

A Skeleton Analysis of Obamacare's Impact on Business

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Business owners have little time to absorb the nearly one thousand pages of legalese contained in the Patient Protection and Affordable Care Act¹ (referred to as “Obamacare” for purposes of this article), but business owners are still burdened with understanding its basic implications. Accordingly, this article will reduce Obamacare into a basic guide, explaining how the regulations and financial obligations will impact business.

Section I of this article will provide a very basic explanation about health insurance exchanges, which are important in understanding the nuances of Obamacare. Section II will discuss the varying levels of impact that Obamacare will have on small, medium, and large business owners.

SECTION I: Multi-State Health Insurance Exchanges

Obamacare provides for the operation of health insurance exchanges (“Exchanges”) set up by states. Initially, Exchanges will predominantly serve small employers and low-income individuals purchasing health insurance on their own, but thereafter, Exchanges will be opened to larger employers.²

These Exchanges are “organized marketplaces for the purpose of providing coordination and guidance to insurers and helping them to comply with consumer protections and compete in cost-effective ways.”³ At the most fundamental level, an Exchange is charged with risk adjustment and certification, recertification, or decertification of qualified health plans in its Exchange pool.⁴

Starting in January of 2014, each state will establish and operate an Exchange for individual purchasers of health insurance coverage, as well as SHOP Exchanges for small business group health insurance coverage.⁵ The SHOP Exchanges will give small business owners the choice to purchase small-group policies inside the SHOP Exchange, outside the SHOP Exchange, to self-fund, or to not offer coverage at all.⁶ Despite these options, it is projected that sixty percent (60%) of all businesses will offer coverage to employees through

¹ Patient Protection and Affordable Care Act, Pub. L. 111-148 (2010).

² Explaining Health Care Reform: Questions About Health Insurance Exchanges, Henry J. Kaiser Family Foundation (April 2010). These Exchanges will probably be opened to larger employers by 2016. See How Will the Affordable Care Act Affect Employee Health Coverage at Small Businesses?, RAND HEALTH (2010).

³ Linda J. Blumberg, Multi-state Health Insurance Exchanges, Robert Wood Johnson Foundation – Urban Institute (April 2011).

⁴ Id.

⁵ Id.; see also Supreme Court Narrowly Upholds Health Reform Law but Limits Congress’ Authority Over States: Ruling Lessens Uncertainty, but Many Companies Will Face Increased Regulation and Costs, Skadden, Arps, Slate, Meagher & Flom LLP (June 28, 2012).

⁶ Id.

Exchanges.⁷ States may even consider operating these Exchanges in conjunction with other states.

If a state fails to set up an Exchange by January 1, 2014, and there is some concern that Pennsylvania is meandering down that path because of partisan gridlock,⁸ the Federal Department of Health and Human Services will establish and operate the Exchange in the state. Until such time that Pennsylvania establishes an Exchange or the federal government usurps that function, little detail can be provided about the Pennsylvania Exchange.

SECTION II: Obamacare's Impact on Small, Medium, and Large Businesses

There are a few provisions of Obamacare that are universally applicable to businesses of all sizes. For example, provisions across all plans have been implemented to expand access to group as well as nongroup coverage. Specifically by extending dependent coverage to adult children up to age 26, eliminating pre-existing condition exclusions for children and requiring coverage of a specified set of preventive services without cost sharing.⁹

But generally speaking, the impact that Obamacare will have on business is directly tied to the size of the business, so its impact will not be uniform among businesses operating in the Commonwealth.¹⁰ Particular sections of Obamacare will provide tax incentives for some business owners, while in the same breath subjecting other business owners, who are not similarly situated, to potential taxes or penalties.¹¹

For the purposes of this article, small employers are those with 50 or fewer employees; medium-sized employers are those with 51-100 employees; and large-sized employers are those with 101 or more employees.

A. SMALL EMPLOYERS

As a general rule, Obamacare requires all individuals to have health insurance, commonly referred to as the individual mandate:

The so-called 'individual mandate,' formally known as the 'minimum coverage requirement,' requires most Americans to maintain 'minimum essential' health insurance coverage. 26 U.S.C. § 5000A. Under the individual mandate, individuals who are not

⁷ See How Will the Affordable Care Act Affect Employee Health Coverage at Small Businesses?, RAND HEALTH (2010).

⁸ In 2011, Pennsylvania legislature introduced two bills that would establish state health insurance Exchanges, but each was tabled to 2012. See <http://healthreform.kff.org/state-exchange-profiles/pennsylvania.aspx>.

⁹ Linda J. Blumberg, Matthew Buettgens, Judy Feder, and John Holahan, Implications of the Affordable Care Act for American Business, Urban Institute: Health Policy Center (October 2012).

¹⁰ Linda J. Blumberg, How Will the Patient Protection and Affordable Care Act Affect Small, Medium, and Large Businesses?, Robert Wood Johnson Foundation – Urban Institute (August 2010).

¹¹ Ben A. Neuburger, Esq., Health Care Reform's Impact on Small Businesses and Individuals, NAELA Journal Volume VII, Number 1 (Spring 2011) (citing Patient Protection and Affordable Care Act, Pub. L. 111-148 (2010)).

exempt from the requirement and do not receive insurance through their employers are required to purchase insurance from a private insurer. Id. Beginning in 2014, individuals who do not comply with the mandate are required to make a ‘shared responsibility payment’ – or pay a penalty – to the federal government. Id. § 5000A (b) (1). This penalty will be paid to the Internal Revenue Service with an individual’s income tax and ‘assessed and collected in the same manner’ as tax penalties. Id. § 5000A (g) (1).¹²

This insurance requirement is “paid for by companies with more than fifty (50) employees,” or in the alternative, requires “individuals who are not so covered to purchase their own insurance.”¹³ As such, Obamacare imposes no financial requirements on small employers, as defined herein, to contribute toward their workers’ health insurance costs, but incentives such contribution by extending tax credits and subsidies to eligible small employers.¹⁴ By way of example, tax credits for employers with 25 or fewer employees and with average salaries of less than \$50,000 per year can work to offset up to 35 percent of a small employer’s premium contribution.¹⁵

Despite the incentives of tax credits, Obamacare also contains provisions that may convince small business owners not offering health insurance to employees to continue such practice. For instance, “while no small employer will be required to provide coverage to their workers, those that do provide coverage must limit waiting periods to no more than 90 days and eliminate lifetime and annual benefit limits.”¹⁶ The bar on lifetime or annual benefit limits can leave small employers with increased premiums. This is especially true where the small group pool that the employer is covering is comprised of mostly healthy individuals. Contrarily, coverage will be more affordable for those groups with mostly unhealthy individuals.¹⁷

Obamacare will also have little impact on those small employers already providing health insurance coverage. Small employers that offered health insurance coverage before Obamacare was promulgated can elect to “grandfather” these policies to avoid the regulations accompanying the new law. If the employer terminates or alters the grandfathered policy, however, any new coverage purchased through an Exchange will be subject to Obamacare regulations.

B. MEDIUM-SIZED EMPLOYERS

On or after January 1, 2014, medium-sized businesses may see additional costs associated with Obamacare’s implementation. If such an employer refuses to offer health insurance coverage to its workers, and at least one employee receives a premium tax credit or subsidy

¹² Supreme Court Narrowly Upholds Health Reform Law but Limits Congress’ Authority Over States: Ruling Lessens Uncertainty, but Many Companies Will Face Increased Regulation and Costs, Skadden, Arps, Slate, Meagher & Flom LLP (June 28, 2012).

¹³ Ben A. Neiburger, Esq., Health Care Reform’s Impact on Small Businesses and Individuals, NAELA Journal Volume VII, Number 1 (Spring 2011) (citing Patient Protection and Affordable Care Act, Pub. L. 111-148 (2010)).

¹⁴ Linda J. Blumberg, How Will the Patient Protection and Affordable Care Act Affect Small, Medium, and Large Businesses?, Robert Wood Johnson Foundation – Urban Institute (August 2010).

¹⁵ Id.

¹⁶ Id.

¹⁷ At first blush, this may seem counterintuitive, but remember, the individual mandate creates a broader risk pool than before.

when purchasing insurance through an Exchange, then a penalty of \$2,000 per full time-employee, excluding the first 30 employees, will be assessed on employers.¹⁸ Meaning, if an employer has 75 full-time employees, does not offer health coverage, and one of its full-time employees buys insurance with a subsidy on an Exchange, then the employer will pay \$90,000 in penalties.¹⁹

On the other hand, if a medium-sized employer offers coverage to its full-time employees, but nevertheless, an employee buys health insurance on an Exchange with the assistance of a premium tax credit or subsidy, an employer will pay the lesser of \$3,000 for each employee receiving a premium credit or subsidy or \$2,000 per full-time employee, excluding the first 30 employees.²⁰ This scenario would arise most often when an employer's insurance coverage plan results in an employee facing a premium contribution of more than 9.5 percent of her family income.²¹ Accordingly, an employer should select a plan carefully, keeping in mind the fiscal burden the plan may place on a low-income employee.

Notwithstanding the aforementioned penalty rules, medium-sized employers who offer health insurance coverage to full-time employees, resulting in no full-time employees purchasing insurance individually through an Exchange, will not experience any adverse effect from Obamacare.

It is important to further note, that medium-sized employers have the same SHOP Exchange privileges and the same grandfathering options as small business owners. Of course, the same pitfalls relating to the termination or alteration of a grandfathered plan also applies.

C. LARGE-SIZED BUSINESSES

Large-sized employers are subjected to the same parameters, penalties, and exemptions as discussed in subsection (B) above, with one clear distinction - these large-sized employers probably will not see as much of an impact once Obamacare is fully operational. For example, as of 2009, prior to the passage of Obamacare, 98 percent of all large-sized employers offered health insurance to its full-time employees.²² To a great extent, these employers are expected to continue to provide the coverage that they currently do.²³ This is true because large-sized employers are not eligible to purchase coverage through the new SHOP Exchanges until after 2017. Even after the 2017 benchmark, eligibility will be determined by states at the states'

¹⁸ Supreme Court Narrowly Upholds Health Reform Law but Limits Congress' Authority Over States: Ruling Lessens Uncertainty, but Many Companies Will Face Increased Regulation and Costs, Skadden, Arps, Slate, Meagher & Flom LLP (June 28, 2012).

¹⁹ (\$2,000 x 45 employees = \$90,000)

²⁰ Id.

²¹ Linda J. Blumberg, How Will the Patient Protection and Affordable Care Act Affect Small, Medium, and Large Businesses?, Robert Wood Johnson Foundation – Urban Institute (August 2010).

²² Medical Expenditure Panel Survey—Insurance Component, available at http://www.meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_1/2009/tia2.pdf

²³ Linda J. Blumberg, How Will the Patient Protection and Affordable Care Act Affect Small, Medium, and Large Businesses?, Robert Wood Johnson Foundation – Urban Institute (August 2010).

discretion.²⁴ As a result, large-sized employers will probably elect to keep existing plans for the time being because there is not a cheaper-market alternative where these employers can shop.

While it is not expected that Obamacare will impact large-sized businesses that much, Obamacare may prove detrimental to large-sized businesses with respect to the availability of tax deductions. Under Obamacare, businesses “can no longer take a tax deduction for payments the government makes (i.e. in subsidies). The Joint Committee on Taxation estimated that this change would increase government revenues by \$4.5 billion between 2010 and 2019.”²⁵ When considering businesses in the aggregate on a national scale, that amounts to only a minimal loss in business expectations generally.

CONCLUSION

In summation, Obamacare takes great effort to insulate small business owners from its regulations through the availability of exemptions, and large business owners will likely experience little change because large-businesses, the vast majority of which who are currently providing health insurance coverage to employees, are expected to continue to do the same under the new law. Nevertheless, Obamacare will have an adverse impact on medium-sized businesses providing salaries with a mean of more than \$50,000 per year. These businesses can expect increase costs to satisfy the health insurance mandate. The final impact of Obamacare remains indeterminable, especially because Pennsylvania has yet to reveal the structure of its Exchange.

This article is authored by Zachary Robert Fowler and Graig M. Schultz for informational purposes only and should not, in any way, be construed as legal advice.

²⁴ Linda J. Blumberg, Multi-state Health Insurance Exchanges, Robert Wood Johnson Foundation – Urban Institute (April 2011).

²⁵ Linda J. Blumberg, How Will the Patient Protection and Affordable Care Act Affect Small, Medium, and Large Businesses?, Robert Wood Johnson Foundation – Urban Institute (August 2010).