It's Not Pay or Play, It's How to Play

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Large-size employers with low-wage workforces do have options when it comes to implementing the requirements of the new healthcare reform. This paper presents seven possible approaches for impacted companies to consider.

The age of Obamacare (formally the Patient Protection Affordable Care Act or "PPACA") is at hand. The main components of healthcare reform will be implemented within a short number of months from now. For large employers (50 or more employees) arguably the biggest issue is how to address the so-called Pay or Play rules. While the term "pay or play" has gained popular currency it is actually misleading, as it implies an either-or dilemma for affected companies. In fact, there are a handful of different ways for employers to approach the new requirements, depending on the context and considerations specific to their own environment and workforce. Making the right choice can not only improve the impact of reform on the employer's bottom line, but also ensure that employees at different income levels have the ability to choose appropriate and affordable levels of coverage for themselves and their family members.

PPACA Requirements and Penalties: Who's Affected?

Many, if not most large employers are minimally impacted by Pay or Play since they have historically provided benefits exceeding the minimum levels prescribed by the law, at costs (i.e. premiums billed to employees) that are far below the legal threshold requirements. However, there are a significant number of large employers with low-wage workforces that face huge challenges. These employers have historically either excluded employees from any kind of health insurance or have given these employees bare bones "mini-med" plans that do not meet PPACA requirements. Under PPACA these employers will either be required to offer coverage to these employees or pay the potential penalties under the law.

The Pay or Play framework has two key, interrelated rules: the coverage rule; and the affordability/quality rule.

Coverage

Under the coverage rule, an employer must provide "minimum essential coverage" to 95% or more of its total full-time employee workforce to avoid penalty. In the absence of that level of

coverage, a $2,000 per full-time employee penalty applies to all full-time employees after the first 30. The trigger for the penalty is activated when one full time employee goes onto the individual market exchange and gets subsidized coverage. Under the proposed regulations, the definition of “minimum essential coverage” is not tied to a specific benefit level but rather a type of coverage that may satisfy PPACA coverage mandates. Individual insurance, Medicare, Medicaid, Tricare and employer-sponsored healthcare are all considered “minimum essential coverage. However, the Department of Labor does read PHS Act Section 2707(b) as requiring all non-grandfathered group health plans to comply with the annual limitation on out-of-pocket maximums described in section 1302(c)(1) of the Affordable Care Act. In addition, preventive services must be provided with no cost sharing.

Affordability/Quality

If an employer provides “minimum essential coverage” to at least 95% of its employees, but the cost for individual coverage provided by the employer is not affordable (“affordable” being defined as less than 9.5% of an employee’s W-2 compensation), or if the coverage is deemed to not be quality care of minimum value (as defined by a minimum 60% actuarial value threshold), then a $3,000 penalty will apply for each full time employee who qualifies for subsidized coverage on the individual exchange.

The maximum penalty assessed on an employer in regard to these two components of the Pay or Play framework will be defined by the coverage rule. For example, an employer with 100 employees that does not provide 95% minimum essential coverage would incur a penalty of $140,000 ($2,000 x (100 – 70)). Alternatively, the maximum penalty that would apply as a result of the Affordability/Quality penalty would be no more than $140,000.

The Employee Perspective

While much of the employer focus is on the penalties applied to employer, there is another important perspective that should not be overlooked: that of the employees themselves. An employer that overlooks the employee side of the equation runs the risk of engendering a disgruntled work force. The key question an employer has to ask is this: which of my employees will benefit from our company health plan, and which of my employees would be better off taking advantage of the individual exchanges? Remember that these exchanges were set up as a mechanism for the ACA’s fundamental goal of universal health care access, and as such there are subsidies and other benefits targeted especially at low-income households.

This issue has real bottom-line impact for an employer’s low-income staff. In 2014 the individual mandate for someone who doesn’t carry “qualified essential coverage” is the greater

of $95 or 1% of income, but it balloons to the greater of $695 or 2.5% of income by 2016. For a family with an already-stretched budget that is a serious challenge. PPACA provides significant subsidies for individual and family coverage for those individuals who qualify based on their income and age. The richest subsidies start at 100% of the poverty line (people earning below 100% are ineligible for the exchanges and must enroll in Medicaid if available in their state) and start to taper off at 200% of the poverty line.

Below is a chart showing some examples of the generous subsidies that apply to individuals at various coverage levels.

Individual Only-Income at $18,600 (160% of Poverty Line)

Age	Subsidy %
25	73%
35	78%
45	81%
55	88%

Individual and Spouse-Income at $25,200 (160% of Poverty Line)

Age	Subsidy %
25	81%
35	85%
45	87%
55	92%

*Note: Each child adds $6,400 to the eligible income while roughly maintaining these subsidy levels.

Source: Kaiser Family Foundation Subsidy Calculator

The result of this is that subsidized exchanges will provide insurance coverage that could cost employees as little as 2.5% of their total income. Meanwhile employer-provided coverage is considered “affordable” for any employee as long as it is no more than 9.5% of their W-2 compensation. An employer strategy that requires employees to pay significantly more than they would through the exchanges is not likely to be in the best interest of the impacted employees.

Employers that understand this reality and embrace a plan design that provides access to the exchanges may very well become the employer of choice for these workers. This is especially true when it comes to dependent coverage. Most employers pay a large portion of individual coverage, but little or nothing for the incremental cost of adding family members. Meanwhile, the PPACA subsidies for people accessing individual coverage with dependents are extremely large.

Putting It All Together: Seven Possible Approaches

How does an employer manage all of this in a way that is financially prudent while maintaining a viable workforce? Below are seven alternative strategies an employer could take, each requiring a consideration of the costs and benefits in the context of the employer's particular work environment and labor arrangements.

1. Termination approach

   A knee jerk reaction would be to simply terminate coverage and pay the $2,000 non-deductible penalty for ALL employees (after the first 30). This could be the least favorable solution for your higher wage salaried staff since none of their premium payments will be deductible and they may be eligible for very small subsidies (if any) on the exchange (subsidies stop at 400% of the poverty line – about $50,000 for an individual and $90,000 for a family of four). Added employer costs include those of retention and hiring as staff rolls over, extra out-of-pocket bonus money paid to staff that has lost coverage, and the payroll taxes associated with those payments.

2. Status quo approach

   In this approach the employer provides fairly expensive benefits to staff with a significant employee out of pocket cost (yet below the 9.5% threshold). It will provide little or no cost-sharing for employee dependents. The employer will pay the $3,000 affordability penalty for employees to whom it doesn't offer qualifying coverage as well as/or the $2,000 coverage penalty if it doesn't meet the 95% coverage bar.

   An employer strategy that requires employees to pay up to 9.5% when coverage is available for as little as 2.5% is almost certainly not in the best interest of the impacted employees. This is especially true for heads of households, since the availability of "employer provided" affordable coverage for an individual employee completely eliminates the ability for family members to get subsidized coverage in the exchange. While the status quo may work for salaried staff, it could be an administrative nightmare for employers with significant numbers of low-wage hourly staff.

3. Dual plan approach

   This contemplates offering all employees two different plans to choose from. The first is benefit rich (exceeding minimum essential benefits) but is unaffordable for low wage hourly staff, while the second does not provide the threshold 60% actuarial value quality test but has very low cost requirements. Under this approach a $3,000 non-deductible penalty will apply for each employee that goes onto the exchange.

   The design would have to pass non-discrimination testing, but if it did, the employer would be able to offer a generous plan that higher paid salaried staff would accept (similar to current coverage) and a low cost plan that hourly staff could afford. Hourly staff with major medical issues would have the ability to opt out of the employer coverage and get subsidized coverage under the exchange, but would only be able to do so during the Individual Exchange Open Enrollment period.

4. Separate entities approach

   In this scenario the employer moves low wage employees into a closely held separate entity so that the minimum coverage penalty applies to just that population and not the entire work force. This approach involves some legal/regulatory considerations.

   On December 27, 2012, the Department of Labor issued proposed regulations regarding how the coverage rules will apply to Employer "Control Groups". These are entities that have joint ownership and must be treated as "one entity" when determining whether the Large Group coverage rules apply. The proposed regulations do say that while the group is aggregated when making that determination, the separate entities are split as of when figuring out what the actual penalties are and that an employer group that is offered coverage is treated separately from an employer group that is not offered coverage. Federal Register Volume 78 No. 1 issued January 2, 2013 (Page 251).

   While our reading of the proposed regulations lends support to this strategy, there are some observers who question whether and under what circumstances it would be compliant. Moreover the current regulations are only transitional, so ultimately they may not allow this strategy. As a result, employers would want to obtain guidance from expert legal counsel before proceeding with this approach.

5. Part time worker approach

   There may be potential advantages to moving low-wage hourly staff to part time status (less than 30 hours a week). Under this approach no penalties would apply for any employee who opts for coverage through the exchange. In addition, the low wage employees would be eligible for a full subsidy.

   This approach implies a change in organizational operations and would likely result in more management cost as staff are added. In addition, an employer runs the risk of getting hit with a coverage penalty ($167 multiplied by total staff less 30) for each month these employees accrue total hours that exceed 130 and they make up more than 5% of your full time work force. As a result, care must be taken when using this approach to make sure that extra hours do not accrue for these staff members or the scheduled hours are sufficiently below 130 hours so that there is some cushion to accommodate extra hours beyond their normal schedule. This strategy also presumes that hourly staff will be able to make up their hours at another employer. If that does not happen or if there is a material difference in the hourly rate they would get from a secondary employer, then they may be hurt by this approach.

6. Minimum-coverage plan approach

   Here an employer would implement a bare minimum “Bronze” plan as one plan alternative that minimizes employer costs and creates a low cost option for staff, especially for dependent coverage. This approach would help provide protections for lower wage salaried staff that are ineligible for the exchange based on employer provided individual coverage, but have trouble covering dependents because of the extra cost of more benefit rich plans. However, this approach would lock in employees to very high deductible coverage (e.g. a $4,000 deductible) and eliminate the ability to get subsidized coverage through the exchange.

7. Voluntary HSA, employer funded HRA or Non-PPACA supplemental plan

   Under healthcare reform all plans (except for platinum-level plans) will carry deductibles exceeding $1,000. Assuming an employer adopts a minimum cost “bronze” plan or something with as low as a 60% actuarial value, their employees will be facing extremely large deductibles ($3,000 to 4,000).

While higher-wage staff may have the resources to fund a Health Savings Account (a pre-tax health IRA), it would be difficult or impossible for a typical salaried employee to accumulate the resources to pay for expenses during a very high deductible. Historically employers have implemented HRA plans (employer funded and owned accounts) to pay for deductible expenses. However, they can be administratively burdensome. One alternative that may be tailor-made for PPACA are Supplemental GAP programs (separate from the base health insurance plan that is subject to PPACA) that covers inpatient and outpatient expenses during the deductible. These types of programs are not subject to PPACA and can be employer paid or provided on a voluntary basis. When combined with approach #6 above it will provide first dollar coverage.

Pay or play really isn't an accurate term for this new world of PPACA. There are a lot of ways that you can "play" that may actually make those alternatives a lot more attractive in the long run. With the flexibility these approaches offer, it should be unnecessary for an employer to have to wind up paying a large punitive cost for the health plan choices it offers.

The appropriate solution adopted by any given employer will be based on what it can afford as well as the goals and general policies of an organization. Hopefully, an employer can adopt a solution that furthers the organization's goals, that is cost effective to the employer, that provides strong protection to the employees, and comes in at a cost the employee can afford. With the proper information in hand, employers can analyze and decide on which choice presents the most compelling win-win for all stakeholders concerned.

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