

The Impact of Health Reform on Staffing

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DISCLAIMER

- The opinions offered in this presentation are from insurance professionals and should in no way be construed as legal advice. This presentation is based on the legal requirements as they are currently written. Our intention is to offer additional information from an insurance carrier perspective and to provide analysis on how this will affect a specific market. If you have any questions as to how Health Care Reform will affect your specific business, please contact your own legal counsel for advice.



AFFORDABLE CARE ACT*

- New Taxes Affecting Employers
- Individual Mandates
- Tax Credits and Cost-Sharing Reductions
- Employer Excise Tax
- Employer Coverage Options and Cost Implications
- Employer Notice and Reporting Requirements

* Patient Protection and Affordable Care Act (as amended by the Health Care and Education Affordability Reconciliation Act of 2010) *



New Taxes Affecting Employers



NEW TAXES AFFECTING EMPLOYERS

- Medicare withholding tax >1.45% to 2.35%—1/1/13
- Excise tax on employers that don't offer coverage or have employees receiving subsidies—1/1/14
- Tax on individuals that don't buy insurance—1/1/14



Individual Mandates



INDIVIDUAL MANDATE—PENALTIES

- Individuals who don't maintain minimum essential coverage will pay a penalty for 2014 of 1% of household income over the amount required to file a tax return or \$95, *whichever is more*. For 2015, the amounts are 2% or \$325, and for 2016, 2.5% or \$695
- Individuals are exempt if contribution under employer plan or the lowest-cost state exchange plan exceeds 8% of household income



INDIVIDUAL MANDATE— HOUSEHOLD INCOME

- “Household income” = sum of modified adjusted gross incomes of taxpayer and all individuals in family required to file return.
“Modified adjusted gross income” means adjusted gross income increased by all tax-exempt interest and foreign earned income



Tax Credits and Cost-Sharing Reductions



TAX CREDITS AND COST-SHARING REDUCTIONS

- Eligible individuals and families can get tax credits to buy health insurance through a state exchange—and cost-sharing reductions to reduce out-of-pocket costs under high-deductible plans
- Individuals with household income between 100% and 400% of federal poverty who aren't covered by an employer or spouse's employer are eligible
- In 2009, family of 4 with household income of \$88,200 would qualify at 400% of FPL



Employer Tax Penalties



EXCISE TAX ON EMPLOYERS WITH EMPLOYEES GETTING SUBSIDIES

- Effective Jan. 1, 2014, employers with more than 50 full-time equivalent employees will be assessed a *non-deductible* excise tax if *any* employee gets a tax subsidy
- An employer is not “large” if work force exceeds 50 employees for 120 days or less during year and employees over 50 are seasonal workers



EXCISE TAX ON EMPLOYERS (CONT'D)

- Employers that don't offer "minimum essential coverage" to all full-time employees and dependants pay \$166.67 monthly for all full-time employees (less 30), irrespective of the number getting subsidies
- Employers that do offer minimum essential coverage pay \$250 monthly for each full-time employee receiving a subsidy, or \$166.67 for all full-time employees—*whichever is less*



FULL-TIME EMPLOYEE - DEFINITION

- “Full-time employee” means an average of at least 30 hours or more per week in a month
- ASA amendment clarified that average hours must take into account the *full* month—so staffing firms will not pay full month’s tax for less than full month’s work



WHAT IS “MINIMUM ESSENTIAL COVERAGE”?

For purposes of tax, “minimum essential coverage” means any employer group health plan, except—

- Medical benefits incidental to other insurance, e.g., accident policies or workers’ comp; or separate policies for long term care, dental and vision, specific diseases or illnesses, hospital or other fixed indemnity plans
- *No employer premium contribution required to satisfy minimum essential coverage*



STATUS OF “MINI-MED” PLANS

- The government has granted waivers from the annual dollar limit and “minimum loss ratio” rules that should allow mini-med plans to continue at least until Jan. 1, 2014
- If mini-med plans are not available, staffing firms may not be able to offer minimum essential coverage to their temporaries—which will affect the staffing firm’s coverage options and how the firm’s tax penalties are calculated (see discussion of coverage options)



ESC COMMENTARY: HISTORY OF “MINI MED” PLANS

- Limited Benefit Health Insurance Plans
- There are two types of limited benefit health insurance plans. Both of these plans have been described by the unofficial industry term as “mini-med” insurance plans.
- Type 1 --- True co-insurance plans that incorporate co-pays, deductibles and co-insurance. These plans are technically filed in each state as major medical insurance plans but they incorporate annual maximums and plan limitations to make them more affordable to an hourly wage employee.
- Type 2 --- Scheduled benefit plans often referred to as hospital indemnity plans or indemnity plans. These insurance policies are filed in each state as supplemental insurance not primary or major medical insurance. As supplemental insurance, these plans do not fall under the rules of the Patient Protection and Affordable Care Act (PPACA).



ESC COMMENTARY: CO-INSURANCE PLANS SPECIFICS

- Marketed and administered by health insurance companies.
- Incorporate PPO networks that are required to accept assignment of benefits.
- They look and feel like major medical insurance; most plans contain annual maximum benefits ranging from \$5,000 to \$50,000 per year.
- A typical co-insurance “mini- med” plan would have the following features; \$15-\$20 co-pay, \$200-\$500 deductible, 70/30 or 80/20 co-insurance, in-patient benefits, out-patient benefits and prescription drug benefits. As true group health insurance, these plans typically incorporate a pre-existing condition limitation.
- Most plans offer additional benefits such as dental, vision, short-term disability and life insurance.



ESC COMMENTARY: INDEMNITY PLANS SPECIFICS

- Typically marketed and administered by life insurance companies.
- Some plans incorporate PPO networks that provide discounts only (not required to accept assignment of benefits).
- As supplemental plans, indemnity insurance pays benefits from a fixed schedule of benefits; no co-pay, no deductible, no co-insurance.
- Typical indemnity “mini-med” plans would have the following features; \$50-\$100 per doctor’s visit, \$50-\$75 per diagnostic testing, \$50-\$100 per x-ray and \$200-\$500 per day in-patient hospital benefit. Surgery benefits are paid from a fixed dollar amount surgical schedule. As supplemental insurance, these plans do not have a pre-existing condition limitation.
- Most indemnity plans are designed to reimburse or pay benefits directly to the employee as opposed to the provider. (ESC does pay directly to provider)



ESC COMMENTARY: ADMINISTRATIVE PROCESSES

- Health Insurance Companies

- Limited benefit plans administered by health insurance companies have been able to develop the systems and processes that enable them to successfully operate in the staffing environment. These systems are complex and costly. Only a small number of health insurance companies have made the commitment to develop such systems.

- Life Insurance Companies

- Life insurance companies typically administer their programs with systems known as ordinary operating systems. This refers to a life insurance process where a fixed benefit amount is paid upon a specific occurrence. These systems almost always operate on a monthly list bill basis where an employer is billed for a full month's premium per enrolled employee per month. These systems historically are not flexible and have difficulty administering benefits offered to temporary employees.



ESC COMMENTARY: TWO ISSUES FACING “MINI-MED” PLANS:

- **1. Restriction on Annual Limits**
 - Existing Plans were handled with waiver process, granting a temporary extension for existing plans with annual limits (in place prior to 9/23/10)
 - New Plans moving forward, these annual limits will apply
 - Indemnity plans sold moving forward

- **2. Minimum Loss Ratio**
 - Affects all group health plans, major med and Mini-Med, old and new
 - Does not affect indemnity plans
 - Since government applied a % of premium approach (85%), higher cost plans have more money to run their business. Mini-Med plans are hit hardest.
 - Temporary extension for grandfathered groups until re-evaluated in 2011
 - As a result, coinsurance based Mini-Med plans are converting to indemnity plans.



Employee Eligibility for Subsidies



EMPLOYEE ELIGIBILITY FOR SUBSIDIES

Employees are eligible for subsidies if—

1. Employee's share of premium is unaffordable" (exceeds 9.5% of household income), or
2. Plan does not provide "minimum value" (plan's share of cost of benefits is less than 60%), and
3. Household income is between 100% and 400% of federal poverty level
 - Government will notify employers of employee eligibility



FREE-CHOICE VOUCHERS

- Employers that offer minimum essential coverage and pay any part of premium must give “qualified employees” a voucher to buy coverage through exchange
- Employee premium contribution must exceed 8%, but not exceed 9.8%, of household income (which can’t exceed 400% of poverty)
- Voucher must equal highest employer contribution
- Employees receiving voucher are ineligible for tax subsidy and employers pay no tax on such employees



EMPLOYER COVERAGE OPTIONS – COST IMPACT

1. If you don't offer minimum essential coverage to employees and dependents:

Tax: \$166.67 tax per month for all full-time employees (less 30)

This option could involve:

- No coverage to any employees
- Coverage for internal staff, but assigned employees get no plan or less than minimum essential coverage (e.g., indemnity plan)—*also has potential nondiscrimination implications*
- **Factors to consider:**
- Employees previously covered may have to be compensated for loss of coverage
- Premium payments will remain tax deductible; excise tax payments are not



EMPLOYER COVERAGE OPTIONS – COST IMPACT

2. If you do offer minimum essential coverage to employees and dependents:

Tax: \$250 tax per month per full-time employee getting subsidies or \$166.67 tax per month for all full-time employees (less 30), *whichever is less*. Total cost will depend on several variables—

- Scope of benefits
- Employer contribution (if any)
- Employee participation rate
- Number of employees getting vouchers or subsidies
- ***No nondiscrimination issues arise if all employees are offered the same level of benefits***



EMPLOYER COVERAGE OPTIONS – COST IMPACT

3. Offer “two-tier” coverage (regular staff/temporaries)

Offer minimum essential coverage to all employees but lower value plan to temporaries—Costs as under option 2.

This option assumes that the nondiscrimination rules will allow two-tier coverage and that mini-med plans continue to be allowed



NONDISCRIMINATION RULES

Beginning Jan. 1, 2011, all insured group health plans (except grandfathered plans) will be subject to nondiscrimination rules similar to tax code rules applicable to self-insured plans

- Self-insured rules bar discrimination in favor of highly-compensated employees regarding eligibility or benefits
- Self-insured staffing firms may comply by covering a nondiscriminatory class of employees—e.g., internal staff—similar tests may apply to insured plans



ESC COMMENTARY

- Historically, it has been okay to offer different benefits to different classes of employees, as long as:
 - The classes are clearly defined up front
 - They are non-discriminatory (not based on age, gender, etc.)
- Employers can structure their benefits-eligible employee classes based on:
 - Part time VS. Full time
 - Hourly VS. Salaried
 - Job location
 - Tenure
 - Job classification (ex. Internal employees vs. external “staffed “employees)
 - Combination of the above (ex. All full time employees working one year or more located at XYZ factory)
- We expect this to continue as normal, so we don’t expect any non-discrimination issues to arise in the near future.
- This means you can continue to offer major med plan to your internal staff, and a different plan to your temps.



COVERAGE OPTIONS FOR TEMPORARY EMPLOYEES IN 2014*

- Self-insure if able to (carries adverse selection risks)
- Obtain coverage through state exchange (currently limited to employers with not more than 100 employees)
- Offer fixed-dollar hospital and medical indemnity plans (but such plans do not qualify as minimum essential coverage)
- * Assumes insurance carriers will continue to refuse to write major medical coverage for temporary employees and that the law will not require them to do so

ESC COMMENTARY-SELF INSURED

- Self-funding major medical insurance for temps is an extremely risky proposition. Now is an especially bad time to self insure given all of the new government mandates and associated costs.
- We've seen self insured plans with \$100,000 and \$200,000 annual caps cause significant loses for staffing companies (you can imagine if those losses were capped at \$5 million per person)
- There is no magic. It all comes down to numbers.



ESC COMMENTARY-STATE EXCHANGES

- Insurance companies will generally not provide a fully insured major medical plan to high turnover, low wage temps due to Adverse Selection (bad claims risk) Ex. People could take a part time job to get their half million dollar surgery covered and then quit
- “Exchanges” limited to employers with less than 100 employees
- A significant percentage of people currently eligible for Medicaid do not seek benefits
- Current penalties to the individual mandate are not high enough to enforce people to seek coverage through the Exchange
- Still needs to be affordable or people won't sign up



ESC COMMENTARY-OFFERING INDEMNITY PLANS

- There will still be a large number uninsured projected
- Offering a robust package of benefits will help firms to remain competitive and attract and retain valuable employees
- Affordable options will be key
- Possible gaps or high deductibles in MEC coverage (if available) make indemnity plans a necessary option



CALCULATION OF EMPLOYER TAX PENALTY

Example: Staffing firm X offers “minimum essential coverage” to all of its full-time employees and their dependents. Staffing firm Y does not. Both have 100 full-time employees (average 30 hours per week in month), 20 of whom get subsidies

Monthly Assessment:

- Staffing firm X: Because X offers MEC to all full-time employees and their dependents, it would pay $\$250 \times$ the 20 employees getting subsidies = $\$5,000$ or $\$166.67 \times$ 70 full-time employees (100 minus 30) = $\$11,667$, *whichever is less. X pays \$5,000*
- Staffing firm Y: Because Y doesn't offer MEC to all full-time employees and dependents, it would pay $\$166.67 \times$ 70 irrespective of who gets subsidies. Y pays \$11,667



ESC COMMENTARY-

CALCULATION OF EMPLOYER'S TAX PENALTY PLUS THE COST OF OFFERING HEALTH INSURANCE TO TEMPS

- **Cost of Health Plan = \$500 per month**
- Employer Contribution = \$250 (50% bare minimum) or \$400 (80% more likely)
- Enrolled Employees = 75 (75% minimum enrollment requirement by carrier)

| Employer Contribution Level: | 50% | 80% |
|---|-----------------|-----------------|
| Staffing firm X Monthly Cost for Health Plan: | \$18,750 | \$30,000 |
| Plus cost of subsidy from previous page: | <u>+\$5,000</u> | <u>+\$5,000</u> |
| Total Monthly Cost to Staffing Firm X (major med for temps)= | \$23,750 | \$35,000 |
| Total Monthly Cost to Staffing Firm Y (no major med for temps) = | \$11,667 | |

- *Other considerations:*

- 50% contribution is not realistic. More likely, a staffing company would have to pay 80% to 90%
- Offering a traditional major med plan to temps, with all of the regulations that accompany it, would require a major investment in Human Resources, Payroll, Legal, and other areas: Cost = \$????
- Does not take medical inflation into account (health plan costs are increasing at 9% per year)
- Does not take tax deductibility into account (varies by company)



EMPLOYER TAX PENALTY – COST PER HOUR

The cost per hour of the employer tax depends on the facts and on how the cost is allocated

Example: in the prior slide, if staffing firm X's 100 employees each worked 172 hours in the month [40 hours per week X 4.3 weeks = 17,200 hours] the hourly cost for the employees getting subsidies would be \$1.45 [$\$250 \div 172$]. But if X spread the \$5,000 monthly tax for the 20 employees getting subsidies over all 100 employees, the cost would be \$.29 per hour [$\$5,000 \div 17,200$].

Staffing firm Y's cost would be \$.97 per hour for the 70 taxable full-time employees [$\$166.67 \div 172$]; but if it spread the \$11,667 monthly tax over all 100 employees, the cost would be \$.68 per hour [$\$11,667 \div 17,200$]



ESC COMMENTARY-COST PER HOUR OF OFFERING MAJOR MEDICAL INSURANCE TO TEMPS

- **Staffing Company X (offering major med to temps):**
Cost per hour = \$1.38 to \$2.03
 - Health plan costs \$23,750 to \$35,000 per month, using the prior illustration
 - Plus cost of time and resources in HR, Legal, Payroll, etc.
- **Staffing Company Y (no major med for temps):**
Cost per hour = \$.68
- Staffing company Y can still offer employee paid indemnity benefits at no cost to firm



ESC COMMENTARY-RESULTS OF OFFERING MAJOR MEDICAL TO TEMPS

- Offering major medical insurance to temporary workforce could possibly double your costs compared to gov't fines.
- Plus, you have the added burden of:
- Administrating a health plan for high turnover temps
- Reconciling missed deductions, including paying for any uncollected employee deductions
- Government reporting requirements
- Budgetary Problems: Health plan price inflation (9% annually) makes future budgeting very difficult
- Possible Cancellation: Insurance companies can cancel policies that do not meet enrollment requirements



EMPLOYER REPORTING OF HEALTH COVERAGE

- Effective Jan. 1, 2014, employers must file an annual return with IRS providing detailed information regarding health coverage offered and employees enrolled
- Employees listed on return must be provided the same information provided to IRS



EMPLOYER NOTICE OF COVERAGE OPTIONS

- Notify employees at time of hire (for current employees not later than 3/1/13) of availability of exchanges
- If plan's share of benefits is less than 60%, tell employees they may be eligible for subsidy if they buy coverage through exchange, and if they do they will lose any employer contribution



INCLUSION OF COST OF HEALTH COVERAGE ON W-2

- Effective Jan. 1, 2011, the law requires that employers report the value premiums for health insurance coverage for each employee on their annual W-2 form. However, recent IRS guidance provides that such reporting will be voluntary for 2011 to give employers a chance to adjust their payroll systems.



ESC COMMENTARY-SUMMARY

- Health reform is changing and will be different in 2014 from today
 - Ex. Gov't changed things Thanksgiving week for a January 1st 2011 effective date
- It's too early to plan for 2014 due to all of the future uncertainties
 - Constitutionality issues with lawsuits in 27 states and growing: Never before has the gov't forced people to buy a private product.
 - Without "individual mandate" the whole thing falls apart
 - Insurance company options (they are not forced to underwrite policies)
 - Politicians plan to "Defund" it or "Repeal and Replace"
 - Upcoming Presidential election
- The fundamental rules of underwriting a group health plan don't magically change with health reform



SUMMARY CONTINUED.....

- Understand that the entire staffing industry will be in this together, so if billable rates need to rise to cover new fines in 2014, everyone will rise together (MA)
- Start small by building language into your contracts that lets you adjust billable rates to cover the cost of any federal mandates or taxes for health insurance in the future.
- Make sure your benefits providers are staying abreast of the regulations, including contingency plans
- It will always be important to offer attractive benefits to your internal and external staff in order to stay competitive



Questions?

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A Special Thank You to our Speakers!

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