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Health Care Reform: What It Means to Your Municipality

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Jonathan M. Calpas, Esq.
calpasj@ballardspahr.com
(215) 864-8385

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Today's Agenda

- Health Care Reform – three new concepts
- Drilldown: Full-time Employee Determination
- Strategic Decisions for Employers in 2013 and 2014
 - Will I pay a penalty?
 - Should I change my workforce?
 - Should I continue my health plan?
- Health Care Exchanges at a Glance
- Wellness Programs
- Compliance for 2013 and 2014
- Visit our Health Care Reform Dashboard:
<http://www.healthcarereformdashboard.com>

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Health Care Reform

Health Care Reform -- Three New Concepts



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Individual Mandate

- Obtain minimum essential coverage or pay a penalty
 - Employer or government (e.g., Medicare) coverage
 - Exchange coverage
- Greater of a dollar penalty or a percentage of household income penalty

Year	Individual \$ Penalty	% Income Penalty
2014	\$95	1.0%
2015	\$325	2.0%
2016 (and after)	\$695 (as indexed)	2.5%

- Penalty is less for dependents
 - $\frac{1}{2}$ of the dollar amount listed above for each uninsured dependent under the age of 18
- Total dollar penalty for a family is capped at 300% of the normal penalty

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Employers: Pay-or-Play

- Requirement for large employers to offer health coverage to full-time employees or pay a financial penalty
 - Large employers have at least 50 full-time employees (FTEs)
- Two types of penalties
 - \$2,000 penalty per FTE
 - Employer does not offer health coverage to FTEs and dependents
 - At least one FTE obtains subsidized coverage through an Exchange (ignore the first 30 FTEs)
 - \$3,000 penalty per FTE who obtains subsidized Exchange coverage
 - Employer offers health coverage, but it is unaffordable or inadequate
 - Cannot exceed what the \$2,000 penalty would be for all FTEs

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Health Care Exchanges

- A one-stop marketplace of health insurance issuers that will enable individuals and small businesses to choose a quality, affordable private health insurance plan
- When do Exchanges become operational?
 - For individuals: January 1, 2014
 - For small employers: January 1, 2014
 - For large employers (more than 100 employees): no earlier than January 1, 2017

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Employer Pay-or-Play



Employer Pay-or-Play

- Only "large" employers are subject to the employer pay or play rules, beginning in 2015
 - 50 or more full-time employees (FTEs) during the preceding calendar year
 - May use a 6-month period for measurement in the first year (i.e., 6 months in 2013 for 2014)
 - Related employers are aggregated under the Internal Revenue Code controlled group rules
 - If all related employers together employ at least 50 FTEs, all of the related employers are treated as large employers

Employer Pay-or-Play

- Counting Rules for Large Employer Status
 - "Full-time" means employed, on average, at least 30 hours per week
 - Regulations include special counting rules for non-hourly employees, foreign employees and seasonal employees
 - Add in a value for "full-time equivalent" employees
 - Combine all hours for part-time employees in a month (max of 120 hours for any employee), divide by 120
 - Calculate the number of full-time / full-time equivalent employees for the prior calendar year; if 50 or more, employer is subject to pay or play rules

Employer Pay-or-Play

- Plan must provide minimum essential coverage (MEC)
 - Employer-sponsored plans, whether insured or self-funded, qualify as MEC
 - Must include dependent coverage by 2015
 - Dependent means a child under age 26 (not a spouse)
 - No requirement to subsidize coverage for dependents

Employer Pay-or-Play

- Plan must offer minimum essential coverage to all (or almost all) full-time employees
 - Full-time employees are still defined as those common law employees who work, on average, at least 30 hours per week
 - Determine on an employer-by-employer basis; do not aggregate controlled group members
 - Can ignore part-time employees
 - Detailed rules for determining who are full-time employees
 - Look-back measurement and stability periods
 - Special rules for seasonal, temporary, leased employees

Employer Pay-or-Play

Example of the \$2,000 penalty

- ABC Township employs 135 public works employees, 120 parks and recreation employees, 115 administrative employees, 35 code enforcement employees, 15 paramedics, 10 engineering employees, 75 police officers, and 25 firefighters
 - ABC provides a group health plan to everyone except the code enforcement employees
 - One code enforcement employee purchases health insurance through the State Exchange; receives a subsidy based on his/her low income level
 - ABC will owe a \$1,000,000 penalty under the ACA for 2015
 - $\$2,000 \times (530 - 30 \text{ full-time employees}) = \$1,000,000$

Employer Pay-or-Play

- Plan must provide "adequate" coverage
 - Plan must cover at least 60% of the employee's costs to provide sufficient "minimum value"
 - HHS minimum value calculator for employers to determine whether their health plan coverage is adequate
 - Other alternatives:
 - Safe harbor checklists
 - Actuarial certifications

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Employer Pay-or-Play

- Plan must provide "affordable" coverage
 - Employee's portion of the premium/cost of coverage cannot exceed 9.5% of the employee's household income
 - Look at the lowest-cost single coverage option offered by the employer
 - Employer safe harbors:
 - 9.5% of the employee's Form W-2 income from the employer
 - 9.5% of the employee's rate of pay (can use for both hourly and salaried employees)
 - 9.5% of the Federal poverty level for a single individual

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Employer Pay-or-Play

Example of the \$3,000 penalty

- ABC Township employs 135 public works employees, 120 parks and recreation employees, 115 administrative employees, 35 code enforcement employees, 15 paramedics, 10 engineering employees, 75 police officers, and 25 firefighters
 - ABC provides a group health plan to all employees, but charges the paramedics 80% of the cost of coverage (\$9,600)
 - One paramedic (who has \$40,000 in Form W-2 wages) declines the ABC coverage and purchases health insurance through the State Exchange; receives a subsidy based on his/her low income level
 - \$9,600 is more than 9.5% of his Form W-2 wages

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Employer Pay-or-Play

Example of the \$3,000 penalty, cont.

- ABC will owe a **\$3,000 penalty** under the ACA for 2015
 - $\$3,000 \times 1$ full-time employee who receives subsidized coverage from the State Exchange = \$3,000
 - If all 15 paramedics receive subsidized coverage from the State Exchange, the penalty is \$45,000 ($\$3,000 \times 15$ employees)

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Determining Full-Time Employees



Determining Full-Time Employees

- Although the general rule contemplates that full-time status will be determined on a monthly basis, many employers will take advantage of IRS look-back measurement/stability period rules to obtain certainty in advance whether an individual is a full-time employee for shared responsibility purposes
 - Determine full-time status on basis of hours worked during a designated look-back "measurement period"
 - If an employee is full-time during the measurement period, he/she is deemed a full-time employee for mandate purposes during the following "stability period" (regardless of actual hours worked)
 - Use of an optional "administrative period"

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Determining Full-Time Employees

- Ongoing employees
 - Standard measurement period
- New variable-hour or seasonal employees
 - Initial measurement period

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Standard Measurement Period (Ongoing EEs)

- Under the look-back measurement method for ongoing employees, a large employer determines each ongoing employee's full-time status by looking back at a standard measurement period
- The employer chooses the standard measurement period – between 3 and 12 months
 - Examples include the calendar year, a non-calendar plan year, or a different 12-month period that ends shortly before open enrollment
 - Standard measurement period must be made on a uniform and consistent basis for all employees in the same category
 - Collectively bargained and non-collectively bargained employees
 - Groups of collectively bargained employees covered by separate CBAs
 - Salaried and hourly employees

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Stability Period (Ongoing EEs)

- If a large employer determines that an employee was employed an average at least 30 hours per week during the standard measurement period, then the employer must treat the employee as full-time for mandate purposes during the following stability period
- Duration of the stability period must be at least the greater of six months or the length of the standard measurement period
 - Stability period = coverage period
 - Stability period must be uniform for all employees in the same category

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Administrative Period (Ongoing EEs)

A large employer may, if it chooses, provide for an administrative period that follows the measurement period and precedes the stability period

- Administrative period cannot exceed 90 days
- Intent is to allow the employer to compile information regarding its employees' full-time status during a measurement period that precedes open enrollment

Example:

- Standard measurement period runs from January – September
- Administrative period lasts from October (beginning of open enrollment) through December
- Stability period runs from January – December of the following year

The employer will know at the beginning of open enrollment which of its ongoing employees will be considered full-time for shared responsibility purposes during the upcoming coverage year.

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New Employees

- Treatment of new hires depends on whether the employer, at the time of hire, reasonably expects the employee to be a full-time employee (and is not a seasonal employee)
- If new hire is reasonably expected to be full-time (and not a seasonal employee), the employer must, to avoid a penalty, offer minimum essential health coverage by the end of the employee's initial three full months of employment

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New Employees

- If the new hire is a variable hour employee or a seasonal employee, the employer is permitted to determine full-time status during an "initial measurement period"
 - No requirement to offer health coverage during the initial measurement period

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Variable-Hour Employees

- A variable hour employee is an employee for whom, based on facts and circumstances as of the employee's start date, the employer cannot determine whether he/she is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain
 - This definition picks up employees intended to work part-time
- Beginning January 1, 2015, the employer cannot take into account the likelihood that the employee will terminate employment before the end of the initial measurement period

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Seasonal Employees

- A seasonal employee is not necessarily limited to an individual who works four or fewer consecutive months.
- A good faith interpretation can be gleaned by analogy to DOL regulations, even if such regulations do not address the kind of seasonal work provided
- A seasonal employee is a worker who performs labor or service on a seasonal basis under DOL rules, and retail workers during holiday seasons. At least for 2014, employers may apply a reasonable good faith interpretation

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Initial Measurement Period (New EEs)

- Only applicable to new hires who are variable-hour employees or seasonal employees
- For such employees, a large employer is permitted to determine whether the new employee is a full-time employee during an initial measurement period of between 3 and 12 months
 - The initial measurement period must begin no later than the first day of the first calendar month following the employee's start date
 - If the variable-hour or seasonal employee averages at least 30 hours per week during the initial measurement period, he/she is considered a full-time employee during the subsequent stability period

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Initial Measurement Period (New EEs)

- If the variable-hour or seasonal employee fails to average at least 30 hours per week during the initial measurement period, employer is permitted to treat the employee as not a full-time employee during the stability period
- However, if variable-hour or seasonal employee is promoted to full-time status, he/she must be offered health coverage no later than the earlier of:
 - The first day of the fourth month following the date of the promotion, or
 - The first day of the month following the close of the initial measurement period (plus any administrative period)

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Stability Period (New EEs)

- If employee is determined to be full time, stability period must be at least six months but no shorter in duration than the initial measurement period
- If employee is determined not to be full time, stability period must not be more than one month longer than the initial measurement period, and cannot exceed the remainder of the standard measurement period (plus associated administrative period) in which the initial measurement period ends

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Administrative Period (New EEs)

- The employer can also use an administrative period of up to 90 days, but the total of initial measurement period and administrative period cannot last beyond the final day of the first calendar month beginning on or after the one-year anniversary of the employee's hire date.

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Initial Measurement Period – Example #1

Example #1 – Employer Choices

Standard measurement period:	12 months starting on October 15
Standard administrative period:	October 15 – December 31 (following end of measurement period)
Standard stability period:	following calendar year (12 months)
Initial measurement period (variable hour/seasonal employees):	eleven months following initial month of hire
Initial administrative period:	one month following initial measurement period
Initial stability period:	12 months that follow the administrative period, but (if not full time) not beyond December 31 of year in which initial measurement period ends

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Initial Measurement Period – Example #1 cont'd.

Example #1 – Application to Facts

John is hired as a variable hour employee on March 12, 2014. His initial measurement period begins April 1, 2014 and ends February 28, 2015. The initial administrative period ends March 31, 2015. At the end of the initial measurement period, John is determined to be full-time. He must be offered minimum essential health coverage for the period beginning April 1, 2015 and ending March 31, 2016.

The employer must test John again as an ongoing employee, with respect to the standard measurement period that begins October 15, 2014 and ends October 14, 2015. If John is determined to be full-time during this standard measurement period, he must be offered minimum essential health coverage for the 2016 calendar year.

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Initial Measurement Period – Example #2

Example #2 – Employer choices

Standard measurement period:	January through September
Standard administrative period:	October through December
Standard stability period:	following calendar year (12 months)
Initial measurement period (variable hour/seasonal employees):	eleven months following initial month of hire
Initial administrative period:	one month following initial measurement period
Initial stability period:	12 months that follow the administrative period, but (if not full time) not beyond December 31 of year in which initial measurement period ends

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Initial Measurement Period – Example #2 cont'd.

Example #2 – Application to Facts

Sarah is hired as a variable hour employee on February 25, 2014. Her initial measurement period begins March 1, 2014 and ends January 31, 2015. The initial administrative period ends February 28, 2015. At the end of the initial measurement period, Sarah is determined to not be full-time. She does not need to be offered minimum essential health coverage for the stability period beginning March 1, 2015 and ending December 31, 2015 (the end of the standard measurement period plus administrative period in which her initial measurement period ended).

The employer must test Sarah again as an ongoing employee with respect to coverage in 2016. She must be tested with respect to the standard measurement period that begins January 1, 2015 and ends September 30, 2015. If Sarah is determined to be full-time during this standard measurement period, she must be offered minimum essential health coverage for the 2016 calendar year.

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Change in Employment Status

- For ongoing employees, a change in employment status during the stability period does not change the employee's status as full time (or not full time) for mandate purposes
 - If EE was not full-time during the standard measurement period, the transfer to full-time status during the stability period does not change his/her status as a non-full-time EE for mandate purposes during the stability period
- For new variable-hour and seasonal employees, if the EE is promoted to a position in which he/she is reasonably expected to be full time, he/she is treated as a full-time EE for whom the employer must offer coverage as of the earlier of
 - The first day of the fourth month following the date of the promotion, or
 - The first day of the first month following the close of the initial measurement period and any administrative period

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Rehires and Leaves of Absence

- General rule:** If the period for which no hours of service are credited is at least 26 weeks, employer can treat the individual as having terminated employment and rehired as a new employee
- Optional rule of parity:** Employer can treat as a new hire an individual who is credited with no hours of service for at least four weeks (and less than 26 weeks), provided that such length of absence is longer than the employee's immediately preceding period of employment
- Example**
 - Employee works 3 weeks for a large employer, terminates employment and is rehired 10 weeks later. The employee can be treated as a new employee because the 10-week period of absence is longer than the preceding 3-week period of employment
 - The rule of parity applies solely for purposes of determining full-time status for employers that use a look-back measurement period

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Rehires and Leaves of Absence

- If an employee on a leave of absence (or a termination-and-rehire) is treated as a continuing employee (rather than as a new hire), the original measurement and stability periods continue to apply
- If such a full-time employee leaves during a stability period and then returns, he/she is treated as full time following return and through the end of the stability period

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Rehires and Leaves of Absence

- There are special rules for averaging hours during a measurement period if the employee goes on unpaid FMLA leave, unpaid jury duty leave, or unpaid leave subject to USERRA ("special unpaid leave")
 - Hours of service per week during measurement period are determined by excluding periods of special unpaid leave (so only periods while actively working are counted)
 - Alternatively, the employer can "deem" hours of service during the special leave period at the average weekly rate of hours worked for those weeks in the measurement period during which the employee was not on special unpaid leave

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Strategic Decisions for Employers in 2013 and 2014



Strategic Decisions for Employers

- Will I pay a penalty for 2015?
 - Am I a large employer (including controlled group affiliates)?
 - Who are my full-time employees?
 - Choose a look-back measurement period that suits your workforce
 - Presumptions for newly hired and rehired employees
 - Is my coverage adequate?
 - Is my coverage affordable?

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Strategic Decisions for Employers

- Should I change my workforce?
 - Employers only pay penalties for full-time employees (average of 30 or more hours per week)
 - Could reduce work schedules to get under 50 FTEs
 - Requires regular monitoring of hours to ensure average stays under 30
 - Adjust definitions of part-time in handbooks and summary plan descriptions
 - Leased employees
 - Independent contractors
 - No obligation to cover part-time or leased employees or independent contractors

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Strategic Decisions for Employers

- Part-time considerations:
 - Cost of health insurance
 - Increased training costs
 - Scheduling challenges
 - Increased manager stress
 - Increased discrimination exposure
 - Decreased employee sense of investment in municipality
 - Impact on morale/municipality culture
 - Decreased retention

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Strategic Decisions for Employers

- Temporary / leased employees are obtained through a staffing agency
 - Agency provides payroll and benefits to employees, municipality pays agency a fee for the worker
- Temporary and leased employees will not subject the municipality to a penalty if the municipality is not a joint employer
 - Many employment laws place compliance responsibilities on BOTH the staffing agency and the municipality under a joint-employer theory
 - Indemnity clauses address but do not remove the risk

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Strategic Decisions for Employers

- IRS proposed "anti-abuse" rule:
 - Penalizes employers who structure workforce to avoid Affordable Care Act coverage
 - i.e. - Employer hires same workers for 20 hours directly and through an agency for 20 more hours
 - Proposed rule: if worker performs services directly for the company that are the same as or similar to the services it provides to the company through a staffing agency, then all hours of the worker are attributed to the company for penalty purposes

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Strategic Decisions for Employers

- True independent contractors are not employees and will not subject a municipality to a pay-or-play penalty for lack of health coverage
- No single test to define whether an individual is truly an independent contractor for all purposes
 - The IRS, the courts, and various federal and state agencies have developed various tests to evaluate an individual's status: common law, economic realities, IRS test
 - Not clear which test will be used under the Affordable Care Act to determine independent contractor status

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Strategic Decisions for Employers

- Common Law Test:
 - An employment relationship exists if the company exercises "control" or has the "right of control" over the worker's performance of the job and how the worker accomplishes the job
 - Elements of the common law "right of control" test:
 - Extent of control that the company may exercise over the details of the work
 - Whether the worker is engaged in a distinct occupation or business
 - The kind of work and whether it is typically done under the direction of an employer or by a specialist without supervision
 - The skill required in the particular occupation
 - Who supplies the tools and place of work

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Strategic Decisions for Employers

- Common Law Test Elements (cont.):
 - The length of time for which the worker is employed
 - The method of payment (by time or by job)
 - Whether the work is part of the regular business of the company
 - Whether the parties believe they are creating an employer-employee relationship
 - Whether the company is a business

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Strategic Decisions for Employers

- Legal implications of misclassification:
 - Affordable Care Act consequences
 - Also tax consequences, wage & hour liability, benefit claims under ERISA and state implied contract laws
- Controlling risk of misclassification:
 - Put the relationship in writing
 - Design the relationship to pass the tests - vest control in the worker
 - Honor the relationship as per the design
 - Treat the independent contractor separately and differently than your employees

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Strategic Decisions for Employers

- Does the Affordable Care Act make it more or less likely that employers will continue to provide health coverage to employees?
 - It depends on:
 - Viability of the State exchanges
 - Size of the employer
 - 50 or more FTE employees
 - Income level of the workforce
 - Cost of insurance policies offered through the State exchange
 - What competitors are doing

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Enforcement

- Interference with Benefits Claims
 - ERISA Section 510 (not applicable to governmental employers) prohibits employers from discharging, fining, suspending, expelling, disciplining or discriminating against a participant for exercising any right to which he or she is entitled under an employee benefit plan or interfering with attainment of any such right (29 U.S.C. § 1140)
 - Will PA courts apply similar "non-interference" rules under common law trust principles if public employers reorganize workforce to avoid providing health care?

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Enforcement

- ACA Whistleblower Claims
 - Section 1558 of ACA prohibits employers from "discharg[ing] or in any manner discriminat[ing] against any employee with respect to his or her compensation, terms, conditions, or other privileges or employment" when the employee objects to violations or receives a subsidy or credit
 - Claimants must file complaints with DOL (OSHA) within 180 days of adverse action, before commencing lawsuit
 - OSHA will investigate claim and can order preliminary reinstatement of any discharged employee.
 - If OSHA issues Final Order, reviewable in U.S. Courts of Appeals; otherwise de novo review in federal district Court
 - ACA prohibits arbitration of whistleblower claims

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Should I Continue My Health Plan?

- Large Employer Example:
 - ABC Township employs 1,000 full-time employees at a wide range of income levels
 - Purchases group health insurance from an insurance company
 - 2015 premium is \$7,000 for single coverage
 - Employee contributes 8% of the premium, or \$560
 - ABC's annual cost of providing health insurance coverage for employees for 2015 -- **\$6.44M**

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Should I Continue My Health Plan?

- Large Employer Example:
 - Assume that ABC drops all health coverage for employees in 2015
 - Employees have to go to the State exchange to purchase their own individual health coverage
 - Employees with household incomes of 400% of the Federal poverty level or less qualify for a subsidy to purchase insurance (assume at least one employee gets a State exchange subsidy)
 - ABC pays a penalty of \$2,000 per full-time employee
 - \$2,000 x (1,000-30) employees = **\$1.94M**

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Should I Continue My Health Plan?

- Large Employer Example:
 - Of course, ABC employees still need to purchase health insurance from the State exchange to avoid the individual mandate penalty
 - ABC could use all or some of the **\$4.5M in savings** to help employees with the cost of health insurance purchased through the State exchange
 - Additional wages
 - Health reimbursement account may not work
 - Reduces or eliminates volatility in the employer's health care spend from year to year
 - Reduces employer's administrative costs

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Wellness Programs

- New nondiscrimination requirements in Affordable Care Act
 - Effective for plan years beginning on or after January 1, 2014
- Two types of wellness programs may be maintained in connection with a health plan:
 - Participatory
 - A participatory wellness program must be made available to all similarly situated individuals
 - Health-contingent (Potential Planning Opportunity)
 - A health-contingent wellness program must meet five requirements

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Health Care Exchanges



Health Care Exchanges

- An Exchange is a state-based internet marketplace where individuals can enroll in health plans meeting ACA qualified health plan standards.
- As of this date, Exchanges will be run
 - Exclusively by a state organization (18 states and D.C.: CA, CO, CT, D.C., HA, ID, KY, MD, MA, MN, MS, NV, NM, NY, OR, RI, UT, VT and WA)
 - By a state organization in partnership with the federal government (Federally-facilitated) (5 states: AK, DE, IA, IL and NC), or
 - By the federal government exclusively (27 remaining states)

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Features of an Exchange

- Each exchange plan must provide certain essential benefits, preventive care without cost-sharing and guarantee eligibility regardless of health status
- With the exception of a few co-ops, only insurance carriers may offer coverage and must be certified by each Exchange
- Large risk pool – restrictions on premium variations
- All plans will be supported in initial years with a reinsurance program
- Coordinated web-based enrollment – if individual eligible for Medicaid or other affordable insurance program rather than an Exchange plan, automatic enrollment follows

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Essential Health Benefits

- Essential health benefits (EHB) is a comprehensive package of items and services within at least the following 10 categories:

Ambulatory patient services	Prescription drugs
Preventive and wellness services and chronic disease management	Rehabilitative and habilitative services and devices
Hospitalization	Laboratory services
Maternity and newborn care	Emergency services
Mental health and substance use disorder services, including behavioral health treatment	Pediatric services, including oral and vision care

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Exchange Premium Structure

- Plans may only vary the premiums charged within limits:
 - age (3:1)
 - tobacco use (1.5:1)
 - family structure and
 - geographic area

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Metal Plan Options - Actuarial Value

	Exchanges			
	Bronze	Silver	Gold	Platinum
Actuarial value	60%	70%	80%	90%
Covered services	Essential and preventive benefits	Essential and preventive benefits	Essential and preventive benefits	Essential and preventive benefits
Essential benefits	No dollar limits	No dollar limits	No dollar limits	No dollar limits
2013 cost-sharing maximums Will be reduced to 2014 levels	Up to \$6,250 (I) \$12,500 (F)	Up to \$6,250 (I) \$12,500 (F)	Up to \$6,250 (I) \$12,500 (F)	Up to \$6,250 (I) \$12,500 (F)

Second-lowest cost silver plan used to determine any government PTCs through the exchanges

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Eligibility for Exchanges

- For individuals: January 1, 2014
 - Annual open enrollment period: October 1, 2013
 - Special enrollment periods
- For small employers: January 1, 2014
 - State sets the size of the small group market at 50 or under or 100 and under employees
 - In 2016, all employers with between 1 and 100 employees can utilize the Exchange
- For large employers (more than 100 employees): no earlier than January 1, 2017

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Subsidies for Exchange Premiums

- Individuals with modified adjusted household income between 100% and 400% of the Federal Poverty Level (FPL) may be eligible for
 - Premium tax credits (PTC) that will be paid in advance to the insurance company or taxpayer
 - Cost-sharing limits (e.g., limits on deductibles, copays and co-insurance)
 - Out-of-pocket spending limits

FPL 2014 (est.)	Individual	Family of 4
100%	\$11,850	\$24,450
400%	\$47,400	\$97,800

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PTC Subsidies After January 1, 2014

Income Level (in terms of FPL)	Max. % of Income Paid Toward Health Care Coverage	Income Level (in terms of FPL)	Cost-Sharing Limit
Up to 133%	2%	150 - 200%	6%
133 - 150%	3 - 4%	200 - 250%	13%
150 - 200%	4 - 6.3%	250 - 300%	27%
200 - 250%	6.3% - 8.05%	300 - 400%	30%
250 - 300%	8.05% - 9.5%	Income Level (in terms of FPL)	Out-of-pocket spending limits
300 - 400%	9.5%		
		100 - 200%	\$2,083 (I) / \$4,166 (F)
		200 - 300%	\$3,125 (I) / \$6,250 (F)
		300 - 400%	\$4,166 (I) / \$8,333 (F)

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Illustrative Exchange Premiums

MAGI			Maximum Annual Contribution		
			(Share of Premium)		
% FPL	Single	Family of 4	% of MAGI	Single	Family of 4
138%	\$16,353	\$33,746	3.00%	\$492	\$1,008
150%	\$17,775	\$36,681	4.00%	\$708	\$1,464
200%	\$23,701	\$48,907	6.30%	\$1,488	\$3,084
250%	\$29,626	\$61,134	8.05%	\$2,388	\$4,920
300%	\$35,551	\$73,361	9.50%	\$3,372	\$6,972
400%	\$47,401	\$97,815	9.50%	\$4,500	\$9,288

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Wellness Programs



Wellness Programs

- What are they?
 - A wellness program is a program of health promotion or disease prevention.

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Examples of Wellness Programs

Employers may establish a variety of different types of wellness programs:

- On-site exercise facility or reimbursement of gym membership
- Educational or exercise programs
- Weight reduction or tobacco cessation programs
- Health risk assessment or biometric screenings
- Programs of disease management and risk reduction

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Examples of Rewards

Employers may seek to reward participation in a wellness program in various ways:

- Praise
- Gift certificates or prizes
- Reduction in health plan premiums or cost-sharing under a health plan

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Legal Environment

Various laws may regulate or influence the design of a wellness program, including nondiscrimination requirements under:

- Americans with Disabilities Act (ADA)
- Genetic Information Nondiscrimination Act (GINA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Affordable Care Act (ACA)

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Legal Environment

Focus on HIPAA and ACA because:

- Often a wellness program is a group health plan or part of a group health plan
- These rules offer the most recent guidance
- These rules offer the most detailed and concrete guidance
- These rules offer the most balanced guidance

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Legal Environment

New nondiscrimination requirements in Affordable Care Act

- Statutory requirements in §1201 of ACA
 - Statute closely follows HIPAA nondiscrimination regulations with discrete differences
- Proposed regulations published in Federal Register on November 26, 2012
- Final regulations published in Federal Register on June 3, 2013
 - Regulations amend HIPAA regulations
- Effective for plan years beginning on or after January 1, 2014

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Types of Wellness Programs

Under current rules, two types of wellness programs may be maintained in connection with a health plan:

- Participatory
- Health-contingent

In 2014, it becomes more complicated:

- Participatory
- Health-contingent
 - Activity-only
 - Outcome-based

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Participatory Wellness Program

- Participatory wellness program
 - Either no incentive at all or no incentive based on health factor
- Examples
 - Reimbursement of gym membership fee
 - Waiver of copayments for certain drugs
 - Payment of the cost of a tobacco cessation program, regardless of outcome
 - Reward for attending health education seminar
 - Reward for undergoing diagnostic tests or completing health risk assessment, regardless of outcome

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Health-Contingent Wellness Programs

- Health-Contingent Wellness Programs
 - Reward based on health factor
 - Rules to ensure that the wellness program
 - Is reasonably designed to promote health or prevent disease
 - Has a reasonable chance at improving health or preventing disease
 - Is not overly burdensome
 - Is not a subterfuge for discriminating based on a health factor
 - Does not use a method to improve health or prevent disease that is highly suspect

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Health-Contingent Wellness Programs

- Activity-only wellness programs base reward only on participation in an activity, where health factor may affect ability to qualify for reward
 - Examples
 - Walking or other exercise program
 - Diet program
- Outcome-based wellness programs provide reward based on health outcome
 - Examples
 - Reward for maintaining healthy readings for blood pressure, cholesterol or BMI
 - Reward for refraining from tobacco use

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Wellness Programs

- Under current rules
 - A participatory wellness program must be made available to all similarly situated individuals
 - A health-contingent wellness program must meet five requirements
- In 2014
 - A participatory wellness program must be made available to all similarly situated individuals
 - A health-contingent wellness program must meet five requirements, but there are some differences between:
 - Activity-only programs
 - Outcome-based programs

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Health-Contingent Wellness Programs

- Requirement #1
 - Now
 - Individuals must have the opportunity to qualify for the reward at least once per year
 - 2014
 - Same as current rule

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Health-Contingent Wellness Programs

- Requirement #2
 - Now
 - Size of the reward must be limited to 20% of the total cost of coverage
 - 2014
 - Maximum reward is increased to 30% of total cost of coverage
 - Reward may be as much as 50% to the extent attributable to prevention or reduction of tobacco use

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Health-Contingent Wellness Programs

- Requirement #3
 - Now
 - Program must be available to all similarly situated individuals
 - If it is unreasonably difficult (because of a medical condition) or medically inadvisable for an individual to satisfy the otherwise applicable standard, a reasonable alternative standard for obtaining the reward must be made available
 - 2014
 - Same as current rule but the terminology is changed

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Health-Contingent Wellness Programs

- Activity-Only
 - Permissible to seek physician verification that there is a health factor which makes it unreasonable difficult or medically inadvisable for individual to meet standard
- Outcome-Based
 - Must offer reasonable alternative standard to anyone who does not meet initial standard
 - May not require physician verification, unless the reasonable alternative standard is an Activity-Only Program

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Health-Contingent Wellness Programs

- Activity-Only and Outcome-Based Programs:
 - "Reasonable" depends on facts and circumstances, but consider time commitment, cost, assistance from the program
 - Personal physician may find any standard not medically appropriate for the individual and the program must offer an alternative standard
 - Cannot cease to provide a reasonable alternative standard because an individual was unsuccessful in satisfying the initial standard (e.g., smoking cessation and weight loss programs)

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Health-Contingent Wellness Programs

- Requirement #4
 - Now
 - Wellness program must be reasonably designed to promote health and prevent disease
 - 2014
 - Remains the same under the new regulations with the express provision that Outcome-Based Programs must provide a reasonable alternative standard to all individuals who do not meet the initial standard in order to be considered reasonably designed.

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Health-Contingent Wellness Programs

- Requirement #5
 - Now
 - All materials that describe terms of wellness program must disclose that, for those who fail to meet the standards for a reward, another means of qualifying for reward may be available
 - 2014
 - Same as current rules, but regulations clarify the disclosure requirements
 - Must include contact information for obtaining the reasonable alternative and a statement that the recommendations of personal physicians will be accommodated
 - Outcome-Based Programs must include a notice in any disclosure to an individual who does not satisfy the initial standard

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Compliance for 2013 and 2014



Compliance for 2013 and 2014

- Medical Loss Ratio (MLR) and MLR Rebates
- Waiting Period Limits
- Health Flexible Spending Accounts (Health FSAs) and Cafeteria Plans
- Required Notices
- Tax Reporting
- Taxes and Fees
- Preventive Care
- Upcoming Guidance

Medical Loss Ratio

Insurance rebates

- Insurers are required to use at least a specified percentage of the premiums they collect to pay benefits or finance certain health improvement activities
- Otherwise, insurer must rebate a portion of the premium by August 1
- Employer must determine how to handle rebate

Medical Loss Ratio Rebates

Whether to refund amounts to employees and the amount of the refund depends on the nature of the plan and plan sponsor

- ERISA plans
- Governmental plans
- Church plans

Waiting Period Limits

- All plans must limit waiting periods for eligible employees to a maximum of 90 days.
- Coverage may need to start mid-month (or a month early) to avoid going past 90 days.
- Special rules

Health FSAs and Cafeteria Plans

- Limit on annual employee salary reduction contributions to a Health FSA: \$2,500
 - No limit on employer contributions to a Health FSA
 - Effective for plan years beginning after December 31, 2012
 - May amend plan document by December 31, 2014 if otherwise in compliance
- Consider amending cafeteria plan documents to allow mid-year changes for employees who wish to enroll in Exchange coverage

Required Notices

- Summaries of benefits and coverage (SBCs)
 - Uniform notice of coverage, 4 page model form
 - Provided upon initial enrollment, re-enrollment and upon request
- Notice of material changes
 - Notice of material change in plan that is not reflected in SBC must be provided at least 60 days before it takes effect
- Notice of Exchange
 - Coverage and comparison to employer coverage
 - Model notice recently issued by DOL

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Tax Reporting

- Employers must annually report the aggregate cost of employer-sponsored health coverage provided to each employee on Form W-2
 - Box 12, Code DD
- First required for Forms W-2 issued in January 2013
 - Covers cost for 2012 calendar year
- Many types of plans are not subject to these rules
- Other Exceptions
 - Small employer exception
 - No new obligation to issue Forms W-2
 - Cost of retiree health coverage

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Fees

- Fees on insured and self-funded plans
 - Patient-Centered Outcomes Research Institute (PCORI) Fee
 - Funds research
 - Insurer pays fee for insured plan; employer pays fee for self-funded plan
 - Applies to plan years ending on or after 10/1/2012 and before 10/1/2019
 - \$2.00 per covered life (\$1.00 in first year), as adjusted
 - Report on Form 720 and payment due by July 31 of following year
 - Transitional Reinsurance Program Fee
 - Reinsurance fees to stabilize reserves of exchanges
 - Applies to calendar years 2014-2016
 - Assessment will be levied on a per-covered-life basis, calculated monthly
 - Contribution rate of \$5.25 per covered life per month in 2014 (\$63/year)

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Awaiting Further Guidance

- Compliance changes awaiting further guidance
 - Automatic enrollment
 - Nondiscrimination rules for insured plans

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Bargaining Considerations



Bargaining Considerations

- Unlike other federal laws, outside of grandfathered plans the Affordable Care Act does not automatically exempt CBA benefits plans until CBA expiration
- No Affordable Care Act unfair labor practice decisions yet by the NLRB or PRLB – but there will be

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Bargaining Considerations

- Employers may decide it is better to pay the "pay or play" penalties than continuing to pay the cost of coverage
- Terminating (or changing) health care coverage of employees represented by unions is a mandatory subject of bargaining
- Even changes that benefit employees (new coverage for 32 hour employees etc.) need to be discussed with the Union
- Even where a change is required by law, the details of how it is implemented may be subject to bargaining (what plan are employees placed on, what will they contribute, etc.)

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Bargaining Considerations

- Unions have been unwilling to agree to give employers the right to shift employees to Exchange coverage and will likely remain reluctant until Exchanges are up and running
- If Exchanges are well-received, Unions may agree to let employer drop coverage in exchange for higher wages (but remember tax implications: one union estimated that \$1 in health care coverage may equal \$1.39 to \$1.93 in wages, depending on the tax bracket)

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Bargaining Considerations

- Automatic enrollment by employers that employ more than 200 employees will carry with it several potentially bargainable issues.
- What plan do you automatically enroll employees in?
- What are the specific procedures for notification and opting out? (future regulations may fill in some blanks)

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Bargaining Considerations

- 90 day waiting periods: permitted by law, but an issue for bargaining; cannot impose unilaterally where current waiting period is shorter.
- Affordable Care Act is subject to change and regulations continue to be issued. Use broad CBA language, don't lock in all the specific details.
- Municipalities should continue to bargain for 1) an increased ability to change plans or providers, and 2) increased employee contributions (within the limits permitted by the Act).

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Next Steps for Employers



Next Steps for Employers

- Are you a large employer?
- Will you pay the pay-or-play penalty?
- Should you make workforce changes?
- Should you continue your health plan?
- Are you fully compliant with the Affordable Care Act changes?
 - Does your wellness program comply with the law?
 - Have you updated your Health FSA and cafeteria plan documents?
 - How will you use your MLR rebate?
- Have you reviewed applicable bargaining considerations?

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Health Care Reform Dashboard

- <http://www.healthcarereformdashboard.com/>

Health Care Reform Dashboard

Charting developments on the Affordable Care Act



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Health Care Reform Dashboard

- <http://www.healthcarereformdashboard.com/tracker>

Topic	Agency	Action Type	Title	Release Date
Individual Act	CMS	Final Rule	Medicare, Medicaid, Children's Health Insurance Programs, Emergency Response	2013/02/01 (Release)
Exchange Requirements	IRS, Treasury	Final Rule	Health Insurance Exchange Tax Credit	2013/01/30 (Release) 2013/01/01 (Effective Date)
Individual Mandate	IRS, Treasury	Proposed Rule	Shared Responsibility Payments for Not Maintaining Minimum Essential Coverage	2013/01/30 (Release)
Individual Mandate	IRS, Treasury	FAQs	Questions and Answers on the Individual Shared Responsibility Payment	2013/01/30 (Release)
Preventive Services	HHS, IRS	Proposed Rule	Coverage of Certain Preventive Services Under the Affordable Care Act	2013/01/30 (Release)
Annual and Lifetime Limits	Treasury, Labor, HHS	FAQs	FAQs About Affordable Care Act Implementation (Part 32)	2013/01/24 (Release)

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Contact Information

Jonathan M. Calpas
calpasj@ballardspahr.com
(215) 864-8385

