Affordable Care Act: Implications for Bargaining

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At 17.6% of GDP in 2010, US health spending is one and a half as much as any other country, and nearly twice the OECD average

Total health expenditure as a share of GDP, 2010 (or nearest year)

1. In the Netherlands, it is not possible to clearly distinguish the public and private share related to investments.
2. Total expenditure excluding investments.
Information on data for Israel: http://dx.doi.org/10.1787/88893315662

Source: OECD Health Data 2012.
What does the ACA do?

- Expands coverage. The ACA helps people obtain coverage in two primary ways:
  - Medicaid expansion
  - Exchanges
- Consumer protections
- Delivery system reforms (ACOs, PCMHs)
- Emphasis on prevention, wellness, primary care
Individual mandate

- Minimum coverage provision:
  - Beginning in 2014, individuals are required to have insurance unless exempt.
  - This is the “individual mandate”

- Penalty for not having coverage the greater of:
  - 2014: 1% of income or $95
  - 2015: 2% of income or $325
  - 2016: 2.5% of income or $695
  - Per person, but capped at 3x that amount for a family
  - Penalty will not exceed the average premium of a bronze plan in the exchange

Exchanges: Timeline

- Oct. 2013:
  - Open enrollment begins for individuals and small businesses

- Jan. 1, 2014:
  - Exchange coverage begins
  - Premium tax credits available

Exchanges: the basics

• “Marketplaces”

• Four tiers of coverage
  – Platinum pays for 90% of your covered costs
  – Gold: 80%, Silver: 70%, Bronze: 60%
  – States may also offer a catastrophic plan to those under 30, and/or a basic plan for the uninsured with incomes 133-200% of FPL

• Subsidies based on second-lowest-cost silver plan

• The average large employer plan pays for more than 80% of expected costs


Exchanges

Jan. 1, 2014
• Exchanges open to small employers (up to 100 FTEs)
• States can define “small” as up to 50 FTEs until 2016
• Employer could pick tier or plan

Jan. 1, 2017
• States can choose to open exchanges to large employers
• Subsidies not available to employees if the employer purchases coverage on exchange

Notification requirement

Employers will have to notify all new and current employees about:

- the existence of the exchange
- the services the exchange offers, and
- how to contact the exchange
- Notices will probably be due in late summer or fall of 2013, to coordinate with exchange open enrollment

State decisions: Active purchasing? Conflict of interest?

- Active purchasers?
- Conflict of interest provisions?
- Track your state’s progress:
  - National Conference of State Legislatures:
  - Kaiser State Health Facts
    http://www.statehealthfacts.org/comparemaptable.jsp?ind=962&cat=17

Federally-Facilitated Exchanges

- At least for first year, federally-facilitated exchanges (FFEs) will allow all qualified health plans to be sold in the exchange
- FFEs will determine eligibility for premium tax credits (subsidies), cost-sharing reductions, Medicaid, and CHIP

Exchanges: Subsidies

Subsidies are not available to employees who have an offer of employer-sponsored coverage that meets certain requirements UNLESS:

- The employee’s household income is at or below 400% of the federal poverty line, AND
- The employee’s share of the self-only premium for the employer’s lowest-cost plan is more than 9.5% of the employee’s household income

- 400% of the 2013 FPL for a family of 4: $94,200
- 9.5%* of $30,000: $2,850 (approx. $238/mo.)
- 9.5%* of $40,000: $3,800 (approx. $317/mo.)

*this percentage will be indexed after 2014.


Employer penalties

- The “fair share” penalties apply to large employers, defined as those with more than 50 FT equivalents.
- Penalties apply if at least one full-time employee (30 or more hrs/week) receives a premium credit in the exchange
- Two kinds of penalties:
  a. Failure to offer coverage to FT employees
  b. Failure to meet affordability test. Coverage is offered, but employee qualifies for exchange subsidy
Who is Full-Time? “Look Back” method

- Large employers are only penalized for not insuring their full-time employees, defined as working 30 or more hours per week on average.
- Employers can calculate their FT employees monthly, or use a “look-back measurement method” to determine FT status. (Method could be bargained.)
- With the “look back” method, employers can choose a measurement period of 3-12 months.
- If the employee was full-time during that period, he/she is considered FT for a subsequent “stability” period (the greater of 6 mos. or the length of the measurement period).

Educational employees: Who is full time?

For ongoing employees of educational organizations who have an “employment break period” of at least four weeks (such as during the summer), employers using the “look back” method must either:

- Calculate average hours worked per week excluding the break period, or
- treat the employee as having worked their average weekly hours during the “employment break” period
Educational employees: Who is full time?

- This means that employers cannot choose June, July, and August as the measurement period for employees who only work during the school year.
- There is also an anti-abuse clause:
  - if the employer requires someone to work for the purpose of interrupting what would otherwise be a four-week or longer “employment break,” the employee will be considered as having an employment break.
- AFT National has been active on this issue.

New Regulations

- No employer penalty for failing to offer coverage to the spouses of full-time employees.
- Family members’ eligibility for exchange subsidies based on affordability of self-only coverage.
- No failure-to-offer penalty for employers who offer coverage to 95% of full-time employees and their dependent children.
What Might Employers Do To Avoid Penalties?

- Cut hours below 30 hours per week
- Make sure the employee share of single coverage is slightly less than 9.5% of the lowest-paid employee’s pay
- Institute a new low-cost, high-deductible plan
- Shift costs to family coverage (single costs the employee little or nothing; family costs a lot)

NOTE: The ACA does not supersede collectively-bargained language, including language on hours of work, benefits, or benefits eligibility

Poll: 84% of employers are “very likely” to or “definitely will” continue to provide employer-sponsored health coverage
### Scenario 1: Employer stops offering health coverage

<table>
<thead>
<tr>
<th><strong>Upside</strong></th>
<th><strong>Downside</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Healthcare costs will take up less of the employer’s money at the bargaining table, potentially leaving more for wages</td>
<td>Exchange coverage will not be as comprehensive as employer-sponsored coverage and will have greater out-of-pocket costs.</td>
</tr>
<tr>
<td>The union can try to bargain for more money to compensate for the loss of the coverage</td>
<td>Employees will not be able to bargain with employers over plan design, plan quality, and cost sharing</td>
</tr>
</tbody>
</table>

*Employers may not give members significantly more in wages to compensate for the loss of this benefit*

*Members may ask what the union’s purpose is if not bargaining benefits*

*The employer will have to pay penalties to the federal government*

### Scenario 2: Employer continues to offer coverage

<table>
<thead>
<tr>
<th><strong>Upside</strong></th>
<th><strong>Downside</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees can continue to bargain over plan design, plan quality, and cost sharing</td>
<td>Healthcare costs will continue to rise, crowding out wage increases. Employers will keep shifting costs to employees.</td>
</tr>
<tr>
<td>Members will continue to credit the union with bargaining good benefits for them</td>
<td>If exchanges work well and employer-sponsored coverage becomes increasingly unaffordable, members may wonder why the union encourages them to stay in the employer’s plan.</td>
</tr>
<tr>
<td>Members will, in general, have coverage that is much more comprehensive than that sold on the exchanges</td>
<td></td>
</tr>
</tbody>
</table>

*If exchanges work well and employer-sponsored coverage becomes increasingly unaffordable, members may wonder why the union encourages them to stay in the employer’s plan.*
Preparing for 2014: Collect info

Member census

- who is not offered coverage?
- who pays more than 9.5% of household income for lowest-cost single coverage?
- who works less than 30 hours per week? Who works exactly 30 hrs/wk?
- household income at or below 400% FPL?
- who needs coverage for spouse and/or children?
- would any members be better off in the exchange?

Preparing for 2014: Collect info

Employer's strategy

- keeping employees out of exchanges?
- avoiding penalties?
- avoiding adverse selection?
- reducing hours?
- grandfathered status?
- dropping coverage altogether?

Members' priorities

- keeping union-negotiated coverage?
- lowest premium possible?
- lowest out-of-pocket costs possible?
- most comprehensive plan possible?
Bargaining considerations

Excise ("Cadillac") Tax (2018)
- Threshold: plan cost exceeds $10,200/$27,500 (single/family; indexed)
- Includes FSAs, HSAs (employer & employee payroll deduction), HRAs
- Vision and dental excluded
- Tax is 40% of the amount that exceeds the threshold

Wellness programs
- Carrots or sticks?
- Based on participation or results?
- On-site clinics?

Healthcare committee
- With authority?
- With release time?
- Transparency and data sharing

ACA Bargaining considerations

Plan offerings and design
- Beware of new low-cost plan (to disqualify members from exchange subsidies)
- Exchange supplement possibilities?
- Avoiding excise tax ("Cadillac tax")
- Can members drop out of employer’s plan?
- Strategic cost-sharing; emphasis on quality
- Defined contribution

Calculation of hours for FT status
- Use and length of look-back measurement period

MLR rebates (fully-insured only)
- How are they distributed?
Additional ACA provisions

• CO-OP plans
• Preventive care
• Transparency provisions:
  – W-2 reporting
  – disclosure of financial relationships between doctors and drug companies and device manufacturers
  – rate review
  – Summary of benefits and coverage
• Medicaid expansion

Consumer Oriented and Operated Plans (CO-OP)

• Nonprofit, member-run plans
• Governed by consumers
• Will be offered on exchanges
• Federal loans given to get them started
• Feds encouraged at least one in every state

http://www.statehealthfacts.org/profileind.jsp?cat=17&sub=191&rgn=37
Preventive Care

- Preventive services with no cost-sharing for those in non-grandfathered plans
  - Includes many vaccinations; flu shots; cancer screenings; tests for cholesterol, diabetes, and high blood pressure
  - Additional women’s services including contraception covered for plan years starting on or after August 1, 2012
  - Full list of covered services:
    http://www.healthcare.gov/news/factsheets/2010/07/preventive-services-list.html#CoveredPreventiveServicesforAdults
Transparency Provisions

• W-2 Reporting of Value of Health Benefits
  – Now on W-2s. This does not mean that the value of your health benefits is being taxed.

• Rate review for individual and small-group plans. Rate review data available at http://companyprofiles.healthcare.gov/

Sources:
http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=35818&AgencyId=8&DocumentType=2; http://www.kff.org/pullingittogether/Most-Popular-Provision-ACA.cfm

Transparency Provisions, cont.

• Disclosure of financial relationships between doctors and drug companies and medical device manufacturers
  – On public website by Sept. 30, 2014

• Summary of Benefits and Coverage
  – Requirement starts the first day of the first open enrollment period starting on or after September 23, 2012.
  – 4 pg., double-spaced; comes with a glossary of insurance terms

Medicaid Expansion

Where the States Stand - February 27, 2013
24 Governors Support Medicaid Expansion

Tools

- Federal poverty level by family size
- Exchange maximum premium by family size
- Kaiser subsidy calculator
- Kaiser Family Foundation
- Healthcare.gov
## 2013 Federal Poverty Level by Family Size

<table>
<thead>
<tr>
<th>Family size</th>
<th>100% FPL</th>
<th>133%</th>
<th>150%</th>
<th>200%</th>
<th>250%</th>
<th>300%</th>
<th>350%</th>
<th>400%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,490</td>
<td>$15,282</td>
<td>$17,235</td>
<td>$22,980</td>
<td>$28,725</td>
<td>$34,470</td>
<td>$40,215</td>
<td>$45,960</td>
</tr>
<tr>
<td>2</td>
<td>$15,510</td>
<td>$20,628</td>
<td>$23,265</td>
<td>$31,020</td>
<td>$38,775</td>
<td>$46,530</td>
<td>$54,285</td>
<td>$62,040</td>
</tr>
<tr>
<td>3</td>
<td>$19,530</td>
<td>$25,975</td>
<td>$29,295</td>
<td>$39,060</td>
<td>$48,825</td>
<td>$58,590</td>
<td>$68,355</td>
<td>$78,120</td>
</tr>
<tr>
<td>4</td>
<td>$23,550</td>
<td>$31,322</td>
<td>$35,325</td>
<td>$47,100</td>
<td>$58,875</td>
<td>$70,650</td>
<td>$82,425</td>
<td>$94,200</td>
</tr>
<tr>
<td>5</td>
<td>$27,570</td>
<td>$36,668</td>
<td>$41,355</td>
<td>$55,140</td>
<td>$68,925</td>
<td>$82,710</td>
<td>$96,495</td>
<td>$110,280</td>
</tr>
</tbody>
</table>

Source: AFT calculation based on HHS poverty figures: [http://aspe.hhs.gov/poverty/13poverty.cfm](http://aspe.hhs.gov/poverty/13poverty.cfm)

## Maximum Annual Premium by Family Size Under the ACA (If Currently Implemented)

<table>
<thead>
<tr>
<th>Poverty Line (FPL, 2013)</th>
<th>Maximum Premium as a % of Income (2014)</th>
<th>Maximum Annual Premium (current) by Family Size</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>100%</td>
<td>2.00%</td>
<td>$230</td>
</tr>
<tr>
<td>133.01%*</td>
<td>3.00%</td>
<td>$458</td>
</tr>
<tr>
<td>150%</td>
<td>4.00%</td>
<td>$689</td>
</tr>
<tr>
<td>200%</td>
<td>6.30%</td>
<td>$1,448</td>
</tr>
<tr>
<td>250%</td>
<td>8.05%</td>
<td>$2,312</td>
</tr>
<tr>
<td>300%</td>
<td>9.50%</td>
<td>$3,275</td>
</tr>
<tr>
<td>350%</td>
<td>9.50%</td>
<td>$3,820</td>
</tr>
<tr>
<td>up to 400%</td>
<td>9.50%</td>
<td>$4,366</td>
</tr>
</tbody>
</table>
Kaiser Subsidy Calculator

Enter Information About Individual Circumstances
1. Enter income as 2014 dollars
2. Enter annual income (Dollars) 70,000
3. Enter age of policyholder (19-64) 45
4. Enter family type Family of 4
5. Is employer coverage available? No
6. Enter regional cost factor Medium

Additional resources
Click here for tables showing results by income and age
Click here for a list of frequently asked questions about the calculator
A summary of the health reform law is available here

Notes
Based on the Patient Protection and Affordable Care Act (PPACA) implementing regulations, the Kaiser Family Foundation's Health Reform Subsidy Calculator provides estimates of average premium costs for 2014 and 2016.

Kaiser Family Foundation:
kff.org

Implementation Timeline

Provisions by Year
- 2010 [ ] Medicaid Expansion
- 2011 [ ] Small Business Health Options Program
- 2012 [ ] Individual Mandate
- 2013 [ ] -
What’s Changing and When

View items by selecting blocks on the timescale, or click the arrow.
You can also see all of the HealthCare items on one page in calendar form.
Read the Affordable Care Act in full or浏览 it section by section.

IMPROVING QUALITY AND LOWERING COSTS

Improving Preventive Health Coverage

Effective January 1, 2013

To expand the number of Americans receiving preventive care, the law provides new funding for state Medicaid programs that offer to cover preventive services for pregnant, include no costs...