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What Impact Will the New Health Care Law Have on Construction Contractors?

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What Will be covered?

- AGC’s advocacy efforts and position
- Impact on employers
- Impact on health care construction
- Questions and answers




AGC’s Response to Health Care Bill

- President Obama Goals... “increase coverage/reduce costs”
- AGC task force concerns at outset
- AGC concerns during debate of proposed legislation
- AGC’s direct lobbying, coalition activities and grassroots efforts



AGC Opposed Final Bill

- Increased federal/state/employer costs/increased complexity
- Contained an employer mandate/benefits mandate
- Redirects increased Medicare tax
- Fails to address medical malpractice and imposes \$107b in new taxes on health care



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Health Care Reform:
What Does it Mean for Employers?





Ilyse Schuman



Michelle Thomas

Health Care Reform

- ⊕ Patient Protection and Affordable Care Act
 - Signed by President Obama on March 23, 2010
- ⊕ Health Care and Education Reconciliation Act of 2010
 - Signed by President Obama on March 30, 2010



Agenda

- ✦ Employer Responsibility Requirements
- ✦ Insurance Reforms and Modifications to Current Benefit Plans
- ✦ Excise Tax Issues
- ✦ Wellness Program Changes
- ✦ Special Considerations for Collectively—Bargained Employees

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Employer Responsibility Requirements



What Happens in 2014?

- ✦ **Health insurance exchanges**—“virtual marketplaces” for eligible individuals and employers to purchase insurance
- ✦ **Individual responsibility**—individuals must obtain health insurance or pay a penalty. Individuals with household income up to 400% of federal poverty level may be eligible for federal tax-credit and cost-sharing reduction
- ✦ **Employer responsibility**—“large” employers that don’t provide affordable and sufficient health coverage are subject to a penalty

Employer Responsibility: Who is a Large Employer?

- ✦ Penalty only applies to large employers
- ✦ At least 50 full-time employees
 - Includes full-time employees working 30 or more hours a week calculated on a monthly basis
 - Also includes full-time equivalents: aggregate total monthly hours of part-time workers and divide by 120
- ✦ Penalty only applies with respect to full-time employees



What Happens if the Employer Does NOT Offer Health Coverage?

- ✦ **IF** an employer does not offer any health coverage to their full-time employees and any full-time employee receives a tax credit to purchase health insurance through an exchange
- ✦ **THEN** the employer must pay a penalty of \$2,000 multiplied by the total number of full-time employees. Subtract 30 from the total number of full-time employees to calculate the penalty.

What Happens if the Employer Does Offer Health Care Coverage?

- ✦ **IF** an employer does offer any health coverage to their full-time employees, but it is unaffordable (more than 9.5% of household income) or covers less than 60% of costs, and any full-time employee receives a tax credit to purchase health insurance through an exchange
- ✦ **THEN** the employer must pay a penalty of the lesser of \$3,000 for each full-time employee receiving a tax credit or \$2,000 for all full-time employees. Subtract 30 from the total number of full-time employees to calculate the penalty.

What Happens if the Employer Offers Coverage, but the Employee Wants Insurance Through the Exchange Instead?

- ✦ **IF** a full-time employee whose premium is between 8% to 9.8%* of their household income, and their household income is at or below 400% of poverty, wants to purchase coverage through the exchange instead
- ✦ **THEN** the employer must provide a "free choice voucher" equal to the amount the employer would have paid toward the coverage under the plan with respect to which the employer pays the largest portion of the cost of the plan.
 - the employer pays the exchange and can deduct the amount of the voucher
 - the employee can keep the difference



Small Business Tax Credits

- ✦ **Eligible Employers**
 - No more than 25 FTEs and annual average wages of less than \$50,000
- ✦ **Eligibility for Tax Credit**
 - Must cover at least 50% of total premiums

Small Business Tax Credit

- ✦ 2010 – 2013
 - Credit up to 35% of the employer contribution
 - Full 35% if 10 employees or less
- ✦ Beginning in 2014
 - Credit increased to 50% of the employer contribution
 - Only available for two consecutive tax years

Automatic Enrollment

- ✦ **Requirement** Employers with more than 200 employee must automatically enroll full-time employees in health plan
 - Employer must provide employees adequate notice and opportunity to opt-out
- ✦ **Effective Date**
 - Unclear. Statute does not provide specific effective date, but appears to be contingent on issuance of regulations

Changes to W-2 Forms

- ✦ **Requirement** Employers must include the cost of employer-sponsored health coverage on the employee's W-2
- ✦ **Effective Date**
 - Effective for tax year beginning 2011
 - Will need to be included on W-2 forms sent in January, 2012



Notice to Employees

- ✦ **Requirement** Employer must provide written notice to employees
 - Exchange information
 - Eligibility for tax credit or cost-sharing reduction
 - May lose employer contribution
- ✦ **Effective date** March 1, 2013 or upon subsequent hire

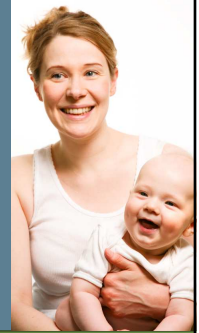
Report on Health Insurance Coverage

- ✦ **Requirement** Large employers must file report on health coverage
 - Secretary can review accuracy
 - Must also provide information to employees
- ✦ **Effective Date**
January 1, 2014



Amendments to Fair Labor Standards Act

- ✦ Protections for employees:
 - Prohibits discrimination against employees because they received a tax credit or cost-sharing subsidy
 - Whistleblower protection
- ✦ Requires reasonable break time for nursing mothers



What Should Employers Do Now?

- ✦ Be prepared to implement W-2 changes for taxable year 2011
- ✦ Be prepared to revise enrollment practices for automatic enrollment
- ✦ Evaluate your benefit and employment policies in light of the new employer responsibility mandates
- ✦ Consider the longer-term impact on the compensation and composition of your workforce
 - Health care costs and employer-sponsored coverage
 - Contingent workforce
- ✦ Determine eligibility for small business tax credit

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Insurance Reform and Modifications to Current Benefit Plans

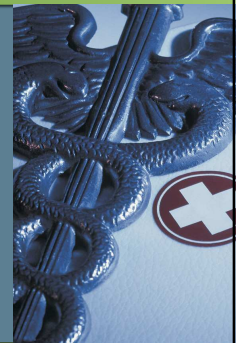


Grandfathered Plans

- ✦ Grandfathered health plans may maintain existing coverage.
- ✦ GHP in existence on 3/23/2010.
- ✦ Collectively-bargained plans until CBA expires.
- ✦ Still subject to certain provisions of insurance market reform.

No Lifetime or Annual Limits

- ✦ Effective for plan years beginning on or after six months after 3/23/2010.
- ✦ GHP may no longer impose lifetime limits on the dollar value of benefits
- ✦ Applies to Grandfathered Plans.



No Lifetime or Annual Limits

- ✦ Prior to 1/1/2014
 - Restricted Annual limits only on essential benefits, as determined by the Secretary.
- ✦ After 1/1/2014
 - No Annual Limits.
- ✦ Applies to Grandfathered Plans.
- ✦ No Prohibition of annual or lifetime limits on non-essential benefits.



No Rescission of Coverage

- ✦ Effective for plan years beginning on or after six months after 3/23/2010.
- ✦ GHP may not rescind coverage except for fraud or intentional misrepresentations.
- ✦ No cancellation of coverage without prior notice.
- ✦ Applies to Grandfathered Plans

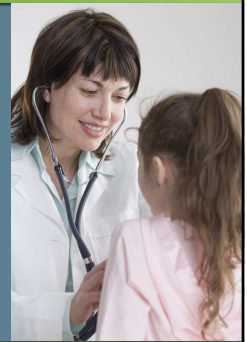
Extension of Dependent Coverage

- ✦ Effective for plan years beginning on or after six months after 3/23/2010.
- ✦ GHP must extend coverage for adult children until the child turns 26 years old.
- ✦ Does not include children of the employee's child, i.e. grandchildren.
- ✦ Applies to Grandfathered Plans.
 - Prior to 2014, only if child not eligible for other employer-sponsored plan



Pre-existing Condition Exclusions

- ✦ Effective for plan years beginning on or after six months after 3/23/2010.
- ✦ GHP may not impose pre-existing condition exclusions on children under age 19.
- ✦ Applicable to all in 2014.
- ✦ Applies to Grandfathered Plans.



Preventative Services

- ✦ Effective for plan years beginning on or after six months after 3/23/2010.
- ✦ No Cost-Sharing
- ✦ Grandfathering rule applies
- ✦ Must Provide:
 - Immunizations
 - Screenings for children
 - Breast cancer screenings
 - Mammography
 - Other Recommended Services from U.S. Preventative Services Task Force, CDC and Health Resources & Services Administration

Patient Protections

- ✦ Effective for plan years beginning on or after six months after 3/23/2010.
- ✦ Designation of primary care provider or pediatrician.
- ✦ Prohibits requiring authorization or referral for an OB/GYN.
- ✦ Must cover emergency services without prior authorization in-network requirements.
- ✦ Grandfathering rule applies.

Appeals Process

- ⊕ Effective for plan years beginning on or after six months after 3/23/2010.
- ⊕ Must have internal appeals process and external review.
- ⊕ Grandfathering rule applies.

Additional Reforms Effective 2014

- ⊕ Coverage of essential health benefits required for health insurance issuers in individual and small group market.
- ⊕ Cost-sharing limits cannot exceed HSA amount.
- ⊕ Deductible limit of \$2,000 individual/\$4,000 family for small group market.
- ⊕ Must cover clinical trials for life-threatening diseases with no additional restrictions
- ⊕ Do not apply to grandfathered plans.

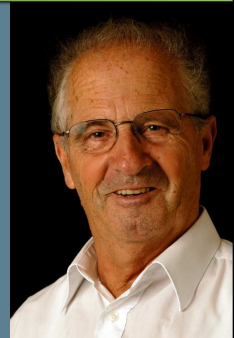
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Other Plan Design Issues



Reinsurance for Retirees

- ⊕ Effective Date: No later than 90 days following enactment.
- ⊕ Provides reimbursement to GHP for part of the cost of health insurance provided to early retirees.
- ⊕ Ends upon the earlier of
 - January 1, 2014; or
 - The exhaustion of the allocated \$5 Billion

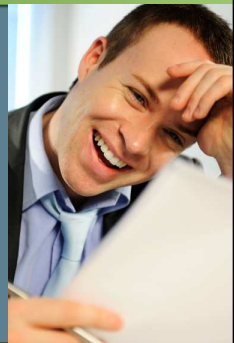


§ 105(h) Non-Discrimination

- ⊕ Effective for plan years beginning on or after six months after 3/23/2010.
- ⊕ Applies to fully-insured plans.
- ⊕ No eligibility rules for FT employees based on salary.
- ⊕ No eligibility rules with effect of favoring highly compensated individuals.
- ⊕ Grandfathering rule applies.

Uniform Explanation of Coverage

- ⊕ Beginning no later than 3/23/2012.
- ⊕ Provide explanation of coverage prior to:
 - Applicants at time of application
 - Enrollee prior to time of enrollment/re-enrollment
 - Policy-holder at time of issuance or delivery of policy



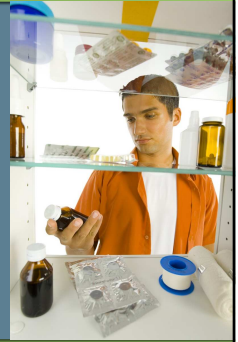
Uniform Explanation of Coverage

- ✦ May be provided electronically.
- ✦ Applies to insurers and plan sponsors of self-insured plans.
- ✦ Penalty for Failure to Provide
 - Up to \$1,000 per failure.
- ✦ The Secretary shall develop standards by 3/23/2011.



Qualified Medical Expenses

- ✦ Effective for tax years beginning after 12/31/2010.
- ✦ Over-the-counter drugs without a prescription are excluded.
- ✦ No longer allowed for reimbursement or payment from health FSAs, HRAs or HSAs.



Waiting Periods

- ✦ Effective for plan years beginning on or after January 1, 2014.
- ✦ No waiting periods that exceed 90 days.
- ✦ Applies to grandfathered plans.

Health FSAs

- ✦ Effective for Tax Years beginning after 12/31/2012.
- ✦ Contributions to Health FSAs limited to \$2,500 (increased annually for COLI)

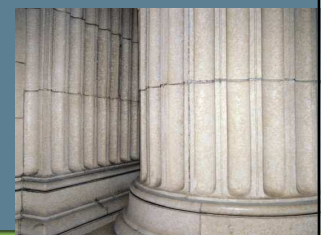


What Should Employers Do Now?

- ✦ Review plan documents, summaries and SPDs.
- ✦ Determine eligibility for Retiree reinsurance program.
- ✦ Determine whether there are any children who were previously excluded for pre-existing conditions.
- ✦ Determine whether any adult dependents who were removed from the plan.
- ✦ Revise health FSA, HSA and HRA open enrollment materials.


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Excise Tax Issues



Excise Tax on "Cadillac Plans"

- ✦ Effective beginning in 2018
- ✦ What is a "Cadillac Plan"?
- ✦ 40% excise tax on premiums in excess of thresholds
 - Who pays the tax?
 - Self-insured vs. insured arrangements
- ✦ Inflation index on thresholds




Excise Tax on "Cadillac Plans"

- ✦ Planning Considerations
 - Thresholds may be adjusted for certain plans—covering women and/or older workers
 - Plan design may impact premium levels
 - Adjustment of deductibles and co-pays
 - Greater emphasis on cost management



Excise Tax on HSA & MSA Withdrawals

- ✦ Effective for distributions after 12/31/2010
- ✦ Non-qualified HSA withdrawals
 - Increased from 10% to 20%
- ✦ Non-qualified Archer MSA withdrawals
 - Increased from 15% to 20%




Additional Plan Taxes

- ✦ Premium tax will be imposed on GHP
 - Used to fund research on comparative effectiveness.
 - Effective for policy years beginning after 9/30/2012
 - Year 1 = \$1/enrollee
 - Year 2 + = \$2/enrollee
 - Sunsets 9/30/2019
- ✦ Other fees may be imposed which are passed on to employers.


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Wellness Programs



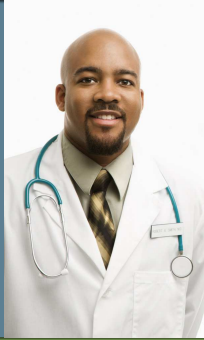
Wellness Programs

- ✦ **Incentives:** Codifies HIPAA wellness rules and increases incentive amount (premium discount or rebate or other reward) from 20% to 30% of the cost of employee-only coverage under the plan
 - Secretary given discretion to increase amount to 50%
 - Alternative standards for individuals with medical conditions and medically inadvisable
- ✦ **Effective Date:** Plan years beginning on or after January 1, 2014



Wellness Programs

- ⊕ Group health plans and health insurance issuers must report on plan benefits and structures that provide incentives for wellness and health promotion activities
 - No information on premiums, enrollment, or rewards based on lawful firearm possession or use
- ⊕ Grants for small business to provide comprehensive wellness programs



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Special Considerations for Collectively—Bargained Employees



Health Care Reform—Impact on Collective Bargaining

- ⊕ Section 154: “Nothing in this subdivision shall be construed to alter or supersede any statutory or other obligation to engage in collective bargaining over the terms and conditions of employment related to health care



General Principles

- ⊕ Health benefits are a mandatory subject of bargaining
- ⊕ Benefits for retirees are a permissive subject of bargaining
- ⊕ BUT post-retirement benefits for current employees are a mandatory subject of bargaining

Impact of Legislative Changes


- ⊕ If employer has options under the law, the choice must be subject to bargaining
- ⊕ Unless the union has explicitly waived the right to bargain over mid-term changes in benefits



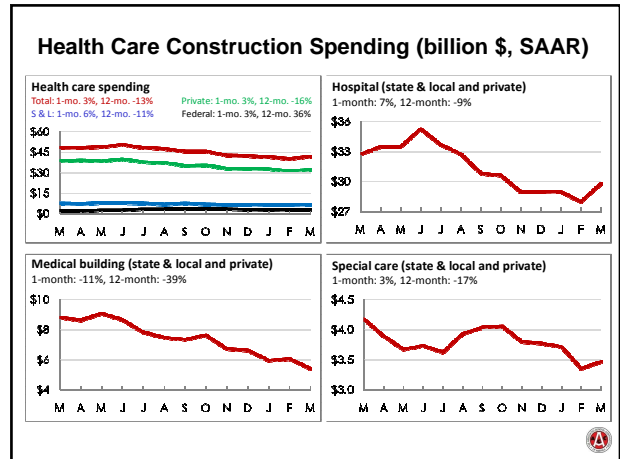
Immediate Bargaining Issues

- ⊕ Early retiree stop-loss benefit
 - When or if to apply
 - How to apply funds received
 - Governance
- ⊕ Coverage for children up to age 26
- ⊕ Elimination of lifetime and annual limits
- ⊕ Eliminate OTC coverage from HSAs, HRAs, FSAs
- ⊕ Auto-enrollment (effective date uncertain)

Bargaining Before 2014



- ⊕ Will CBA extend into 2014 Plan Year?
- ⊕ Plan coverage mandates
- ⊕ Employer subsidy mandates
- ⊕ Coverage for part-time employees



Impact on Health Care Construction

- AGC economic resources
 - The DataDigest: weekly 1-page email that summarizes the latest economic news relevant to construction
 - Monthly Construction PPI Tables
 - State and Metro Data
 - Stimulus info: www.agc.org/stimulus
 - Webinars
- Email simonsonk@agc.org



Upcoming AGC Webinar!


Advanced Issues about Worker Misclassification:
What Every Construction Contractor Needs to Know

May 18: **Independent Contractor vs. Employee**


May 20: **Exempt vs. Non-exempt**

2:00 PM - 3:00 PM (EDT)


Register today at: www.agc.org/WMwebinar



Questions and Answers



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