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Health Care Reform 101: What Every Lawyer Should Know About PPACA

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Despite the town hall meetings, rallies, and extensive media coverage that accompanied the passage of the federal Patient Protection and Affordable Care Act (PPACA or Act) earlier this year, which was amended by the federal Health Care and Education Reconciliation Act, many employers are still uncertain how PPACA will impact their employees and their bottom lines.

Attorneys who counsel large and small employers may hear questions from clients such as: “How does the health care reform bill affect my business?” “Does the new law mean I have to provide health insurance to my employees?”

Below are a few key points from PPACA’s hundreds of pages that may come in handy when counseling clients.

Overview
PPACA requires most legal U.S. residents to secure health care insurance by 2014 through an employer health plan, government plan (e.g., Medicare, Medicaid), or to-be-created state health care insurance marketplace or exchange. Individuals who need financial assistance to pay for health care insurance coverage are eligible to receive government subsidies.

Effective January 1, 2014, for each month that individuals do not have health care insurance coverage, a penalty will be assessed and included on their federal tax returns. Subject to certain limitations, the penalty for the entire year is up to $95 in 2014; $325 in 2015; and $695 in 2016.

In addition to individual health care insurance coverage mandates, PPACA also imposes several new requirements on employer-sponsored health plans, including expansion of the types of services that must be covered and penalties on employers that do not offer health care insurance coverage.

When counseling clients that are employers, it is important to recognize that many of PPACA’s requirements differentiate between “grandfathered” health care insurance plans and new plans. “Grandfathered” plans are plans in which at least one individual is enrolled as of March 23, 2010. Attorneys should confirm when clients’ plans were established and verify whether a particular provision of PPACA extends to grandfathered plans (for purposes of this article, provisions extend to all plans except where otherwise noted).

Attorneys also should keep in mind that the definition of “large” and “small” employers varies throughout PPACA. For example, with respect to automatic enrollment provisions, “large” employers are defined as employers with 200 or more employees; alternatively, for the employer penalty provision (which references the Internal Revenue Service Code), “large” employers are defined as those with at least 50 full-time employees during the preceding calendar year. Attorneys regularly should confirm employer definitions for specific provisions of PPACA.

Penalties on large employers not offering affordable coverage
Starting on Jan. 1, 2014, certain “large” employers (employers with 50 or more full-time employees working 30 or more hours per week) must offer “acceptable” health care insurance to employees or risk paying penalties. If at least one employee of “large” employers obtains a premium credit (i.e., subsidy) through a health care insurance exchange—either because employers do not offer health care insurance coverage or the coverage offered is unaffordable—then employers must pay a monthly penalty.

If one or more employees receive a premium credit because large employers do not offer coverage, the penalty assessed equals the number of full-time employees minus 30 multiplied by 1/12 of $2,000 for any applicable month. For example, an employer that does not offer health care insurance coverage and has 50 full-time employees must pay $40,000 annually (50–30 x $2,000). After 2014, the penalty payment amount is recalculated based on a premium adjustment percentage for the calendar year.

If large employers do offer health care insurance coverage but at least one employee obtains a premium credit because the employers’ plan is not “affordable,” the monthly penalty assessed for each full-time employee who receives a premium credit is 1/12 of $3,000 for any applicable month. Whether employers’ plans are considered “affordable” is based on a PPACA formula that assesses employees’ income with respect to federal poverty levels.

Despite the creation of employer penalties, critics of PPACA observe that many employers actually may prefer to pay penalties rather than offer health care insurance coverage as the penalties are likely to be lower than the costs of providing health care. *See* Pat Regnier, *The Truth About Health Care Reform*, CNNMoney.com, Apr. 22, 2010, available at http://money.cnn.com/2010/04/22/news/economy/health_care_reform.moneymag/ (last accessed June 22, 2010).

Tax credits for small employers
PPACA also contains a provision to help small employers with relatively low-wage workers afford health care insurance coverage for employees. Specifically, employers with 10 or fewer full-time equivalent employees who earn less than $25,000 a year are now eligible for a tax credit of 35 percent of health care insurance costs. Companies with between 11 and 25 employees and an average annual wage of up to $50,000 also are eligible for partial credits.

This tax credit is available until 2014, when states will be required to provide Small Business Health Option Programs (SHOP Exchanges). SHOP Exchanges are designed to allow small businesses to pool resources and provide their employees with affordable health care insurance coverage. After 2014, the tax credit increases to 50 percent of small employers' health care insurance costs for the first two years that they buy health care insurance through a state exchange.

Dependents covered until age 26
One important change that will affect all employer-sponsored health plans is the new mandate requiring plans that provide coverage to dependent children of participants to continue such coverage until dependents turn age 26. This requirement is effective for all plan years beginning on or after Sept. 23, 2010.

Certain restrictions on coverage lifted
Clients also should be advised of several PPACA provisions that drastically curb health care insurance coverage limitations. First, health plans may not deny coverage to children under 19 based on preexisting conditions for plan years beginning on or after Sept. 23, 2010. This prohibition is extended to all plan participants (regardless of age) for plan years beginning on or after Jan. 1, 2014. Additionally, employers with 200 or more full-time employees that do offer health care insurance coverage must automatically enroll all new employees in employer-sponsored health plans.

Second, health plans may not impose lifetime or annual dollar limits on "essential health benefits." What specifically constitutes "essential health benefits" is yet to be defined, but PPACA indicates that it will include categories such as emergency services, hospitalization, maternity/newborn care, prescription drugs, mental health and substance abuse treatment, and other "basic" services.

Additionally, in line with PPACA's focus on encouraging wellness and healthy behavior, preventative health services may not be subject to any cost-sharing requirements. This means that employer-sponsored plans cannot require co-pays for certain services, such as vaccines and breast-cancer screenings. However, this co-pay prohibition does not apply to "grandfathered" plans.

PPACA imposes many dramatic and sweeping changes, and its impact on employers and employees cannot be overstated. Attorneys should understand when the Act's various provisions take effect and check in with their business clients periodically to ensure proper compliance and that their handbooks and policies are up-to-date.

For more information on PPACA, visit PPACA's official Web site at www.healthreform.gov or the federal Department of Health and Human Services Web site at www.hhs.gov.

***NEXT* STEPS**

- *Healthcare Reform: Enough Politics, Let's Prepare for the Future!* (Online Course, Audio CD Package, or MP3 Download). 2010. PC # CET10EPLI. ABA Center for CLE and Health Law Section.

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