

The Patient Protection and Affordable Care Act (“ACA”)

Where are we now?

Presented by Kristin Nealey Meier

“Health Reform Hits Main Street”



[YouTube video](#) written and produced by the Kaiser Family Foundation.



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Will the ACA survive?

- Political issues
 - Republicans controlling House of Rep.
 - Deficit issues/Funding
 - Future of Medicare/Medicaid/Social Security

- Legal challenges
[map]

- Natural evolution

For now, we must assume that the ACA will be implemented as written and plan accordingly.

Certain provisions implemented now:

- Small business tax credits
- Coverage for employee's children 26 or under
- Temporary high-risk pool
- Reinsurance program for early retirees
- Plans must cover (with no cost sharing) certain preventative care and emergency
- No pre-existing condition limitations for under age 19

2014 – The year of reckoning



What happens in 2014?

- Individual mandate with penalty
- Premium assistance credit for low-income
- Minimum essential coverage
- Large employer penalties for no or too expensive coverage
- Permanent insurance reforms
 - No exclusion for pre-existing condition
 - Fair health insurance premiums for individual and small group market
 - Small market reforms – “essential health benefits package” and limits on cost-sharing
 - No waiting period longer than 90 days
- State Exchanges

What are the Employer Requirements?

(1) Offer Coverage or Pay Fine

If you employed less than 50 full-time (or equivalent) employees, no fine.

- Can offer coverage
- Can send to exchanges

If you employed an average of 50 full-time (or equivalent), non-seasonal employees, must offer health coverage that covers at least 60% of costs and meets

“MINIMUM ESSENTIAL COVERAGE REQUIREMENTS”

(What’s that??? We don’t know yet)

OR

PAY A FINE

\$\$\$\$\$\$*

\$2000/full time employee after first 30.

For example, if you have 50 employees, don’t offer coverage, you pay $\$2000 \times (50-30) = \$40,000$

*If at least one of your employees receives a tax credit for health insurance

If you employed an average of 50 full-time (or equivalent), non-seasonal employees and offer health coverage that meets

“MINIMUM ESSENTIAL COVERAGE REQUIREMENTS”

AND

One employee accesses a tax subsidy or cost-reduction benefit for health insurance,

YOU

PAY A FINE

\$\$\$\$\$\$*

\$3000/full time employee who accesses subsidy/ cost/benefit.

(2) Offer Vouchers to “Qualified Employees”

Qualified employee:

- a) Does not participate in health plan offered by employer
- b) Premium costs under employer plan exceed 8% but less than 9.8% of household income
- c) Household income in less than 400% of federal poverty level (currently \$88,200 for a family of four)

Voucher is equal to the largest portion of what the employer would have paid to provide health coverage to the employee under the employer plan.



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(3) Minimum Essential Health Benefits Package

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance use disorder
- Prescription drugs
- Rehabilitative services
- Laboratory services
- Prevention and wellness services and chronic disease management
- Pediatric services
- Limit Total out-of-pocket spending

(4) Other Requirements

- Large employer Automatic Enrollment (more than 200 full-time employees)
- Provide written notification of existence of health insurance exchanges and subsidies to all employees
- Large employer reporting requirements to Secretary of the Treasury:
 - Details about employer
 - Whether full-time employees offered coverage
 - Details of employer plan
 - Number of full-time employees for each month
 - Name, address, tax ID # for each full-time employee, plus months covered under the plan

State-Based Exchanges



" The good news is that you have something that your insurance will allow you to have. "

State based exchanges are intended to provide consumers with choice and the ability to compare for individual and small group plans.

Starting in 2017, businesses greater than 100 employees may participate in exchanges.



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Plan	Description
Bronze	Provides essential health benefits package and covers 60% of the benefit costs of the plan
Silver	Provides essential health benefits package and covers 70% of the benefit costs of the plan.
Gold	Provides essential health benefits package and covers 80% of the benefit costs of the plan.
Platinum	Provides essential health benefits package and covers 90% of the benefit costs of the plan.
Catastrophic	Available to those younger than age 30 or to those exempt from the mandate to purchase coverage. Plan available only in the individual market.

Source: P.L. 111-148

No later than 2014, states are required to set up Small Business Health Options Programs, or **SHOP** exchanges, in which small businesses would pool together to purchase insurance.

Small businesses are defined as having fewer than 100 employees, although states would have the option of limiting pools to companies with 50 or fewer employees through 2016. Companies expanding beyond the size limit would be grandfathered in.



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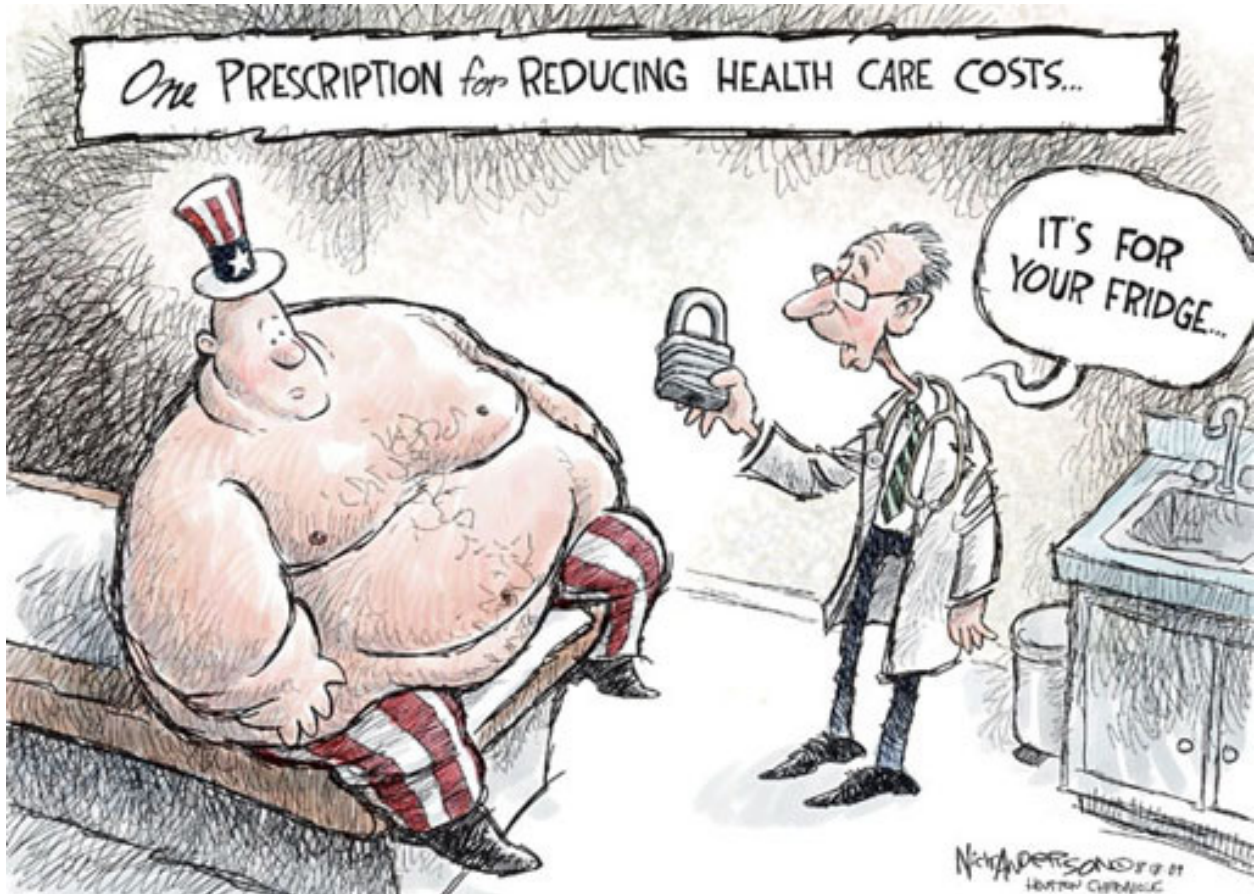
Washington State Exchange

- Health Care Authority (“HCA”) developed seven opinion briefs on what to consider for exchange (<http://www.hca.wa.gov/hcr/exchange.html>)
- HCA is working with Joint Legislative Committee for design of exchange.
- \$23 million federal grant, \$19 million of which will go into designing the information system
- Under Senate Bill 5445 from 2011 session, a public-private organization called the Washington Health Benefit Exchange will govern the exchange

Timelines

- November 2011 – House and Senate committee submit names for Board and they are appointed.
- State Legislature will take up legislation required for full implementation in 2012 session.
- March 16, 2012 – Washington Health Benefit Exchange takes over all responsibilities
- Failure to make progress by January 2013 results in federal government taking over.
- Must start signing up health insurance plans by summer 2013.
- January 1, 2014 – Exchange is up and running

Wellness Programs



Wellness programs have been around for a long time, but the ACA contains provisions intended to incentivize employers to adopt wellness programs.

They are great, but **BE CAREFUL!!**

Non-discrimination Provisions

- HIPAA prohibits discrimination in health coverage based on health factors, including
 - Medical conditions
 - Claims experience
 - Receipt of health care
 - Medical history
 - Genetic information
 - Evidence of insurability, disability, or “any other health status-related factor...”
 - ACA provisions mirror this provision, goes into effect in 2014, but provides exceptions.
- (1) Reward or rebate is not based on a participant’s health-related factor and is available to all similarly situated individuals.

For example,

- Reimbursement of gym membership
 - Diagnostic program that rewards participation, not outcomes
 - Reimbursement of smoking cessation program without regard to whether employee quits smoking
 - Rewarding employees for attending a monthly health education seminar
- (2) If wellness program conditions the receipt of premium discount, rebate or reward on health-related factor, legal if:
- The reward does not exceed 30 percent of the cost of coverage under the health plan
 - The plan is reasonably designed to promote health or prevent disease, not subterfuge to discriminate
 - The plan gives eligible employees the opportunity to qualify for a reward at least once a year
 - The reward is made available to all similarly situated individuals
 - The plan discloses the availability of reasonable alternatives (or waiver) if impossible – for health reasons – for employee to participate



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Other Legal Issues

- Americans with Disabilities Act (“ADA”)
 - Unable to achieve reward because of disability
 - Health assessment for program that elicits information about the disability
- Title VII
 - Disparate Impact
- Genetic Information Nondiscrimination Act (“GINA”)
 - Family history
 - Legal if program is voluntary

Better Safe than Sorry

- 1) Make participation voluntary
- 2) Avoid communication that could be perceived as threatening or coercive
- 3) Make incentives that are rewards and not penalties for achieving health-related objectives
- 4) Offer reasonable alternatives to employees who cannot meet standards
- 5) Avoid medical inquiries and have third-party manage the collection and storage of medical information
- 6) Implement procedures aimed at securing sensitive information and maintaining confidentiality
- 7) Assess the program to protect against a disparate impact on protected classes
- 8) Make sure the program is described in clear terms
- 9) Monitor the program’s effectiveness and weigh its value against a potential negative impact to employee morale
- 10) Have the program reviewed by legal counsel



Resources

Washington State Exchange, including policy briefs: <http://www.hca.wa.gov/hcr/exchange.html>

Cartoon regarding fundamentals of law: <http://theincidentaleconomist.com/wordpress/the-health-reform-cartoon-2/>

Department of Labor: The DOL has an FAQ sheet for employers (<http://www.dol.gov/ebsa/faqs/faq-aca2.html>) as well as a series of resources from the Employer Benefits Security Administration on health care reform (<http://www.dol.gov/ebsa/healthreform/>)

National Association of Insurance Commissioners: The NAIC provides tips and information about insurance options for small business owners (<http://www.insureuonline.org/smallbusiness/>)

U.S. Chamber of Commerce: This national business organization has a guide for employers (<http://www.uschamber.com/reports/critical-employer-issues-patient-protection-and-affordable-care-act>)

Small Business Majority: The Small Business Majority, a nonprofit advocacy organization, has a list of frequently asked questions specific to businesses and health reform (<http://www.smallbusinessmajority.org/hc-reform-faq/>) and holds listening tours around the country to help small business owners with questions about health reform

National Business Group on Health: This nonprofit advocacy organization represents the larger employers' perspective on national health policy issues and has published a toolkit for businesses on health reform (http://www.businessgrouphealth.org/benefitstopics/et_healthcarelaw.cfm)

U.S. Small Business Association: This governmental agency is an information resource (<http://www.sba.gov/content/health-care-health-care-reform>) for small businesses, small business owners and prospective business owners

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