

Symposium on the Affordable Care Act: Regulations and the Impact on Employers

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Overview

- ▶ Grand Bargain of the ACA
- ▶ The regulatory process
- ▶ Drilling down into four key issues
 - Transitional reinsurance fee
 - Shared responsibility/employer penalty
 - Transmission of information between employers and Exchanges
 - Wellness
- ▶ Short detour to the courts
- ▶ Summing up

Grand Bargain of the ACA

► For employers

- The “pros”
 - Reduce the number of uninsured
 - Reduce the costs associated with providing medical care to the uninsured
- The “cons”
 - Higher plan fees and expenses
 - Additional administrative burdens
 - Significant new systems changes
 - Highly complex new rules generate confusion and anxiety for employees and, especially, retirees

The regulatory process

- ▶ Traditional
 - Agency/department vets new rule through OMB
 - Proposed regulation published
 - Public comments accepted and reviewed
 - Final regulation published
- ▶ New approach unfolding
 - Increasing use of pre-rules, announcements, FAQs, other “sub-regulatory” guidance
 - First use of blogs to announce important rules and policy changes: delay in employer shared responsibility and key announcement on DOMA

Drilling down: Risk reinsurance

- ▶ Transitional risk reinsurance fee
 - 3-year ACA fee to raise money to stabilize premiums in individual market
 - Imposed on insured and self-funded plans
 - \$63/per covered life for 2014
 - \$44/life for 2015
 - Probably \$22ish/life for 2016
- Employer concerns
 - Slow to recognize magnitude of resulting cost
 - No direct benefit for self-funded plans
 - Preferential treatment for some self-funded plans
 - Concern for possible future extension or expansion

Drilling down: Shared responsibility/employer penalty

- ▶ Significant penalty for failure to cover 95% of all full-time employees (and dependents): \$2000 times # of full-time employees
 - Second penalty of \$3000 per full-time employee who obtains subsidized coverage in an Exchange
 - Applies if employer's plan is not affordable or not of minimum value
- ▶ One –year delay in penalty and reporting
- ▶ Complex tracking and reporting requirements
 - Strong perceptual differences: government vs. plans
 - Prime example of regulatory overkill

Drilling down: Info transfers between Exchanges and employers

- ▶ Employees need critical info to show eligibility for subsidy from Exchanges
 - Are they eligible for health coverage from an employer or enrolled in the plan?
 - Is the employer's coverage affordable?
 - Does the employer's coverage meet the "minimum value" standard?
- ▶ How can this information be generated most efficiently?
 - Cost benefit analysis
 - Issue of over-subsidization
 - Do employers always need to pick up the tab?

Drilling down: Wellness

- ▶ Regulation implements ACA increase in permitted reward levels for results-based programs starting in 2014
 - 20% becomes 30% for general wellness, 50% for smoking
- ▶ Key issues
 - Adversarial response from consumer community
 - Claim that wellness programs are replacement for pre-existing condition exclusions
 - Role of individual responsibility for health
 - Over-regulation by government: will wellness plans follow fate of defined benefit programs???
 - Inhibits move toward outcomes-based plans
 - Fear of further regulations – health risk assessments
 - Spoiler role of the EEOC

The ACA and the courts

- ▶ Fate of individual tax subsidies in federally run Exchanges
 - Under consideration in 4 U. S. District Courts
 - Could topple the ACA
- ▶ 80+ cases challenge ACA rule that health plans cover contraceptives at no cost
 - Split in 4 Circuit Courts that have decided
 - SCOTUS will hear case; decision possible in 2014
 - Core issue: do companies have same right as people to free exercise of religion?
 - Would alter, but not dismember, ACA

Summing up

- ▶ Impact of ACA regulations on private employer health plans has been detrimental
 - Cost
 - Administrative burden
- ▶ Fate of defined benefit pension plans should be heeded
 - Impact on employees
- ▶ “Worst case” scenarios should not drive regulatory rule-making
- ▶ Burden is not always appropriately placed on employers

For more information...

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