HR's Role in Effectively Managing Health Care Reform

SHRM of Greater Tucson
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Presented by the Southern Arizona Association of Health Underwriters (SAAHU)

Introductions

- Chad Schneider, Broker Development Coordinator for AFLAC for the state of Arizona and President of the Southern Arizona Association of Health Underwriters (SAAHU).

- Ray Magnuson, JD, CLU, Chartered Financial Consultant, Registered Employee Benefits Consultant. Principal and owner of Magnuson & Associates, a firm specializing in employee benefit plan design and implementation. Ray is a member of the National Association of Health Underwriters and serves on the local, state and regional Boards. Ray is also the incoming President to the Board of Directors of Casa de los Ninos.

- Lael Byrne, SPHR, Account Executive with CBIZ Benefits & Insurance Services, a nationwide employee benefits and HR consulting firm with offices in Tucson and Phoenix. CBIZ consults for over 500 fully insured and self-funded clients in Arizona and specializes in employee benefits, HR, accounting and tax, retirement plans and property and casualty insurance. Lael also serves on the Board of the Southern Arizona Association of Health Underwriters.

What we will discuss…

- Overview and timeline of the law's key provisions
  - It's going to be a crazy ride! The HR and benefits world will significantly change over the next few years and we all will be tasked with continuous education and implementation of health care reform law's key provisions

- The law's immediate short-term and potential long term impact on your organization and employees
  - Benefit plan changes
  - Tax changes and implications
  - Payroll and other reporting changes

What we will also discuss…

- The complexity, undefined and unknown aspects of the law…2,400+ pages which leaves much to still be decided and determined by regulatory agencies and individual states
- We really don't know the ultimate outcome as so much is influenced by regulatory agency decision-making and future politics
- Without regulatory clarification, it is difficult to calculate the ultimate impact on businesses, employees, individuals, insurance carriers, providers and existing governmental programs

Law's Intended Purpose

- Coverage:
  - Expansion
  - Access
  - Affordability
  - Wellness

- Will this ultimately be accomplished?
  - Time will tell and much could change in the next 4 years

Benefit Plan, Tax and Payroll

- Fully integrated analysis of the bill's projected impact on your organization and employees is essential

- We will help to provide an integrated roadmap to the immediate and longer-term ramifications of this law so you know:
  - What you need to know or do in 2010 – 2011
  - What appears will occur between 2010 and 2014
  - What is still unknown about 2014 (and beyond…)??

- Law impacts companies differently based on size, average wages, etc.

- Our job as consultants and brokers is to stay on top of regulatory updates, advise clients on necessary action to stay in compliance with state and federal law and the best strategy for their organization

Health Care Reform Laws 2010

- Patient Protection and Affordable Care Act (Public Law 111-148, enacted March 23, 2010)

- Health Care and Education Reconciliation Act (Public Law 111-152, enacted March 30, 2010)

- **And, where the rubber hits the road, a myriad of state and federal regulatory decisions to be made over the next 4 years**

Let's Hit the Highlights!

Expansion of Coverage/Access

- **Provisions effective plan years beginning on or after 9/23/2010 – HHS issuing guidance almost daily** (Pertain to all sized employers)
  - **Extension of Dependent Coverage up to Child's 26th Birthday**
    - Many insurance carriers & some self-funded ERs are complying early
    - Tax code amended to exclude cost of coverage from EE's income
    - Before 2014, limited to those who do not have access to ER-provided coverage (not including coverage under another parent's plan); also impacts COBRA
    - HIPAA special enrollment provisions apply to dependent children who become newly eligible by virtue of this law – written notice to employees is required (can be included in plan enrollment materials, provided statement is prominent)
  - **Ban on Preexisting Condition Exclusions for Children <19**
    - Effective 1/1/14, preexisting condition exclusions cannot be imposed on anyone (guaranteed access)
  - **Ban on Policy Rescissions**
    - Cannot rescind coverage once an enrollee is covered except in event of fraud or intentional misrepresentation
  - **Ban on lifetime limits & restrictions on annual limits on the dollar value of "minimum essential benefits"** *(TBD by regulations)*

Expansion of Coverage/Access

Provisions effective plan years beginning on or after 9/23/2010 (continued):

- Mandated coverage for preventive services with no EE cost sharing (*TBD by regulations)*
- Plans must implement an internal & external appeals process for coverage determinations and claims (N/A to grandfathered plans)
- Fully insured plans must comply with current non-discrimination requirements for self-funded plans (IRC 105(h)) – plan cannot discriminate in favor of highly compensated EEs regarding eligibility & benefits (N/A to grandfathered plans)

Expansion of Coverage/Access

- Advance notice of Material Modification of Benefits
  - Notice of any material modification of benefits must be provided to plan participants no later than 60 days prior to effective date of change
    - Effective date yet to be clarified

- Automatic enrollment in health plans
  - ERs with 200+ FTEs will be required to auto enroll new FTEs in one of plans offered; subject to any waiting period
    - Effective date not yet known (notice due 3/1/13)

Incentives for Wellness

- Law allows ERs to offer premium discounts & other financial incentives for up to 30% of total premium to individuals who satisfy a health standard
- Law provides for grants up to 5 years to small employers that establish wellness programs
- HHS has authority to issue reg. to allow financial incentives up to 50% of total premium
- Effective date & details yet to be determined
- Law does not otherwise change other current legal regimes applying to wellness programs (HIPAA rules, etc.)

Expansion of Coverage/Access

- Miscellaneous Provisions with Effective Dates 2010 - 2012
  - Small Business Tax Credit
  - Temporary High Risk Pool
  - Temporary Early Retiree Reinsurance Program
  - Value for Premium Payments/Medical Loss Ratio
  - Simple Cafeteria Plans for Small Employers
  - Voluntary Self-Funded Long Term Care (CLASS)
  - <u>Effective 3/23/10</u>: Employers required to provide reasonable break time & private place other than bathroom for nursing mothers (<50 EEs exempt if it would cause “undue hardship”)

Grandfathered Plans

- Certain provisions exempt from HCR mandates including: Dependent coverage need not be offered if dependent eligible for other ER-sponsored coverage until 2014 and those noted on page 9
- Grandfathered (GF) Plans defined as those in existence on 3/23/2010
- Employers can only keep plan on a GF basis if only plan changes are to add or delete new employees and dependents (except for plan changes related to a collective bargaining agreement)
- If plan loses GF status, it will be subject to all HCR mandates as they take effect (most HCR provisions slated to take effect in the next 6 months will apply to all plans, whether or not they have GF status)
- <u>Events causing loss of GF status have not yet been made clear</u>

Small Business Tax Credit
(effective in 2010)

- Goal: Incentivize more employers to offer health insurance coverage

- Critics say many smaller ERs will not participate as still not financially feasible; tax credit offered on a sliding scale depending on amount of premium, # of employees and average wages; must run numbers to determine if it makes sense to offer or expand coverage to get tax credit (ER must contribute at least 50% of EEs premium)

- Tax credit is temporary – only available for 6 years (until 2016)

- Employer with 25 or less FTEs (defined as 30+ hrs/week) and avg. annual wages of $50k or less receive tax credit up to 35% of health plan premiums; ER with 10 or less FTEs and avg. annual wages of $25k or less receive tax credit up to 50% of health plan premiums

Small Business Tax Credit (con't)

- Sliding scale: tax credit reduced as employees added to the payroll so hiring a new worker might also mean losing some or all of the tax credit
- After 2013, the credit increases to 50% for employers (35% for tax exempt)
- Credit is taken on the annual tax return (amount taken for the tax credit must be subtracted from ERs deduction for health insurance premiums)
- Tax credit should factor into determining the net cost of hiring a new employee as tax credits go down as the number of employees goes up

Temporary High Risk Pool

- To be established by HHS & effective 6/21/10
- Program for people who cannot obtain individual coverage due to preexisting conditions
  - Generally, to be eligible for pool, individual must have been without creditable coverage (as defined by HIPAA) for at least 6 months & have a preexisting condition, to be defined by HHS
- Employers are prohibited from intentionally dumping individuals to a high-risk pool (penalties associated with doing so)

Temporary Early Retiree Reinsurance Program

- By 6/23/10, HHS to establish a temporary reinsurance program to reimburse certain expenses to plan sponsors of group health plans that provide retiree coverage to early retirees (ages 55 – 64) & eligible spouses & dependents
- Plan must meet HHS certification criteria for reimbursement
- Program reimburses up to 80% of cost of benefits in excess of $15,000 and below $90,000
- Reimbursement must be used to lower plan costs or reduce participant premiums, co-pays, deductibles, coinsurance, etc.
- ER must file an application (to be available by mid-June)
- **Program expires 1/1/2014** – limited funding available for this reimbursement; $5 billion allocated and when it runs out it runs out; ERs reimbursed on a first come first serve basis

Provisions Effective in 2011

- FSAs, HRAs and HSAs (effective 1/1/11)
  - Can no longer reimburse the cost of OTC medications, except for insulin or prescribed OTC drugs (other OTC products still apparently okay including contact lens solutions, etc.)
  - Effective 1/1/11, penalties on nonqualified HSA distributions will increase from 10% to 12%. Penalty for nonqualified distributions from Archer MSAs will increase from 15% to 20%

Provisions Effective in 2011

- Medical Loss Ratio (MLR) Limit – effective 1/1/11
  - Requires that 80%/85% of insurance carriers costs must be spent on "reimbursement for clinical services provided to enrollees" & "for activities that improve health care." Details of what will qualify an an expense under these 2 categories are yet to be developed (must be adopted by HHS):
    - 85% for insurers in the large group market
    - 80% for insurers in the small group or individual markets

- Effective 1/1/14, rebate amount will be based on averages for each of the previous 3 years for the plan

Provisions Effective in 2011

- Simple Cafeteria Plan Design for Small ERs (<100 EEs) – effective 1/1/11
  - Eligible small employer can establish a simple cafeteria plan that includes a safe harbor from the non-discrimination requirements applicable to cafeteria plans & certain qualified benefits
  - Simple plans must meet certain minimum eligibility & participation requirements
  - Employer must make a contribution to provide qualified benefits under the plan on behalf of each qualified employee, without regard to whether a qualified employee makes any salary reduction contribution

Provisions Effective in 2012

- CLASS Act: Voluntary Self-Funded Long Term Care Program
  - Effective 1/1/12 – new social insurance program
  - HHS to establish a voluntary long term care insurance program for purchasing community living assistance services & support (CLASS) – provides limited long term care coverage
  - Individuals required to contribute to the program for 5 years (vesting period) before benefits are available (up to $50/day cash benefit)
  - Program financed solely by voluntary payroll deductions
  - All working adults must be automatically enrolled in the program and can choose to opt-out
  - By 1/1/12, employers must have automatic enrollment procedures in place for workers to either enroll or opt out

Provisions Effective in 2013

- Employee deferrals to FSAs capped at $2,500 effective 1/1/13
- Increased FICA tax for high-income employees
- Medicare tax on investment income for high-income individuals
- Employer’s deduction for retiree RX expenses is reduced by the amount of the Medicare Part D tax-free subsidy

Provisions Effective in 2013

- FICA Medicare Increases for High Income Individuals – effective 1/1/13
  - Increased by 0.9% (from 1.45% to 2.35%), to the extent their wages exceed
    - $250,000 for married filing jointly,
    - $200,000 for single taxpayers, or
    - $125,000 for married filing separately
  - Employer must withhold on all wages over $200,000
  - Employee liable regardless of employer withholding
  - Counted for estimated tax payments

Provisions Effective in 2013

- Unearned Income Medicare Contribution – effective 1/1/13
  - A Medicare tax will be imposed on high income individuals equal to 3.8% of the lesser of an individual's (1) "net investment income" (capital gains, interest, dividends, annuities, rent and gross income from passive activities or (2) modified adjusted gross income in excess of $250,000 for married filing jointly, $200,000 for single taxpayers, or $125,000 for married filing separately
- No ER withholding requirement (individual responsible)
- Net investment income excludes income from a qualified retirement plan

2014….

MANDATES, VOUCHERS AND EXCHANGES!

Provisions Effective in 2014

- Individual Mandate – effective 1/1/14
  - All individuals required to maintain minimum essential health coverage for themselves and dependents
  - Options for Coverage:
    - Individuals with household income <133% of FPL may be eligible for minimum essential coverage through Medicaid
    - Individuals between 134%-400% of FPL may be eligible for premium assistance or cost-sharing possibilities
    - Individuals with household income <400% of FPL entitled to a Free Choice Voucher if their ER offers coverage with cost between 8% to 9.5% of the individual's household income, and they do not participate in the ER's plan
    - Exceptions: members of Indian Tribes; individuals suffering a hardship; individuals with household modified AGI below the filing threshold; individuals with short coverage gaps

Provisions Effective in 2014

- **Premium Assistance Tax Credit – effective 1/1/14**
  - Taxpayers with family income of 400% of FPL or less & whose ERs fail to offer minimum essential coverage at an affordable rate are entitled to a tax credit for coverage purchased through a state Exchange
  - Amount of credit is based on premium cost & family income, but starts at the amount by which premiums exceed 2% of family income if the income is at or below 100% of FPL
  - At 400% of FPL, the credit is the amount by which premiums exceed 9.5% of income
  - The credit is refundable, payable in advance and remitted directly to the insurer

Provisions Effective in 2014

- **Minimum Essential Coverage at an Affordable Rate**
  - In an employer-sponsored plan, the employer must contribute at least 60% of the benefit costs and the employee's contribution, including salary reduction amounts, cannot exceed 9.5% of household income
- **Employer Penalty for Unaffordable Coverage**
  - If an employee opts out of an employer plan because coverage is "unaffordable"—that is, if the premium exceeds 9.5 percent of family income—the employer must pay a $3,000 penalty for each full-time employee who receives a government subsidy and purchases coverage through an exchange

Provisions Effective in 2014

- **Free Choice Vouchers**
  - ERs who offer minimum essential coverage to employees & pay any portion of cost must provide Free Choice Vouchers to certain qualifying employees (those exempt from the individual mandate who do not qualify for premium subsidies). Qualified employees include any employee:
    - Whose required contribution for minimum essential coverage is between 8% & 9.5% of household income;
    - Whose household income does not exceed 400% of the FPL
    - Who does not participate in the employer's health plan
  - The amount of the voucher includes what the ER would have paid to cover the employee in it's plan. The ER pays these amounts to the Exchange plan in which the employee is enrolled. The entire cost of the voucher is deductible by the ER. Any excess over the cost of the premium for coverage through the Exchange is paid to the employee as taxable compensation.

Provisions Effective in 2014

- Health Insurance Exchanges
  - Effective 1/1/14 for Individual & Small Group Plans
  - Effective 2017 for Large Group Plans

- Law requires states to create and maintain health care "exchanges" in which health insurance providers compete for customers on equal terms

- Exchanges will be open to anyone without ER-provided coverage who wants to purchase a health insurance plan. If a state does not create an exchange, the federal government will create one for it

- Will be established by individual states to facilitate the purchase of qualified health plans by individuals & assist small employers in facilitating the enrollment of their employees (SHOP Exchange).

- Participating Insurer Requirements
  - Plans seeking to participate in the Exchange are required to submit justification for any premium increases to the Exchange prior to implementing the change & prominently post the information on their websites

Provisions Effective in 2014

- **Employer Penalty for Not Offering Coverage – Eff. 1/1/14**
  - Law will not require employers to offer health insurance, but beginning in 2014 employers with more than 50 FTEs that do not offer coverage must pay a penalty of $2,000 per FTE for all full-time employees in excess of 30 if even one employee receives a federal government subsidy and purchases coverage in an exchange
  - Covered ERs subject to monthly nondeductible penalties for failure to offer minimum essential coverage (ER payment of at least 60% of the benefit costs) at an affordable rate (employee's contribution, including salary reduction amounts, cannot exceed 9.5% of household income):
    - Monthly penalty in 2014: (number of FTEs – 30) x 166.67 ($2,000/yr.); after 2014 penalty indexed for inflation
  - If ER is offering minimum essential coverage at an affordable rate, but at least one FTE is eligible for or receives a premium tax credit or cost sharing assistance for buying insurance from a state Exchange plan:
    - Monthly penalty in 2014: Number of credit employees x $250 (subject to cap described above); after 2014 penalty indexed for inflation

Provisions Effective in 2014

- Ban on Excessive Waiting Periods
  - Effective 1/1/14
  - An individual's waiting period to be able to enroll in a group health plan may not exceed 90 days
  - Applies to all employer group plans

Provision Effective in 1/1/18

- **Excise Tax on High Cost ER-Sponsored Health Coverage**
  - A 40% excise tax will be imposed on the value of high cost ER-sponsored health coverage for "Cadillac" health plans exceeding certain threshold limits ($10,200/individual; $27,500/family per year)
  - Tax will apply to the amount of premium in excess of threshold
  - Employer will calculate excise tax & provide to the insurer or third party administrator, who then pays the tax

New Employer Reporting and Disclosure Obligations

- **Form W-2 Reporting Rules** *(effective in 2011 – applies to all ERs)*
  - ERs required to disclose the aggregate cost of any ER-sponsored health insurance coverage on the Form W-2, including both the ER's and EE's portion (calculation method to be clarified)
- **Form 1099 Changes** *(effective 1/1/2012)*
  - Expansion of Form 1099 requirements
- **Uniform Summary of Plan Benefits & Coverage** *(effective 3/23/12 or 12 months after model forms issued)*
  - Plans must provide applicants & enrollees an add'l. disclosure document explaining certain aspects of the health plan coverage

New Employer Reporting and Disclosure Obligations

- **Quality of Care Reporting Requirement** (*effective 3/23/12)*
  - Plans & insurers required to submit quality of care report to HHS with details on coverage, provider reimbursements, improvements in health outcomes and implementation of wellness or prevention programs.
- **Notice of Exchange Coverage** *(effective 3/1/13)*
  - ERs required to provide current and each new EE a written notice informing them of the existence of an Exchange, including a description of the services provided by the Exchange & how to contact the Exchange for assistance

Other Miscellaneous HCR Bill Provisions

- **Increase of Adoption Credit (effective 1/1/10)**
  - Increase from $12,170 to $13,170 (indexed for inflation)
- **Tanning Salons (effective 7/1/10)**
  - 10% tax imposed on the cost of indoor tanning services

RESOURCES

- Contact us at:
  - Lael Byrne, lbyrne@cbiz.com, 520-321-7537
  - Ray Magnuson, ray@magnusonassociates.com, 520-760-6048
- On-Line Resources:
  - National Association of Health Underwriters (NAHU) has up-to-date, comprehensive HCR information and timelines: www.nahu.org
  - Southern Arizona Association of Health Underwriters (SAAHU): www.saahu.org
  - SHRM: www.shrm.org
  - Email your questions to the legal experts at CBIZ: www.cbiz.com/healthquestion

QUESTION & ANSWER

THANK YOU ALL FOR ATTENDING!