The Affordable Care Act (ACA) And Health Insurance Bargaining

THE IMPACT OF THE AFFORDABLE CARE ACT (ACA) ON COLLECTIVE BARGAINING AND UNION BENEFITS

June 20, 2014
Until Now, the ACA Has...

- Provided lower cost insurance to many lower wage workers and their families.
- Reduced or slowed the increase in premium costs for some small business owners and contract workers.
- Provided tax credits to small employers for insuring workers.
- Closed Medicare Part D “donut hole”
- Expanded family coverage to young adults under age 26
- Mandated free preventive care under new employer-provided plans
- Reduced cost, for a few years, to employers for pre-65 retirees
Every Workplace To See Changes In Next 1-5 Years

- Workplaces with decent insurance gravely threatened by new “excise tax”
- Workplaces with poor insurance or low incomes may fare better on state exchanges
- Everyone else will continue the fight to hold onto benefits in even tougher circumstances
Relentlessly higher copays, deductibles, and coinsurance
Drop insurance – make workers go on exchange
Ratchet down coverage to 70% (silver plan) or less
Slash benefits in attempt to keep premium below excise tax level
Convert jobs to under 30 hours per week
Contract out work to temps
Force workers to pay “excise tax”
Require workers to pay 9.5% of income for health insurance
Principles Regarding Healthcare Bargaining

- No unilateral changes in plan design/providers
- Any employee administration of benefits done during work time – not after hours
- Medical care providers to determine treatment, not insurance bureaucrats
- Choice of medical providers, including hospitals
- No paperwork – easy to follow plan documents
- Oppose cost shifting onto workers
- Low copays and low, if any, upfront deductibles
- Employee payments based on percentage of income OR flat dollar amount – NOT premium!
- No denial based on employment, economic, or immigration status
How To Begin

1. Develop understanding of current health insurance

2. Shops with good insurance
   - Undertake a membership survey and use The Alliance excise tax calculator to determine if insurance is at risk of being above excise tax: $10,200 individual and $27,500 for family.

3. Shops with low wages and poor insurance
   - Undertake a membership survey to see who, if anyone, is eligible for and benefits from the exchanges and subsidies. The Kaiser Family Foundation ACA calculator is a useful tool to calculate member’s potential exchange subsidy...but there are others, as well.
Considerations For All Workplaces:

- Ensure contracts set benefit threshold at 30 hours or less

- Waiting periods for health insurance coverage cannot be longer than 90 days.

- Language to negotiate insurance when faced with changes to state or federal laws.

- Illegal for bosses to retaliate for enrolling and getting subsidies on the exchanges
  - Might want to add specific contractual protections and make it grievable if your language doesn’t already have a “or violates state or federal law” type language.
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31, 2014</td>
<td>Beginning of individual mandate and SHOP exchange of under 50 employees</td>
</tr>
<tr>
<td>January 1, 2015</td>
<td>Employer mandate begins for employers with 100+ employees</td>
</tr>
<tr>
<td>January 1, 2016</td>
<td>Employer mandate totally phased in. SHOP exchanges in all states must cover employers with 50-100 employees</td>
</tr>
<tr>
<td>January 1, 2017</td>
<td>States may allow 100+ employers on SHOP exchange, states may opt out (for example, Vermont single payer)</td>
</tr>
<tr>
<td>January 1, 2018</td>
<td>40% excise tax on high premium cost plans begins</td>
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## Employer Penalty / Mandate

<table>
<thead>
<tr>
<th>Employer Action</th>
<th>Annual Fine</th>
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<tbody>
<tr>
<td><strong>2015:</strong> Less than 70% of 30+ hour employees covered for employers over 100. <strong>2016:</strong> Less than 95% of 30+ hour employees of employers of 50 or more</td>
<td>$2,000 x (FT headcount–30)</td>
</tr>
<tr>
<td>Workers who have unaffordable employer-based coverage (excluded from coverage or more than 9.5% of income) can enroll on exchange and qualify for subsidies</td>
<td>$3,000 per enrolled worker</td>
</tr>
</tbody>
</table>
To determine employee wages an employer can use one of three safe harbors:

1. “W-2 Safe Harbor”- Wages from Box 1 of W-2
2. “Rate-of-Pay Safe Harbor”- Wages as calculated using salary or hourly rate times 130 hours. Note: if this safe harbor is used the employer cannot reduce the employee’s wage during the year
3. “Design-Based Safe Harbor”- uses 100% of Federal Poverty Level (FPL). If cost for employee only coverage is 9.5% or less than 100% of FPL then plan meets the affordability requirement. For 2013 100% of FPL is $11,490. 9.5% of 100% FPL-employee only coverage would be $1,091.55.
What Are The Exchanges?

- Marketplace for private health insurance plans purchased by individuals and small businesses
- Costs/coverage transparent – no waiting for rates
- Plan comparison/enrollment online
- Pooling requirements mean no difference in rates in geographic area besides age/smoking status
- Every state has one or more exchanges
  - 27 federally-run exchanges
  - 7 federal-state partnerships
  - 17 state-run exchanges
Coverage of Exchange

- Plans are rated based upon the percent of medical expenses covered
  - Platinum (90%), Gold (80%), Silver (70%) and Bronze (60%)
  - Catastrophic plans for adults under 30
  - For a silver plan (baseline on exchange), 70% of expenses would be covered by insurance for a typical enrollee – the last 30% would be paid in some mix of coinsurance, copays, and deductibles
Who Can Get Exchange Plans?

Small businesses:
- Now: Under 50 employees in all states
- 2014: 50-100 in states that allow it
- 2016: 50-100 in all states
- 2017: 100+ employers in states that allow it

Individuals:
- Anyone who isn’t an undocumented immigrant or receiving public insurance (medicare, medicaid, CHIP, TRICARE, etc.)
- Some will pay 100% of premium cost as income limits are fairly high ($92,200 for family of four)
# Small Business Exchanges – Different Status Depending On Size

<table>
<thead>
<tr>
<th>Employee Range</th>
<th>Access to exchange?</th>
<th>Special Tax Credits?</th>
<th>Mandate?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-24</td>
<td>2014</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>25-49</td>
<td>2014</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>50-99</td>
<td>2014 or 2016, depending on state</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>100+</td>
<td>After 2017, if state decides to allow</td>
<td>No</td>
<td>Yes</td>
</tr>
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</table>
Push for employer to offer 90% of coverage (platinum plans) – not silver

Oldest workers may potentially have premium shares three times greater than the youngest workers, so…

Bargain to establish premium payment as percentage of income or, if not possible, flat dollar amount. Get away from % of premium.
Workers in lower-wage shops may gain enough exchange subsidies to make eliminating employer-provided insurance and going to exchange sensible. Probably need additional compensation from the employer to make going to an exchange worthwhile.

Resist employer demands to eliminate insurance and go to exchange in all cases where wage is over $16.00 per hour.
# Summary Of Individual Exchange Subsidies

<table>
<thead>
<tr>
<th>Income Level As % of FPL</th>
<th>Max % of Household Income for Premium</th>
<th>% of Medical Expenses Covered</th>
<th>Reduction of OOP Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>100%-133%</td>
<td>2%</td>
<td>94%</td>
<td>66%</td>
</tr>
<tr>
<td>133%-150%</td>
<td>3%-4%</td>
<td>94%</td>
<td>66%</td>
</tr>
<tr>
<td>150%-200%</td>
<td>4%-6.3%</td>
<td>87%</td>
<td>66%</td>
</tr>
<tr>
<td>200%-250%</td>
<td>6.3%-8.05%</td>
<td>73%</td>
<td>50%</td>
</tr>
<tr>
<td>250%-300%</td>
<td>8.05%-9.5%</td>
<td>70%</td>
<td>50%</td>
</tr>
<tr>
<td>300%-400%</td>
<td>9.5%</td>
<td>70%</td>
<td>33%</td>
</tr>
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Nibbling Around the Edges

- Not covered by the employer mandate
  - Spouses
  - Pre-65 retirees
  - Part timers (under 30 hours)

- If 50%-100% of cost is picked up by employee, dropping coverage may be better
# Annual Individual Tax Penalties Due To Individual Mandate

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charge per Adult</td>
<td>$95</td>
<td>$325</td>
<td>$695</td>
</tr>
<tr>
<td>Charge per Child</td>
<td>$47.50</td>
<td>$162.50</td>
<td>$347.50</td>
</tr>
<tr>
<td>Family Max</td>
<td>$285</td>
<td>$975</td>
<td>$2,085</td>
</tr>
<tr>
<td>Or % of Income If Higher</td>
<td>1%</td>
<td>2%</td>
<td>2.5%</td>
</tr>
</tbody>
</table>
Excise Tax Begins in 2018

- All health plans above the limits subject to 40% tax on all benefits exceeding those limits

- Benefit value includes sum of:
  - Total premium (employer & employee share)
  - Employer contributions to HSAs, HRAs, MSAs, and FSAs
  - Likely employee contributions to HSAs, MSAs, and FSAs
  - Supplemental health benefits, like onsite medical clinics
## Excise Tax Thresholds: 2018 -2020

<table>
<thead>
<tr>
<th>40% Tax Above Annual Limits</th>
<th>2018</th>
<th>2019</th>
<th>2020+</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single – Regular Limit</td>
<td>$10,200</td>
<td>CPI+1%</td>
<td>CPI</td>
</tr>
<tr>
<td>Single – High Risk/Retiree</td>
<td>$11,850</td>
<td>CPI+1%</td>
<td>CPI</td>
</tr>
<tr>
<td>Family – Regular Limit</td>
<td>$27,500</td>
<td>CPI+1%</td>
<td>CPI</td>
</tr>
<tr>
<td>Family – High Risk/Retiree</td>
<td>$30,950</td>
<td>CPI+1%</td>
<td>CPI</td>
</tr>
</tbody>
</table>
Insurers will degrade plans that have good coverage to keep premiums lower

More options in self-insured workplaces to reduce costs without increasing out-of-pocket costs
- Eliminating high-cost, low value providers from network, HMOs, wellness, eliminating FSAs, etc

Experience may be similar to Pension Protection Act – changes to federal law that end up hurting workers and limit our ability to bargaining over the effects of the change

Increased costs to workers
The Affordable Care Act (ACA) will levy excise taxes for plans over certain statutory thresholds beginning in 2018. Beginning in the 2018 plan year, and thereafter on an annual basis, the Company will, following reviews with the Union, make any necessary design changes to the active employee and retiree medical plans to avoid excise taxes or fees related to the ACA. In the event any taxes, including excise taxes, or fees are levied on the healthcare benefits as mandated by state or Federal legislation and design changes are not sufficient to avoid such taxes or fees, these taxes or fees will be the responsibility of the employee and the retiree.
The employer agrees it shall not diminish or eliminate any employee benefit, network, or employee cost structure of the health insurance plan to avoid paying additional costs due to the “excise tax”. The employer agrees to pay for any and all additional costs related to the enactment of the ACA’s 2018 “excise tax”.
When the ACA Has No Direct Impact

- If the workplace’s insurance isn’t in danger of hitting excise tax, and wages are too high for exchange subsidies, it’s the same fight as always.
- Keep in mind it’s now more expensive for the employer to eliminate our insurance.
- Don’t let the employer use confusion to push through new massive concessions.
- Healthcare bargaining remains difficult, but not too different until all employers are allowed on exchanges.
Mounting A Fight

- Educate and involve the membership
- Make comprehensive information requests
- Survey, survey, survey and analyze – particularly when the employer wants drastic changes to plan design
- Talk to members about real solutions to the healthcare crisis – universal single payer health insurance
Mounting A Fight

- Challenge employers to sign on to Medicare for All/Single Payer
- Mobilize allies by framing contract fight as part of a broader fight for affordable healthcare for all
- Blow the whistle on employers trying to dump workers off coverage
- Strike or other job action, over health insurance, expose employer, the insurer and elected officials who refuse to push for quality affordable public health insurance
Where to Go For More Information

- **UE Website**
  - A version of this presentation, along with other materials and links to ACA-related documents are available under “Resources” then “Education”

- **UC Berkeley Labor Center**
  - Best guide available with unions online

- **Kaiser State Premium Watch**
  - Tracking all state actions – keep watch for your own exchange

- **Kaiser Family Foundation**
  - General accessible information regarding healthcare reform
Annual Health Insurance Premiums And Household Income, 1996-2025

SOURCE: Graham Center One-Pager. Who will have health insurance in 2025? Am Fam Physician 72(10):1989, 2005
We didn’t ask for this –
We want single payer!
Bargaining for Health Insurance

How to keep from getting whupped and... even make some gains.
Health Insurance Principles

- SURVEY, SURVEY, SURVEY
- No paperwork
- Choice of provider
- No member should be penalized or dissuaded from paying for healthcare by high co-pays or deductibles
- Affordable (LOW) health insurance costs
  - Paycheck deduction = pay cut
  - Out-of-pocket costs: co-pays, up-front deductibles, etc.
- Any “self-administration” of any insurance issues should be done during work time (“Call 1-800-URS-CREWD”)
- ANY changes in ANY benefit of plan must be negotiated - unless the contract states otherwise
Guidelines for Changing Health Insurance

- Regardless of contract language, from “comparable” to “equal to or better than”, demand employer meet with committee to provide detailed comparison and analysis and set up meetings with members well prior to proposed change date.

- “Comparable” or any standard should apply to each member – not just the whole group.

- Make sure coverage for each member’s needs and requirements are covered. (Rx, diabetic supplies, etc.)

- If insurance company eliminates or changes a particular benefit that should not get the employer off the hook. The union’s contract is with the employer not the insurance co.
“equal to or better than”

“benefit levels and network as written in Appendix A”

“comparable to”

Stay away from any language that gives employer ability to change anything unilaterally or “after discussions”

Words and phrases on changes to health insurance