UBA PPACA Advisor

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What Employers Need to Know Right Now About Health Care Reform

Requirements and Applicability

February 21, 2014

Requirement	Effective Date	Apply to Large Employers (>100 employees)	Apply to Mid-size Employers (50 - 100 employees)	Apply to Small Employers (<50 employees)	Apply to Fully Insured Plans	Apply to Self-Funded Plans	Apply to Grand-fathered Plans	Action Needed	Comments	Penalties
Elimination of annual dollar limits on essential benefits	First day of 2014 plan year	Yes	Yes	Yes	Yes	Yes	Yes	Determine if current plan design complies; if not, revise plan/policy	Standalone HRAs will only be allowed if retiree only or limited to excepted benefits; health FSAs must qualify as an excepted benefit (other group medical is available to the employee and employer contribution to health FSA generally cannot exceed $500/year)	Up to $100/ affected participant/ day
Elimination of preexisting limits for adults (as well as children under age 19)	First day of 2014 plan year	Yes	Yes	Yes	Yes	Yes	Yes	Determine if current plan design complies; if not, revise plan/policy		Up to $100/affected participant/day
Waiting period cannot exceed 90 days	First day of 2014 plan year	Yes	Yes	Yes	Yes	Yes	Yes	Determine if current eligibility rules comply; if not, revise	First of month after 90 days is not permissible, special rule for variable-hours employees	Up to $100/affected participant/day
No discrimination based on health status	First day of 2014 plan year	Yes	Yes	Yes	Yes	Yes	No	Determine if current plan design complies; if not, revise plan/policy	Minimal change from current HIPAA rules	Up to $100/affected participant/day
Limits on deductibles	First day of 2014 plan year	No	No	Yes	Yes if < 50	No	No	Determine if current plan design complies; if not, revise plan/policy	Maximum deductible of $2,000 for single and $4,000 family; state may permit higher deductible for bronze plans	Up to $100/affected participant/day
Limits on out-of-pocket maximums (includes deductible, coinsurance and copays)	First day of 2014 plan year	Yes	Yes	Yes	Yes	Yes	No	Determine if current plan design complies; if not, revise plan/policy	Maximum OOP based on HDHP limits ($6,350/12,700 for 2014)	Up to $100/affected participant/day

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Mandated coverage of clinical trials	First day of 2014 plan year	Yes	Yes	Yes	Yes	Yes	No	Determine if current plan design complies; if not, revise plan/policy		Up to $100/affected participant/day
Wellness Incentives	First day of 2014 plan year	Yes	Yes	Yes	Yes	Yes	Yes	If have HIPAA/PPACA-compliant wellness program, may increase incentive to 30% of cost of single coverage (may increase incentive to 50% for non-use of tobacco)	Compliance with HIPAA/PPACA does not guarantee compliance with ADA	N/A; if fail to meet wellness program criteria penalty is up to $100/affected participant/day
Essential health benefits applies	First day of 2014 plan year	Only for lifetime & annual maximums	Only for lifetime & annual maximums	Yes	Yes (varies by group size)	Only for lifetime & annual maximums	Only for lifetime & annual maximums	If this applies, determine if offered coverage is adequate	These are the 10 listed categories of benefits; this is not the same as "minimum essential benefits"	Up to $100/affected participant/day
Transitional Reinsurance Fee	11/15/2014	Yes	Yes	Yes	Yes	Yes	Yes	Report and pay as required if self-funded (majority of payment due early Jan. 2015 and balance late in 2015); insurer reports and pays but will likely pass cost on	Fee applies for 2014 through 2016; fee is $63/covered life for 2014, likely $44/covered life for 2015 and will decline further for 2016	

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Employer shared responsibility ("play or pay")	Delayed to 2015, or 2016, depending on employer size	Yes (2015)	Yes (generally 2016)	No	Yes (if meet employee threshold)	Yes (if meet employee threshold)	Yes (if meet employee threshold)	Begin to consider whether to play or pay (i.e., offer compliant coverage or pay the penalty); begin to track employees' hours so can determine employer size.	Employer to pay a penalty for each full-time (30+ hours/week) employee who is not offered acceptable coverage. Requirement applies in 2015 to employers with 100 or more full-time or full-time equivalent employees. Non-calendar year plans may wait until start of 2015 plan year if they meet the plan year transition rule requirements. Requirement does not apply until 2016 for employers with 50 to 99 employees, as long as employer doesn't make prohibited changes to workforce or coverage.	If minimum essential coverage is not offered to most full-time employees, penalty is number of full-time employees minus "free" employees x $166.67/month. If coverage is offered but is unaffordable or below minimum value, penalty is $250/month for each full-time employee who gets a premium tax credit or cost share through an exchange. For 2015 "most" means 70%. For 2016 and later, "most" means 95%. For 2015 "free" means 80. For 2016 and later "free" means 30. Coverage must be offered to dependent children by 2016.
Report to IRS and participants on minimum essential coverage	Delayed to 1/31/2016	Yes	Yes	Yes	Yes	Yes	Yes	Report as required once rules set	Begins with coverage provided on or after 1/1/15; insurers will be responsible for reporting for insured plans	Likely $50 per employee
Report to IRS and participants on coverage offered by large employers	Delayed to 1/31/2016	Yes	Yes	No	Yes (if 50 employees)	Yes (if 50 employees)	Yes (if 50 employees)	Report as required once rules set	Begins with coverage provided on or after 1/1/15	Likely $50 per employee

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Excise tax on high cost plans	1/1/2018	Yes	Yes	Yes	Yes	Yes	Yes	Determine if current design falls below threshold; if not, consider design changes	Employer pays excise tax if total cost of medical benefits (employee and employer contributions combined) exceeds $10,200 (single) or $27,500 (family) [indexed] for medical, HRA, and Section 125 (pre-tax and health FSA)	40% non-deductible excise tax
Nondiscrimination requirements	TBD for insured plans; existing requirement for self-funded plans	Yes	Yes	Yes	Yes (once guidance is issued)	Yes	No if insured, yes if self-funded	Determine whether meet discrimination requirements and make needed adjustments if do not	Nondiscrimination rules will not apply to insured plans until guidance is issued; there is no target date to release guidance	$100/discriminated-against employee if insured; loss of tax preference for unduly benefited highly compensated individual if self-funded
Automatic enrollment	TBD	Yes (if > 200 employees)	No	No	Yes (if > 200 employees)	Yes (if > 200 employees)	Yes (if > 200 employees)	Auto-enroll employees who do not affirmatively enroll in or decline coverage, most likely in lowest cost plan, once rules are set	Requirement will not apply until guidance is issued; there is no target date to release guidance. Unclear if will use same definition of employee as will for "play or pay"	
Report to HHS and participants on quality of care	TBD	Yes	Yes	Yes	Yes	Yes	No	Report as required once rules set	Guidance was due prior to 3/23/12, but none has been issued yet; rules will not apply until guidance is issued; there is no target date to release guidance	HHS will determine

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Cover dependent to age 26	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	Partly for 1010 – 2013; yes for 2014 and later	Verify plan/SPD has been amended and administration is correct	Until 2014 grandfathered plans may exclude dependent if dependent has employer-provided coverage available	Up to $100/affected participant/day
Elimination of lifetime dollar limit	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	Yes	Verify plan/SPD has been amended and administration is correct		Up to $100/affected participant/day
Restriction on annual dollar limits on essential benefits	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	Yes	Verify plan/SPD has been amended and administration is correct		Up to $100/affected participant/day
Elimination of preexisting limits for children under age 19	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	Yes	Verify plan/SPD has been amended and administration is correct		Up to $100/affected participant/day
Limits on rescissions	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	Yes	Verify administration is correct	Generally may not terminate ineligible covered persons retro to ineligibility date	Up to $100/affected participant/day
First dollar coverage for preventive care	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	No	Verify plan/SPD has been amended and administration is correct	HHS may periodically revise definition of preventive care, such as they have done with women's care	Up to $100/affected participant/day
Enhanced appeals rules	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	No	Verify plan/SPD has been amended and administration is correct		Up to $100/affected participant/ day
No reimbursement of OTC drugs without a prescription	First day of 2011 plan year	Yes	Yes	Yes	N/A	N/A	Yes	Verify plan/SPD has been amended and administration is correct	Applies to FSAs, HRAs and HSAs	Plan disqualification (all benefits become taxable)

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Primary care physician choice	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	No	Verify plan/SPD has been amended, participants advised and administration is correct		Up to $100/affected participant/day
OON emergency department coverage	First day of 2011 plan year	Yes	Yes	Yes	Yes	Yes	No	Verify plan/SPD has been amended, participants advised and administration is correct		Up to $100/affected participant/day
Minimum medical loss ratio (MLR) rebates	July 2012	Yes	Yes	Yes	Yes	No	Yes	If receive rebate, must share *pro rata* with participants; if no rebate received, for first year of rebate only, include notice with first plan materials (e.g. open enrollment materials) provided after 7/1/12	Precise method of determining each participant's share of rebate is not prescribed; must use "reasonable" approach; beginning in 2013 if apply to premium insurer must apply to next premium due	Failure to distribute appropriately may be a prohibited transaction
W-2 reporting of value of group health benefit	1/31/2013	Yes, if issued >250 W-2s in prior calendar year	No	No	Yes, if issued >250 W-2s in prior calendar year	Yes, if issued >250 W-2s in prior calendar year	Yes, if issued >250 W-2s in prior calendar year	Ensure W-2 system has needed data on value of GHP coverage and can correctly populate Box 12	Report total value (employer + employee contributions)	Likely $50 per W-2
Loss of deductibility for Part D subsidy	First day of 2013 tax year	Yes	Yes	Yes	Yes	Yes	Yes	Consider subsidy taxable income for 2013 and later	Only affects employers receiving subsidy for providing Rx to retirees; change also likely impacts financial reporting	
Summary of Benefits and Coverage	First open enrollment or plan year after 9/23/2012	Yes	Yes	Yes	Yes	Yes	Yes	Prepare SBC and distribute by due date	Insurer will provide for insured coverage and TPA likely will help with self-funded, but plan sponsor ultimately responsible	$1,000 per failure to provide

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Additional FICA withholding on employee's share of wages > $200,000	1/1/2013	Yes	Yes	Yes	Yes	Yes	Yes	Update pay withholding to collect additional 0.9% FICA for employees earning less than $200,000 beginning with the pay in which the employee's compensation reaches $200,000	Employee owes an additional 0.9% Medicare withholding if filing married with combined wages > $250,000 or filing single with wages > $200,000. Employer responsibility limited as described	Likely 20% of amount under-withheld
Patient Centered Outcomes/ Comparative Effectiveness Fee due	7/31/2013 for plan years ending 10/1/12 - 12/31/12	Yes	Yes	Yes	Yes	Yes	Yes	Calculate fee ($1/covered life) and pay on IRS Form 720 if self-funded; insurer calculates and pays for insured plans but likely will pass fee along	Fee increases to $2/covered life for following year, then $2 (indexed)/ covered life; fee applies to plan/ policy years ending after 9/30/2012 through plan/policy years ending on or before 9/30/2019; fee is due by 7/31 of the calendar following the plan year; applies to retiree only plans	5% of unpaid fee/month, generally to a 25% maximum
Maximum health FSA contribution of $2,500 (indexed)	First day of 2013 plan year	Yes	Yes	Yes	Yes	Yes	Yes	Update enrollment materials, verify administration is updated, amend plan by 12/31/2014	This is a longer time to amend than is usually given	Plan disqualification (all benefits become taxable)
Open enrollment for individual exchanges/health marketplace	10/1/2013 – 3/31/2014	Employees are eligible	Employees are eligible	Employees are eligible	Employees are eligible	Employees are eligible	Employees are eligible	Employers are encouraged to respond to inquiries from exchange relating to eligibility for premium subsidies	Employees may enroll in an exchange regardless of the employer's size or offer of coverage; coverage begins 1/1/2014 if enroll by 12/24/2013	N/A

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Enrollment begins for SHOP exchanges	10/1/2013	Not available until at least 2017; state by state decision	Not in 2014	Yes	Yes	No	Yes	If eligible, begin to consider whether to provide coverage inside or outside of exchange/SHOP	Exchanges/SHOP will provide online resource to elect health coverage	N/A
Notice of Exchanges	10/1/2013	Yes	Yes	Yes	Yes	Yes	Yes	Create and send notices re availability of exchanges	Model notices are available	DOL has stated no fines will apply for failure to provide notice

Notes:

- Cutoff for a “small employer" under insurance rules may be 50 or 100 in 2014 and 2015 depending on state election. All states are using 50 employees as the cut-off for 2014. Threshold increases to 100 for all small group plans in 2016.
- Controlled group rules generally apply when determining employer size
- "Fully insured" includes HMOs
- Non-ERISA plans remain exempt from SPD requirements but are subject to PPACA’s requirements

This information is general and is provided for educational purposes only. It reflects UBA's understanding of the available guidance as of the date shown and is not intended to be comprehensive. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.

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