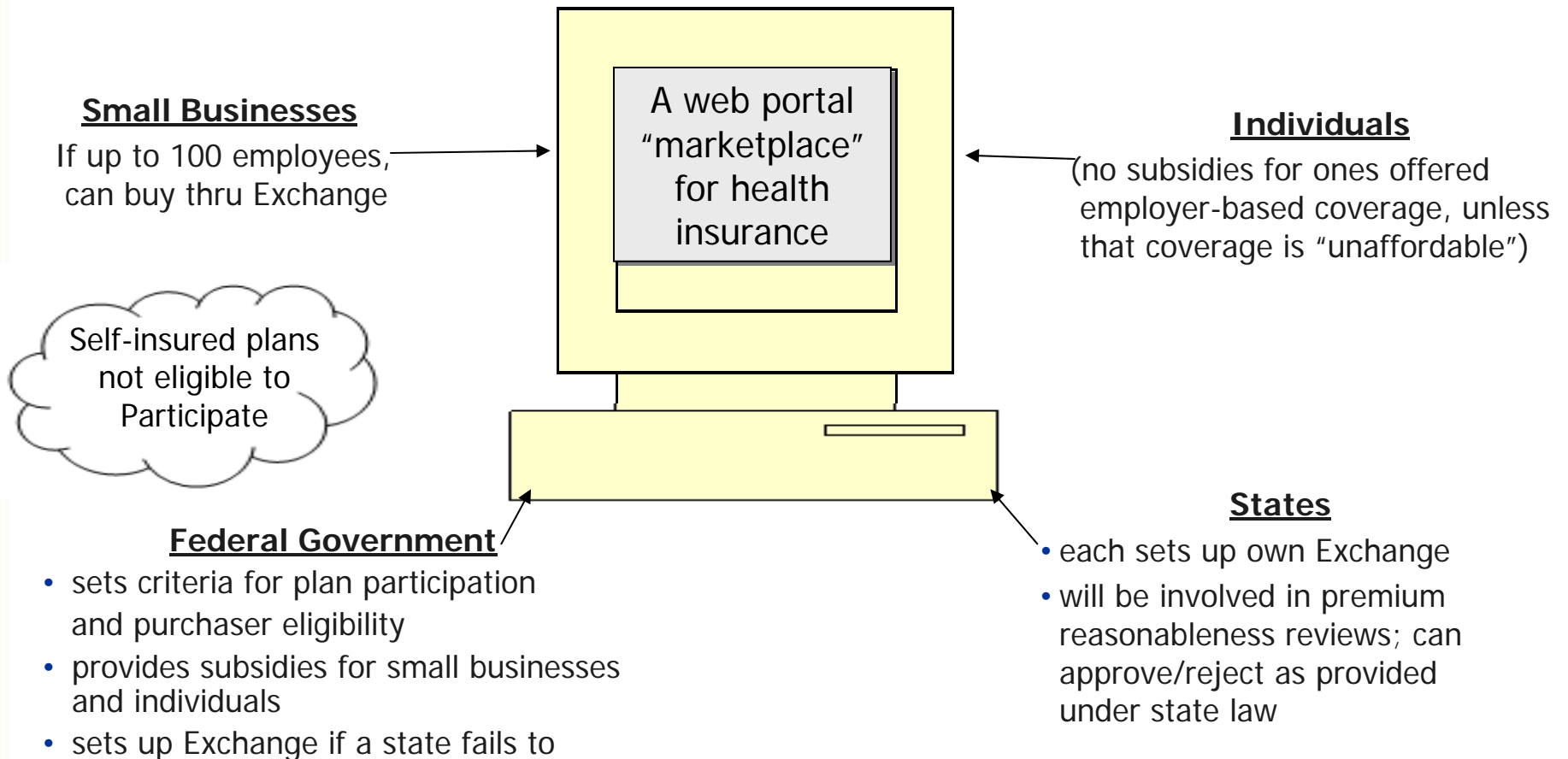
# Market Reforms/Plan Design – Highlights



## 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

# Exchanges



# Exchanges

## Other Potential Plans in the Marketplace



### 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”

# 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

# 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).

# 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.



# 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/individ; \$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

# 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



# New Reporting Obligations – Employers

- 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)

# New Reporting Obligations – SIPs/Carriers



- 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)

# Wellness



- 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)



# Others to Note

## 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

# Contact Information:



Gleason:

1-877-GLEASON

[info@gleasoninc.com](mailto:info@gleasoninc.com)

Ann Wilson: 814-532-0270

## Please Note:



These slides are intended to provide only a general overview of selected issues related to the health care reform bills. They do not provide a complete analysis. The information in the outline is for general use only and is not intended to provide specific advice or recommendations, legal or otherwise, for any individual or organization. The information provided herein is not intended to be and should not be construed as a legal opinion or advice. You need to consult with your own attorney or other adviser relating to your specific circumstances or those of any organization that you advise.

Internal Revenue Service Circular 230 Disclosure: As provided for in Treasury regulations, advice (if any) relating to federal taxes that is contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any plan or arrangement addressed herein.



# Health Care Reform – What Employers Need to Know Now



**THE COUNCIL**  
of INSURANCE  
AGENTS & BROKERS  
Count on THE COUNCIL™

STEPTOE & JOHNSON LLP

**Joel Kopperud**

**Scott A. Sinder**

May 26, 2010

© 2010 Steptoe & Johnson LLP