

They say we're going to have "Health Care Reform," but what does that really mean for me?

A nonpartisan review of the Patient Protection and Affordable Care Act



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1

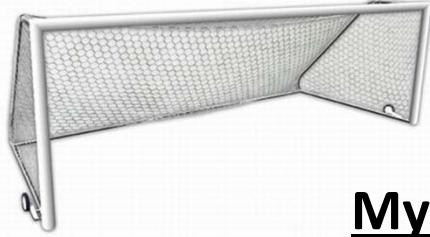
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2



My Goals

- Explain key provisions of the law that will directly impact an individual's life.
- Explain the current litigation to you.
- Enable you to think about the law for yourself.



3

Basics

- The Patient Protection and Affordable Care Act was signed into law on March 23, 2010 by President Barack Obama.
- P.L. 111-148.
- 124 STAT 119-1024.
- The Act is 905 pages long.



4

Big changes that impact individuals:

§ 2711 – No lifetime or annual limits.

"A group health plan and a health insurance issuer offering group or individual insurance coverage may not establish - (1) lifetime limits on the dollar value of benefits for any participant beneficiary; or (2) unreasonable annual limits . . . on the dollar value of benefits for any participant or beneficiary."



What this really means?

Under the old law and insurance practices, insurance companies would only cover to the extent of a lifetime maximum or specified annual limit, typically between \$1 million to \$5 million dollars. Heaven forbid, in the course of a couple years if an individual got into a terrible car accident and then was diagnosed with a terminal illness, the lifetime limit could easily be exceeded. Under the new law, there are no lifetime or annual limits.

5

Big changes that impact individuals:

§ 2712 – Prohibition on Rescissions.

"A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not rescind such plan or coverage with respect to an enrollee once the enrollee is covered under such plan or coverage involved, except that this section shall not apply to a covered individual who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage. Such plan or coverage may not be cancelled except with prior notice to the enrollee and only as permitted under section 2702(c) or 2742(b)."



What this really means?

Under contract law, a party may unilaterally cancel a contract on his or her own (there are ramifications for this depending on the contract). Basically, this provision of the law limits the insurance carriers right to cancel a policy and requires notice to be given to the patient.

6

Big Changes that impact individuals...

§ 2713 Coverage of Preventative Health Services:

"A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum provide coverage for and **shall not impose any cost sharing requirements** for - (1) evidence-based items or services that have in effect a rating or 'A' or 'B' in the current recommendations of the United States Preventative Services Task Force; . . ."

7

Coverage of preventative services, continued...

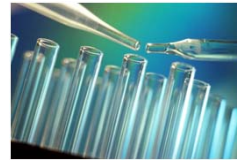
- According to www.healthcare.gov, "if a patient with insurance appears for preventative services, the **insurance company cannot require the patient to pay any copayment, co-insurance, or deductible to receive the identified service.**"
 - Exceptions – stay in network.
 - Loop holes? Need Regulations on propriety of charging for the actual office visit.
- This provision applies to people enrolled in job-related health plans or individual insurance policies created after March 23, 2010.

8

Coverage of preventative services, continued...

Services covered:

- Abdominal screen (former smokers)
- Alcohol counseling
- Anemia screening (pregnant)
- Bacteria screening (pregnant)
- Blood pressure screening
- Breast cancer chemoprevention
- Mammograms
- Breastfeeding counseling
- Cervical cancer screening
- Chlamydia screening
- Cholesterol abnormalities
- Colorectal cancer screening
- Fluoride treatments
- Depression screening
- Diabetes screening
- Folic acid supplements
- Gonorrhea medication
- Gonorrhea screening
- Healthy diet counseling
- Hearing loss screening
- Sickle cell screening
- Hepatitis B screening
- HIV screening
- Hypothyroidism screening
- Iron supplements for kids
- Obesity screening
- Osteoporosis screening
- PKU screening
- Blood screening
- STIs
- Tobacco counseling
- Syphilis screening
- Visual acuity screening



9

Coverage of preventative services, continued...

Immunizations covered:

- Hepatitis A
- Hepatitis B
- Herpes Zoster
- HPV
- Influenza
- Measles, Mumps, Rubella
- Meningococcal
- Pneumococcal
- Tetanus, Diphtheria, Pertussis
- Varicella



10

Big changes that impact individuals:



§ 2714 Extension of Dependent Coverage.

"A group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage for children shall continue to make such coverage available for an adult child (who is not married) until the child turns 26 years of age.

- NOTE - no coverage for a dependent's dependent (grandchildren).

11

Big changes that impact individuals:

§ 2716 Prohibition on Discrimination Based on Salary

"The plan sponsor of a group health plan . . . may not establish rules relating to the health insurance coverage eligibility . . . of any full-time employee under the terms of the plan that are based on the total hourly or annual salary of the employee or otherwise establish eligibility rules that have the effect of discriminating in favor of higher wage employees."



Plain English, please?

CEO's can't enjoy the platinum health plan while "Joe Six Pack" is only offered the bronze plan.

12

Big changes that impact individuals:

§ 2717 Ensuring the Quality of Care

The Act aims to improve the quality of care with a four prong approach:

1. **Mandatory reporting on patient outcomes**
2. **Avoid hospital readmissions**
3. **Improve patient safety (fewer errors)**
4. **Wellness programs**
 - Smoking cessation
 - Weight management
 - Stress management
 - Physical fitness
 - Nutrition
 - Heart disease prevention
 - Healthy lifestyle support
 - Diabetes prevention

REPORT CARD				
GRADING PERIOD	1	2	3	4
READING	A			
WRITTEN COMMUNICATION	A			
MATHEMATICS	C			
SCIENCE/HEALTH	B			
SOCIAL STUDIES	B			
ART	A			
MUSIC	A			
PHYSICAL EDUCATION	C			
Grade Average	B			
Attendance:	Present	40		
	Absent	2		
	Tardy	1		
<small>A = Excellent • B = Good • C = Satisfactory • N = Needs Improvement U = Unsatisfactory • I = Incomplete / Incomplete</small>				
Student:	Grade:	Year:		

13

Big changes that impact individuals:

§ 2718 Bringing Down the Cost of Health Care Coverage

Another goal of the Act is to bring down the cost of health care. The Act uses a three prong approach to do this:

1. Requires insurance companies to submit annual reports showing what percentage of annual revenue was spent on:
 - reimbursement for clinical services
 - activities that improve health care quality; and
 - on all other non-claims costs.
2. Ensuring consumers receive value for their premium through rebate programs. (§2718 Rebate = Refund)
 - § 2794 – Insurers must provide justification for premium increases.
3. Hospitals must make public a list of its standard charges for items and services the hospital provides.



14

Big changes that impact individuals:

§ 1101 Immediate Access to Insurance for Uninsured Individuals with a Preexisting Condition

- Sets aside \$5 billion dollars for the creation of a high risk pool.
- To be eligible must be: (1) a U.S. citizen; (2) not been covered for prior six months; and (3) have a pre-existing condition
- The pool plan deductible max of \$5,000.
- Issuer of pool plan must cover 65% of costs.

15

Big changes that impact individuals:



§ 2701 Fair Health Insurance Premiums:

The Act limits how an insurance company may vary its premiums for participants:

- Premiums may vary depending on whether the plan is for an individual or family
- Rating area (geographical area)
- Age (but rates can't vary by more than 3:1)
- Tobacco use (but rates can't vary by more than 1.5:1)

16

Big changes that impact individuals:

§ 2703 Guaranteed Renewability of Coverage:

“. . . the issuer must renew or continue in force such coverage at the option of the plan sponsor or the individual, as applicable.”

17

Big changes that impact individuals:

§ 2705 Prohibition on Discrimination Based on Health Status:

Pursuant to the Act, a health insurance issuer may not establish rules for eligibility based on an individuals:

- 1) Health status
- 2) Medical condition (physical or mental)
- 3) Claims experience
- 4) Receipt of health care
- 5) Medical history
- 6) Genetic information
- 7) Evidence of insurability
- 8) Disability
- 9) Any other health status-related factor



18

Big changes that impact individuals:

§ 2708 Prohibition on Excessive Waiting Periods:

Under the Act, a health insurance issuer may not apply any waiting period that exceeds 90 days.



19

Additional Information:

- Section 1943 – enable individuals to enroll for State plans via internet
- Section 2301 – Medicaid will cover services at Free Standing Birthing Centers
- Section 2202 – Hospitals to make presumptive eligibility determinations for all medicaid eligible populations

20

Additional Information:

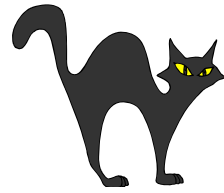
- Section 2715 – Standardized EOBs
- Section 1511 – Auto enrollment for new employees
- Section 4205 – Chain restaurants (20 locations or more) must provide nutrition information for menu items
- Section 9010 – Insurance providers to pay fee (tax) to Federal Government
- **Something is missing... something written into every contract... severability clause.**

21

So what's all the litigation about?



22



The Individual Mandate



23

Or, in fairness:

24



The Individual Mandate



25

The Individual Mandate

- **§5000A Requirement to Maintain Minimum Essential Coverage**
 - An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.

26

Individual Mandate Cont...

- §5000A (c)(1) &(3)
 - Beginning in 2013, a penalty will be imposed for each month a taxpayer or its dependent is without *Minimum Essential Coverage*
 - Penalty is equal to 1/12 of the “Applicable Dollar Amount”
 - Applicable Dollar Amount for:
 - 2014 = \$95.00 (\$7.92/month)
 - 2015 = \$350.00 (\$29.16/month)
 - 2016 = \$750.00 (\$62.50/month)
 - 2017+ = \$750.00 + Cost of Living Adjustments
 - Max Penalty – 300% of Applicable Dollar Amount §5000A (c)(2)

27

Exemptions?

- 5000A (e) & (d)
 - Religious exemptions
 - “Individuals not lawfully present”
 - Incarcerated Individuals
 - Underclass
 - If contribution to plan is greater than 8% of household income – exempt.
 - If making less than 100% of Federal Poverty Limit – exempt.
 - Member of an Indian Tribe
 - Law Permits up to a three month break in coverage without penalty.

28

“Minimum Essential Coverage”

- 5000A (f), any of the following qualifies:
 - Medicare Part A
 - Medicaid
 - CHIP
 - TRICARE
 - Veteran's Health Care Program
 - Health Care Plans relating to the Peace Corp
 - Employer-Sponsored Plans
 - Plans in the Individual Market
 - Grandfathered Plans

29

What Gave the Federal Government The Power to Pass this Law?

- Fed's Response – THE COMMERCE CLAUSE
- States' Response – FED'S LACK THE POWER → UNCONSTITUTIONAL

30

What is the Commerce Clause?

- Article I, Section 8, Clause 3 of the United States Constitution, Congress shall have power:
 - “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”
- Examples of Commerce Clause Power:
 - *Wickard v. Filburn* – regulating price and growing of wheat
 - *Heart of Atlanta Motel v. U.S.* – desegregation of motels – SCOTUS upheld Title II of Civil Rights Act of 1964 which prohibited discrimination by places of public accommodation
 - *US v. Lopez* – under the Commerce Clause, SCOTUS declared Gun Free School Zone Act of 1990 unconstitutional as it interfered with commerce

31

Congress' Link PPACA to CC

- Sec 1501(a)(1): the individual mandate “is commercial and economic in nature, and substantially affects interstate commerce. . .”
- Sec 1501(a)(2):
 - regulates how and when health care is paid for
 - health insurance and health care services make up \$2.5T or 17.6% of national economy
 - Private health insurance spending is \$854B
 - New requirements will add millions of customers to the commercial market
 - ½ of all personal bankruptcies are caused in part by medical expenses
 - Under ERISA Federal Government already has a role in regulating health insurance

32

Key Dispute

- Can Congress use power under Commerce Clause to regulate economic activity to mandate that individuals purchase health insurance?
 - Federal government (Congress and President) say YES because health care and insurance are unlike any other form of commerce because everyone will need care at some point, therefore the government has a stake in that decision because the costs of caring for the uninsured will ripple into the insurance market and the rest of the health-care system
 - States (some, not all) argue that failure to purchase health insurance is not an interstate economic activity and therefore the individual mandate violates the Commerce Clause
 - Most states are fine with a state-mandated insurance requirement, as in Massachusetts, but claim that a Federally-mandated requirement destroys states' rights and federalism

33

CURRENT LITIGATION

34

Litigation:

- **Florida v. U.S. Dept. of Health & Human Services – KEY CASE**
 - Primary plaintiff is State of Florida, originally joined by 12 other states, now total of 26 states, including Ohio, and the National Federation of Independent Business (NFIB)
 - United States District Court for the Northern District of Florida – Judge Roger Vinson
 - On January 31, 2011, Judge Vinson ruled that the individual mandate is unconstitutional and un-severable from the rest of the law
 - Agreed with states that an individual mandate is not “‘necessary and essential’ to health care reform in general”
 - When writing the law, Congress did not include severability clause that would allow rest of law to stand if Courts ruled it unconstitutional, so Judge Vinson had to find entire law unconstitutional

35

UPDATE

- **Florida v. U.S. Dept. of Health & Human Services**
 - On August 12, 2011, 11th Circuit Court of Appeals (ATL), issued a 2-1 decision that Congress exceeded its authority by requiring Americans to buy insurance coverage
 - HOWEVER, REVERSED the striking of the entire law
 - 304 page opinion
 - Two justices appointed by Clinton
 - One by Bush – 41

36

Litigation, continued:

- **Virginia v. Sebelius**
 - Filed just after law passed
 - **Virginia legislature had earlier passed a law forbidding a mandate to purchase health insurance within the State**
 - Suit challenges inclusion of individual health insurance mandate, in violation of commerce clause and **state law**
 - December 13, 2010, Judge Henry Hudson rules that the individual mandate is unconstitutional
 - Judge found that decision to purchase or not purchase insurance is not an economic decision and outside of scope of Commerce Clause
 - Judge's ruling did not invalidate the entire law or force Federal and state officials to stop the work of putting it into effect
 - steps Virginia had requested

37

- **Virginia v. Sebelius**
 - The thrust of the District Court's decision was that the law was unconstitutional.
 - Following decision by District Court, Attorneys filed motions to fast-track to SCOTUS – motions denied
 - Case appealed to the 4th Circuit
 - On September 8, 2011, 4th Circuit dismissed the case on standing issues
 - Standing:
 - Injury (No injury)
 - Causation
 - Redressability
 - Court called Virginia's law a "smoke screen for Virginia's attempted vindication of its citizens' interest"

38

Litigation, continued:

Thomas More Law Center v. The President of the United States

- Filed hours after passage of law by conservative Christian not-for-profit group
- United States District Court for the Eastern District of Michigan – Judge George Steeh
- Challenge based on lack of Congressional authority to mandate health insurance as well as the claim that the health care reform act violates the First Amendment right to free exercise of religion
- On October 7, 2010, Judge Steeh ruled that the individual mandate falls squarely within Congress's ability under the Constitution to regulate interstate commerce

39

Thomas More Law Center v. The President of the United States

- Case appealed to the 6th Circuit.
- On June 1, 2011, the 6th Circuit issued an opinion upholding the law saying the individual mandate is a constitutional exercise of federal government power.

40

Litigation, continued:

- **Liberty University, Inc., et al v. Geithner, et al**
 - Filed March 23, 2010 just after law signed by President Obama
 - United States District Court for the Western District of Virginia – Judge Norman Moon
 - Similar challenge as in Virginia v. Sebelius, challenging the Patient Protection and Affordable Care Act based on Virginia state law banning an individual mandate to buy health insurance
 - Government moved to dismiss the case and judge agreed, holding that buying health insurance is “economic in nature” and therefore can be regulated as interstate commerce by Congress

41

Liberty University, Inc., et al v. Geithner, et al

- Case appealed to the 4th Circuit.
- Oral arguments were held on May 10, 2011.
- Decision was issued on September 8, 2011.
- 4th Circuit found the individual mandate was tantamount to a tax.
 - Under Anti-Injunction Act – taxes cannot be challenged until collected
 - Very similar to standing:
 - » Injury (missing – haven’t paid it yet)
 - » Causation
 - » Redressability

42

Litigation, continued:

- **What happens next?**
 - Opinion did NOT stop government from continuing to implement the law because judge refused to grant the injunction the states asked for
 - Judge stated that it is presumed that federal officers will adhere to the law as declared by the court (unconstitutional) and therefore, would not proceed to implement it
 - Eventually will reach the United States Supreme Court. Most experts expect a close vote with Justice Kennedy being the swing vote.
 - Expect SCOTUS to take the case this term which commences in October – expect the decision to be issued in October of 2012

43

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44