what Health Care Reform

means for your business

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Introduction

"The Patient Protection and Affordable Care Act" (ACA), as amended, is America's new sweeping health care reform law. The ACA affects just about every business, non-profit and public employer.

More than two years ago, MVP Health Care started meeting with members of Congress, urging them to adopt reform that would reduce health care costs and improve access to health coverage. The ACA includes many measures that will, for some, make health coverage more affordable and accessible. But the ACA does little to control the cost of health care, and in some situations, the ACA will cause the cost of health coverage to increase above current trends. MVP will continue to urge members of Congress to address these issues in the coming months.

In the meantime, employers should understand the ACA's implications for their particular situations. In the near-term, employers should evaluate whether they qualify for the ACA's new federal tax credits to purchase health coverage, and whether they are eligible for funding from a new federal reinsurance program for retirees age 55 and older who are not Medicare eligible. Another near-term consideration for employers: make sure their employee health coverage complies with the ACA's many new consumer protection requirements.

In the long-term, small employers should consider whether there are any advantages to purchasing employee health coverage through the state-based insurance exchanges beginning in 2014. Large employers, will likely be eligible to purchase employee health coverage through the exchanges beginning in 2017.

Other long-term considerations for employers include the implications of the new exchanges. Qualifying individuals will be eligible for federal subsidies to help pay for their health coverage if they purchase health coverage directly through an exchange. It is possible that some low-wage earners could find it more advantageous to access health coverage through the exchanges, rather than through their employer. This could challenge the current employer-sponsored health coverage system.

In the sections that follow, we describe some of the ACA's more significant aspects, and point out the possible challenges and opportunities the ACA might present for employers. But remember the environment is dynamic. The federal government continues to issue new regulations and other guidance on a weekly basis. Employers are encouraged to contact MVP or a qualified professional on how the ACA will affect their particular situation.

WHAT EMPLOYERS CAN EXPECT IN THE NEAR-TERM

New Federal funding for pre-65 retirees

The ACA creates a temporary reinsurance program for employers that provide health insurance coverage to retirees age 55 and older who are not eligible for Medicare. The program will reimburse employers for 80 percent of the claim costs for each retiree or covered dependent between $15,000 and $90,000 during a plan year. This program will run from 2010 through the end of 2013. MVP has already helped many employers qualify for this program, and is prepared to provide employers with the data and other support they need to access federal funds.

Cuts to Medicare Advantage will be costly for employers

Some employers use the Medicare Advantage (MA) program — a private health plan option for Medicare eligible individuals — as a cost-effective way to provide health coverage for their Medicare eligible retirees. The ACA freezes MA funding in 2011 at 2010 levels, and in subsequent years phases in funding cuts. As the federal government scales back funding for MA, employers will be forced to offset the funding shortfall by decreasing benefits or increasing premiums for their retirees.

During the health reform debate, MVP told Congress that the MA program should not be cut and used as a funding source for the ACA, especially because it out-performs traditional Medicare in almost every objective measure. MVP will continue to work closely with members of

Congress to be sure they remain aware of the effects of the funding cuts, and will urge them to restore funding if the cuts jeopardize the sustainability of the MA program.

New small employer tax credits for health coverage

Beginning in 2010, small employers — employing less than 25 full-time employees with average annual wages of less than $50,000 — which purchase health coverage for their employees can receive a sliding scale tax credit. Tax-exempt organizations are also eligible in the form of a tax credit against payroll taxes. To qualify for a tax credit, an employer must contribute at least 50 percent of the total premium cost of a yet-to-be determined benchmark premium.

From 2010 through 2013, the maximum tax credit is 35 percent of an employer's contribution toward the employee's health coverage premium. The maximum credit for eligible tax-exempt organizations is 25 percent of their contribution.

Beginning in 2014, the maximum credit for employers increases to 50 percent, while the maximum credit for tax-exempt organizations increases to 35 percent. The credit expires after the 2015 tax year.

New coverage and consumer protection requirements

The ACA imposes new coverage and consumer protection requirements on employer health coverage that is issued or renewed on or after September 23, 2010. These requirements are set forth in the adjacent table. Grandfathered health plans (discussed in the next section) can choose not to comply with the new requirements that appear in italics. Employers should bear in mind that some experts predict that the associated costs of these additional coverage requirements could range from 2 to 4 percent above current cost trends.

Grandfathered plans: Exempt from some ACA requirements

The ACA allows employers (fully insured and self-funded) to choose not to comply with *some* ACA

- No pre-existing exclusions for children under age 19.
- No lifetime dollar limits on essential benefits.
- Phasing out of annual dollar limits on essential benefits.
- No coverage rescission except for fraud.
- Provide coverage for children to age 26.
- *No cost-sharing for preventive services.*
- *Out-of-network ER cost-sharing same as in-network ER.*
- *Internal and external appeal processes.*
- *No discrimination based on salary.*

requirements if they meet two conditions: (1) the employer health plan was in effect on March 23, 2010, and (2) the employer does not change the health plan in a material way (e.g., decrease in benefits, increase the employee premium contribution percentage and other changes that cost-shift to employees). These plans are commonly called grandfathered health plans.

There are limited changes employers can make to their grandfathered plans. For example, they can change the health plan to comply with the ACA, add new benefits, and add new employees and their dependents to the plan, if doing so is consistent with the plan enrollment provisions. Even so, employers should carefully consider the impact of *any* change they intend to make to their grandfathered health plan.

In addition to having several new near-term compliance obligations, grandfathered plans also are required to comply with a number of other provisions that are effective in future years. The compliance landscape for grandfathered plans requires a deeper discussion that we do not include in this article.

Contact MVP or your qualified professional for more details about how grandfathering might apply to your health plan.

WHAT EMPLOYERS CAN EXPECT IN THE LONG-TERM

Shared responsibility and increased access to coverage

Many of the ACA's most significant health coverage access and affordability provisions will be effective in 2014. That's when large employers (50 or more full-time employees) generally are required to pay tax penalties if they do not offer minimum essential health coverage to their employees. These employer tax penalties are discussed in the next section.

Also in 2014, the ACA requires every US citizen and legal resident (i.e., your employees) to have minimum essential health coverage. There are exceptions in cases of economic hardship. Individuals that choose not to maintain minimum essential health coverage will be forced to pay a "free rider" tax penalty. The tax penalty varies depending upon the individual's income level. But the "free rider" tax penalty levels appear to be too insignificant to incent "young invincibles" and other relatively healthy individuals to purchase health coverage.

The ACA also establishes new tax credits to make coverage more affordable. Beginning in 2014, tax credits will be available for individuals who earn 400 percent or less of the federal poverty level (FPL) to help pay for coverage and cost-sharing.

Individuals and small employers (100 or fewer full-time employees) starting in the months leading up to 2014 will be eligible to purchase health coverage directly through newly established state-based health insurance exchanges. States have the authority to open the exchanges to any size group starting in 2017.

The insurance exchanges will administer the ACA's new tax credits for qualifying individuals and eligible small businesses. Qualifying individuals and eligible small businesses can access these tax credits only if they purchase their health coverage through an exchange. Tax credits — no matter income or eligibility — are not available for any individual or small business that obtains health coverage outside of an exchange.

And individuals — no matter their income level — are not eligible for tax credits if they receive health coverage through their employer.

Employers should consider how these new tax credits could affect their low-and moderate-wage employees. Those employees could potentially find it more advantageous to access coverage through the exchange using tax credits. But their access to employer-provided coverage would prevent them from doing so. Employers should consider the implications of such a scenario.

Penalties for large employers that do not offer coverage

Beginning in 2014, employers with 50 or more full-time employees that do not offer *any* coverage and have at least one employee who receives a federal tax credit to purchase health insurance through an exchange, must pay a $2,000 per-employee penalty. In calculating the tax penalty, the employer can disregard its first 30 employees (i.e., employers with 80 employees would pay the tax penalty on only 50 employees).

Employers should understand that they could still be subject to the tax penalty even if they offer employees minimum essential health coverage. A tax penalty generally will apply if:

- The employer's share of the total allowed cost of benefits is less than 60 percent; or
- The employee contribution to premium exceeds 9.5 percent of any employee's household income.

If an employer fails to provide health coverage that meets either of the two above thresholds, its tax-credit eligible employees would then be permitted to purchase coverage through an exchange using tax credits. In that case, the employer would be assessed a penalty that is the lesser of $3,000 per employee receiving a tax credit or $2,000 for each full-time employee, excluding the first 30 employees.

Employers must provide *"Free Choice Vouchers"*

Employers that offer coverage to their employees must provide *"Free Choice Vouchers"* to their employees whose (1) *household income* is not more than 400 percent of the FPL and (2) contribution to the employer-provided coverage is between 8 and 9.8 percent of their *household income.* The ACA does not establish a workable way to determine household income. MVP continues to work to develop solutions for this issue.

The voucher must equal the amount of the employer's contribution to the employer-sponsored coverage. If the voucher value exceeds the cost of the exchange plan chosen by the employee, the employee can keep the excess. Free choice vouchers are excluded from taxation and voucher recipients are not eligible for tax credits.

TAXES THAT ADD TO THE COST OF DOING BUSINESS

New hidden taxes that will drive up premiums and health care costs

The ACA establishes several new taxes that many employers know little about. MVP estimates the ACA's new hidden taxes will cause about a 5-percent premium increase above current cost trends in 2014, and similar significant increases in subsequent years.

The Health Coverage Tax

The ACA imposes a health coverage tax beginning in 2014. MVP has estimated this tax will cause premiums to increase by approximately 3 percent per year in its service area.

The Market Stabilization Tax

Also beginning in 2014, the ACA layers a market stabilization tax on health coverage. MVP estimates that this tax will cause premiums to rise by an additional 1.5 percent above current cost trends when implemented at its maximum rate.

The Device and Pharmaceutical Taxes

Starting in 2011, the ACA imposes a 2.3-percent excise tax on the sale of virtually every medical device. Also beginning in 2011, the ACA imposes an excise tax on businesses that manufacture or import certain branded prescription drugs. This tax will be apportioned to companies according to market share. These taxes will drive up the cost of care, causing an escalation in health coverage costs. MVP will continue to urge Congress to repeal these taxes.

Excise Tax on "Cadillac" health plans

Beginning in 2018, a 40 percent excise tax – the so-called "Cadillac tax" – will be assessed on health coverage premiums in excess of $10,200 for individuals and $27,500 for families. Assuming current trends, health coverage that provides just average benefits would likely be implicated by this tax.

Payroll tax changes affecting employers and employees

Starting in 2013, individuals earning more than $200,000 and families earning more than $250,000 will pay an additional Medicare tax equal to 0.9 percent of their wages over those threshold amounts. Additionally, a 3.8 percent Medicare payroll tax will apply to investment income that exceeds the $200,000/$250,000 thresholds. Employers are not required to pay any additional matching taxes. But employers will need to adjust withholdings for affected employees.

EMPLOYERS LOSE KEY TAX DEDUCTION

The ACA eliminates the tax deduction currently available to employers for federal subsidies they receive to provide prescription drug coverage to their Medicare-eligible retirees.

NEW LIMITS IMPOSED ON PRE-TAX ACCOUNTS

The ACA limits flexible spending account (FSA) contributions to a maximum $2,500 per year for medical expenses. This change applies to tax years beginning after December 31, 2013, and indexes the cap for inflation. Starting in 2011, FSAs, Health Savings Accounts, Health Reimbursement Arrangements and Archer Medical Savings Accounts can no longer be used for over-the-counter medicines, except for insulin, without a doctor's prescription.

NEW ADMINISTRATIVE OBLIGATIONS FOR EMPLOYERS

Notice to employees

The ACA requires all employers to provide each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013) written notice informing them of the existence of the health insurance exchange, including a description of the services provided by the exchange and the manner in which the employee can contact the exchange to request assistance. The notice must also inform employees that they might be eligible for a premium tax credit, and that if the employee purchases coverage through the exchange, the employee will lose the employer contribution for their health coverage.

Reporting requirements

Beginning in 2014, the ACA requires employers to file information about their employee health coverage with the IRS and US Department of Health and Human Services (HHS). The filings must identify individual employees covered by the plan, the number of months covered, the coverage type, and the premium amount paid by each employee. Employers that provide health coverage are required to disclose its cost on each employee's W-2 form. If employers do not offer health coverage, they must file a report stating so with the IRS and HHS.

Automatic enrollment for large employers

Starting in 2014, employers that offer health coverage and have 200 or more full-time employees will be required to automatically enroll all of their employees in the employer coverage. Employers are required to establish a procedure through which employees may opt-out of this auto-enrollment.

The CLASS Act: Long term-care enrollment

Starting in 2015, the ACA establishes a voluntary long-term care insurance program to help buy community living assistance services and support (CLASS). The CLASS program is not employer sponsored or funded; however, beginning in 2015, it requires *all* employers to automatically enroll all adult employees in the program. If the employer elects, employees' premium payments may be made through payroll withholding. Employers are required to establish an opt-out process for their employees.

1099 Form filing expanded to payments for goods

Starting in 2011, the ACA requires employers that make payments of $600 or more for goods in a year to a single corporation (other than a tax-exempt corporation) to report the payments to the IRS by filing a 1099 tax form. There have been recent efforts to repeal this requirement due to the significant administrative burden it would create for many employers. MVP will report to you if there any further developments on this issue.

LOOKING TO THE FUTURE

The ACA contains many components that will take several years to fully implement. The federal government is updating its guidance on the specific requirements of the ACA just about every week. Some in Congress have signaled their intent to drive changes to the ACA through legislation. And changes in leadership in Washington could also affect the way the ACA is implemented.

MVP Health Care will continue to keep you informed with the most up-to-date information about federal and state implementation of the ACA.

Understanding how the ACA will affect your situation can be a challenge. Let MVP help you navigate your way through this new law. Contact us:
www.mvphealthcare.com.

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MVP Health Care is committed to implementing the provisions of the Patient Protection and Affordable Care Act and to keeping you informed with the most up-to-date information about this topic.

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