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Employers Need to Plan Now for the Next Phase of Health Care Reform

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Although most employers have implemented the initial phases of Health Care Reform as they became effective over the past couple years, many of them have taken a "wait-and-see" approach to the next phase of Health Care Reform. Since last summer, Health Care Reform has survived a Supreme Court challenge and the 2012 election and it is clear now that the next phase of Health Care Reform will be implemented as planned. Government agencies are fully committed to—and are—providing the guidance necessary to implement the provisions of Health Care Reform that become effective later this year and in 2014, and employers should be prepared to do the same.

Preparing for the impact of Health Care Reform on employer-sponsored group health plans requires an understanding of the mandates and the steps to be taken to address them. The changes are substantial and complex, and implementation will require input not only from human resources, but also from finance, payroll, IT and senior leadership. Putting together the appropriate interdisciplinary team, analyzing the impact of the mandates and compliance all will take time, so an early start to the effort in 2013 is critical.

This Alert highlights the most significant changes impacting employer-sponsored group health plans in 2013 and 2014, and the actions employers can take now to address them.

MANDATE	DESCRIPTION	EMPLOYER ACTION STEPS
Patient Centered Outcomes Research Institute (PCORI) Fees	These fees are payable by certain health insurers and self-insured health plan sponsors for policy/plan years ending after September 30, 2012 and before September 30, 2019. The fees are determined based on the average number of covered lives under the policy/plan and for calendar year plans are first due by July 31, 2013.	• Employers with self-insured plans should: (1) determine which plans are subject to fees, (2) determine how to calculate average number of covered lives and (3) develop an action plan for filing Internal Revenue Service ("IRS") Form 720
Exchange Notice	Employers must provide all new hires and current employees with a written notice about the exchanges and the consequences of purchasing coverage through an exchange instead of employer-provided coverage. Although the exchange notice was initially required to be provided by March 1, 2013, recent guidance delays the effective date until late summer/early fall 2013.	• Watch for guidance including model exchange notice • Develop action plan for distributing exchange notice to current employees (e.g., through annual enrollment process) and new hires (e.g., in new hire materials)

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Individual Mandate	Beginning in 2014, virtually all U.S. taxpayers will be required to either have a basic level of health coverage for themselves and their dependents or pay a tax penalty for each month during which they do not have such coverage. Premium tax credits and reduced cost-sharing will be available to certain low or moderate income taxpayers to help purchase coverage through an exchange. Employers will be required to report coverage under employer-sponsored group health plans to the IRS.	• Watch for guidance regarding reporting of coverage under employer-sponsored health plan to IRS, which the IRS may use to assist in determining eligibility for premium tax credits
Health Insurance Exchanges	Beginning in 2014, state, federal and partnership exchanges will be available to facilitate the purchase of health insurance coverage by individuals and certain employers (initially, only small employers).	• Eligible small employers should determine whether to shop for coverage through an exchange
Employer Pay-or-Play Mandate	Beginning in 2014, employers with at least 50 full-time employees (generally, employees who work on average at least 30 hours per week) and/or full-time equivalent employees ("FTEs") may be subject to a tax penalty if they: • fail to offer a basic level of health coverage to substantially all (generally, at least 95%) full-time employees and their children through age 26; • offer a basic level of health coverage that is unaffordable (meaning, generally, coverage with respect to which the employee contribution exceeds 9.5% of household income); or • offer a basic level of health coverage that does not provide at least minimum value (a plan provides minimum value if employee out-of-pocket costs do not exceed 40% of plan costs). The tax penalty is triggered in these circumstances only if a full-time employee purchases coverage through an exchange and qualifies for the premium tax credit or reduced cost-sharing. If triggered, the tax penalty can be significant. For example, if an employer with 1,000 full-time employees fails to offer basic health coverage to at least 950 of those employees for 2014, and just one employee purchases coverage through the exchange with a premium tax credit or reduced cost-sharing, the employer will be required to pay a penalty of $1,940,000 for 2014.	• Determine whether the Pay-or-Play mandate applies by calculating the number of full-time employees and FTEs in accordance with the Health Care Reform rules • If the Pay-or-Play mandate applies, identify full-time employees for 2014 using IRS safe harbors and transitional guidance • Consider whether service providers have been properly characterized (e.g., independent contractors and part-time employees) • Determine whether employer-provided coverage is "affordable" using IRS safe harbors • Determine whether employer-provided coverage provides "minimum value" using IRS safe harbors • Consider engaging in financial analysis/modeling of whether to "pay or play"

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MANDATE	DESCRIPTION	EMPLOYER ACTION STEPS
Re-insurance Payments	Beginning in 2014, each state that operates an exchange must establish a temporary reinsurance program funded, in part, by contributions from insurers and self-insured plan sponsors. The amount of the payments is based on the average number of covered lives (currently $63 per covered life per year). The enrollment count must be submitted to HHS by November 15, 2014 and payments will be due to HHS shortly thereafter.	• Employers with self-insured plan should (1) determine which plans are subject to payments, (2) determine how to calculate average number of covered lives and (3) develop an action plan for reporting to HHS or contractually allocating responsibility for doing so to third party administrator
Wellness Program Expansion	Beginning in 2014, Health Care Reform increases the rewards that may be provided under wellness programs to 30% of the total cost of coverage or 50% of the total cost of coverage for programs designed to prevent or reduce tobacco use. The requirements for health-contingent (formerly referred to as standards-based) wellness programs also have been clarified.	• Evaluate whether wellness program changes are warranted in light of availability of increased rewards and clarification on health-contingent wellness programs
Small Business Tax Credits	The tax credits available to eligible small employers increase in 2014 from 35% to 50% for small non tax-exempt employers and from 25% to 35% for small tax-exempt employers and are generally available for any two years after 2013 where the employer pays at least 50% of its employees' health insurance premiums.	• For small employers, determine eligibility for and budget for higher tax credits
Other Plan Reforms	A number of other changes will impact insurers and self-insured plan sponsors in 2014 including: • A prohibition on waiting periods in excess of 90 days • A prohibition on annual limits on essential health benefits (prior to 2014 annual limits on essential health benefits were permitted below certain thresholds) • Mandatory coverage of routine clinical trial costs for nongrandfathered plans • A prohibition on discrimination against providers for nongrandfathered plans • A limitation on the dollar amount of out-of-pocket costs that can be charged to plan participants • Extension of the prohibition on pre-existing condition limitations to individuals over age 18	• Review and update plan documents, summary plan descriptions, insurance policies and certificates to ensure compliance with the new mandated benefits rules

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The evolving Health Care Reform guidance is complex and institutions should be working with legal counsel to determine what the requirements are and how best to comply with them. If you have any questions, please do not hesitate to contact any member of the K&L Gates Employee Benefits practice group.

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