

2010: The Year that Changed Healthcare

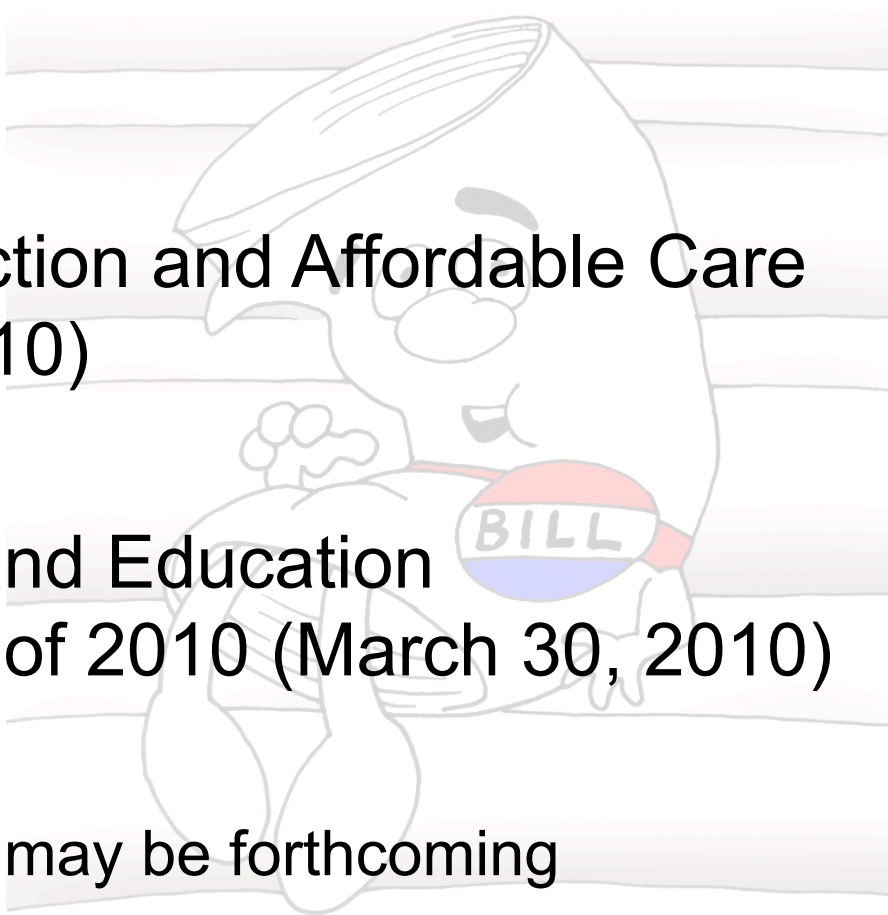
How Healthcare Reform will Effect Your Employees and Your Business

N.G.A. 2011 Annual Convention
February 13-15, 2011

Kara M. Maciel, Esq.
Adam Solander, Esq.
Mike Beal

Background

- Health Care Reform Consists of Two Separate Bills:
- The Patient Protection and Affordable Care Act (March 23, 2010)
- The Health Care and Education Reconciliation Act of 2010 (March 30, 2010)
 - Legislative history may be forthcoming

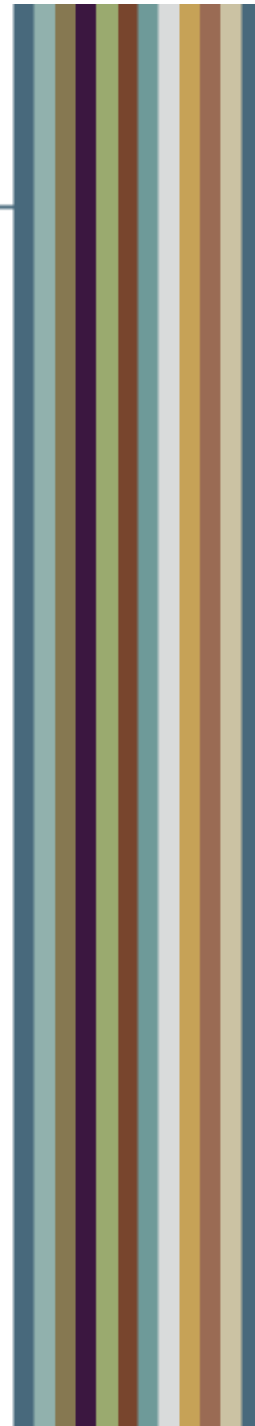




Coverage Issues - Individual

- All individuals required to obtain “minimum essential coverage” or pay a penalty (2014)
- Individuals may receive federal tax credits or subsidies to pay for insurance through an exchange if: (2014)
 - Their household income is up to 400% of the federal poverty level (~\$88,000 for a family of four)
 - They have employer-sponsored coverage, but such coverage is “unaffordable” (more than 9.5% of household income – referred to as “unaffordable” coverage)
 - They have employer-sponsored coverage, but it pays less than 60% of covered health care expenses – referred to as “insufficient” coverage





Penalties

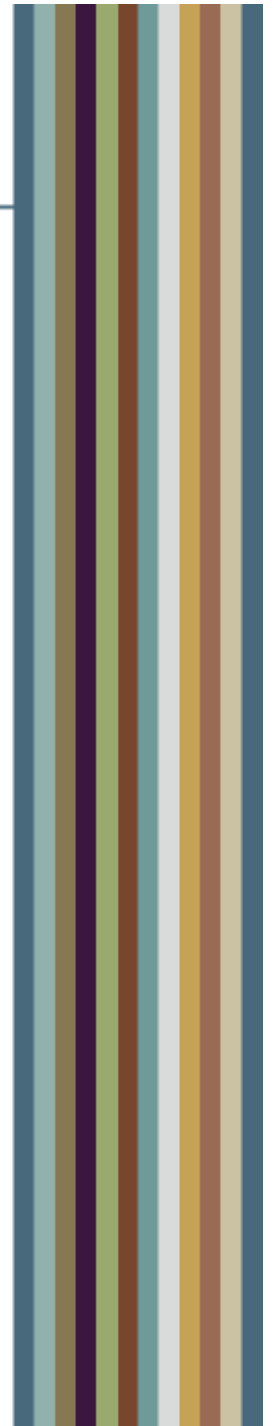
- Penalties only apply to employers with more than 50 Full Time Employees
- Penalties arise if: (1) coverage is not offered; and/or (2) coverage is “unaffordable” or “insufficient” and (3) at least one employee receives government assistance to buy coverage through a health insurance exchange
- If coverage is not offered, penalty is \$2,000 per full-time employee
 - First 30 full-time employees are excluded (\$2K x FT ee – 30)
- If coverage is offered, penalty is lesser of \$3,000 per full time employee who gets government assistance and buys coverage in an exchange or \$2,000 per full-time employee (minus 30).





New Definition of Full-Time Employee

- Definition of Full-Time
 - Individual who works at least 30 hours per week
 - Be sure to review workforce regardless of current classification
- Definition of FTE
 - FTE is calculated by dividing the total number of hours paid to all part-time employees by the total number of hours a full-time employee could have worked in a year (2080 hours)
 - Ex: 3 part-time employees who worked 700 hours each = 1 FTE ($2100/2080 = 1.009$)
- Calculating the Number of Employees
 - Count both Full-Time Employees and Full-Time Equivalents (“FTE”)



Impact on Collective Bargaining Agreements

- PPACA provides “special protections” for insured collectively bargained agreements with regard to grandfathered rules
 - Grandfathered until at least termination of CBA
 - After CBA expires, must be in accordance with rules applicable to all plans
- Self-insured collectively bargained agreements treated like all other plans
- No delay in effective date





Grandfathered Plans: Loss of Grandfather Status

- Plan Design Issues
 - May not eliminate substantially all benefits (or a necessary element) to diagnose or treat a particular condition
 - May not impose, adopt, or decrease an overall annual limit on the dollar value of benefits if the plan did not impose a lifetime or annual dollar value of benefits as of 03/23/10
 - May add new options



Grandfathered Plans: Loss of Grandfather Status

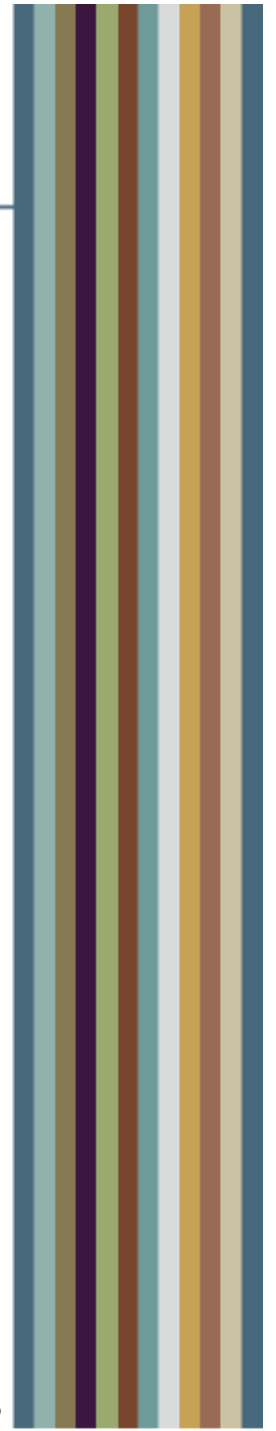
Employee Payments and Contributions

- May not increase coinsurance percentages
- May not increase co-payments as of 03/23/10 beyond limit to be determined by government
- May not increase other fixed costs as of 03/23/10 (e.g. deductible, out-of-pocket maximums) by more than medical inflation plus 15%

Employer Contributions

- Cannot decrease employer contributions by more than 5% for any tier of coverage below the rate as of 03/23/10
- This determination is made by looking at each tier of coverage and each benefit option

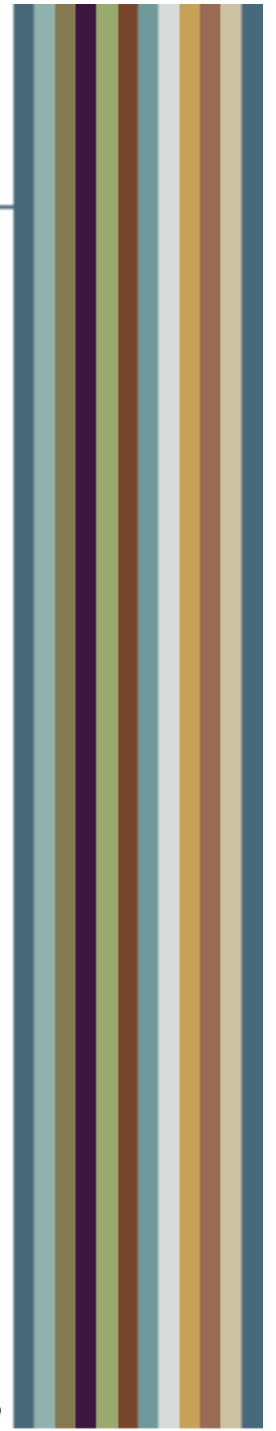




Nursing Mothers

Employers must provide unpaid, reasonable break time to nursing mothers to express breast milk for one (1) year after a child's birth.

- Effective Now!
- Location cannot be a restroom
- Location must be “shielded from view and free of intrusion”
- Employers with 50 or less employees are exempt if able to show “undue hardship”
- DOL is seeking comments regarding these requirements, including compensability of break time, factors to determine reasonableness, what constitutes an adequate location and the undue hardship exception



Adult Children: Eligibility

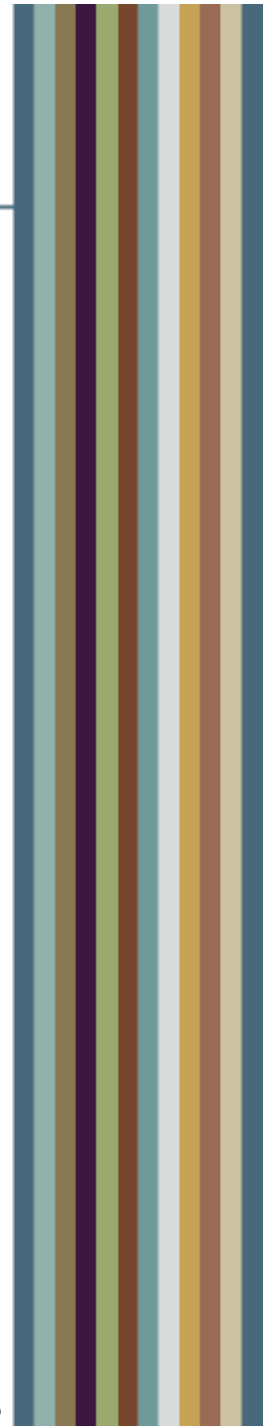
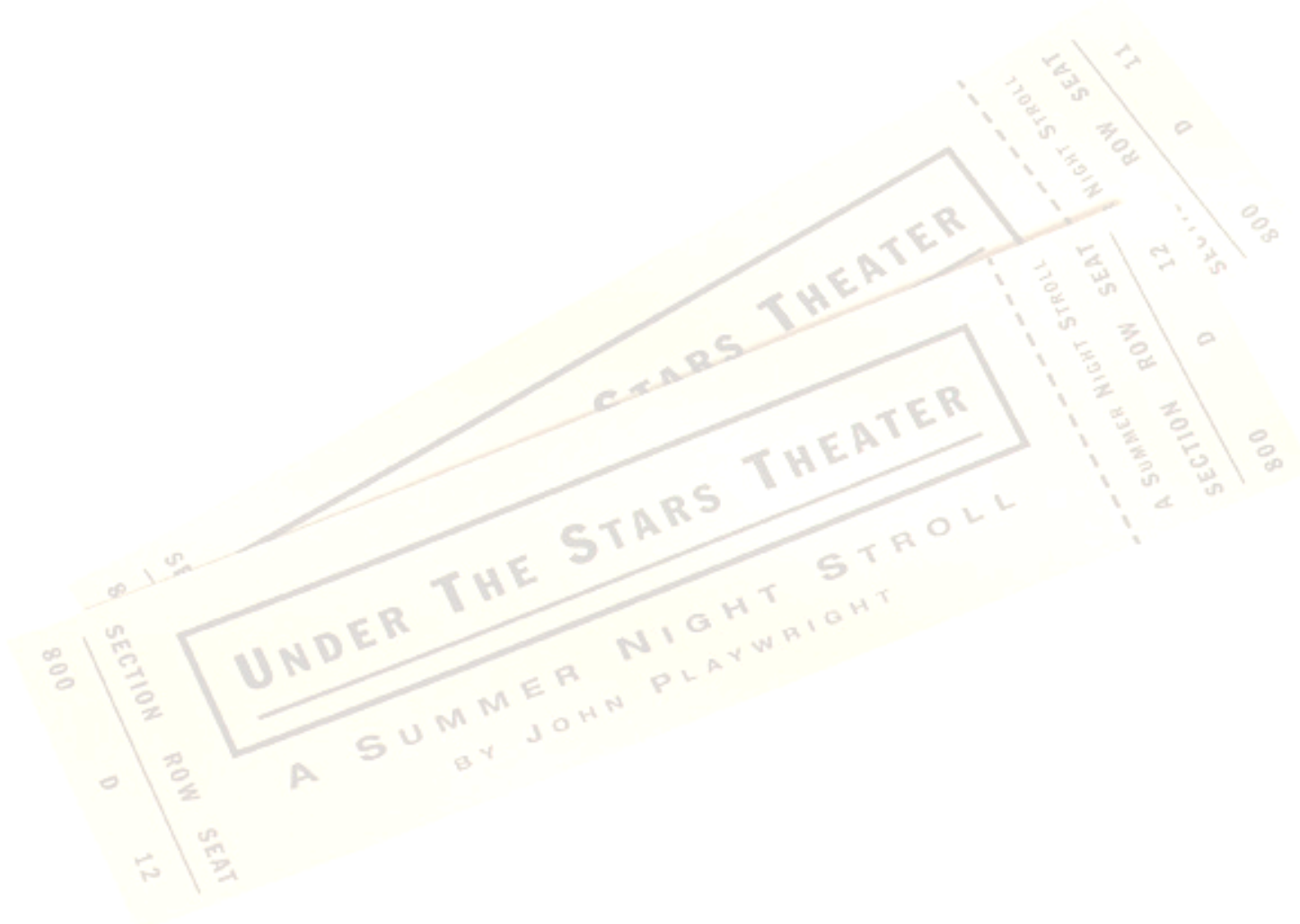
- ❑ No requirement to provide dependent coverage at all
- ❑ Can only base eligibility for coverage on the child's familial relationship to the employee (i.e., the sponsor's classification of eligible dependent – employee's children only, or additional children such as stepchildren, foster children or grandchildren)
 - No restrictions based on residence, financial support, student status or marital status of the child;
 - The child does not have to be a tax dependent and the employer may rely on the employee's representation as to the child's date of birth.
- ❑ Do not have to provide coverage to spouse or children of adult child

Adult Children: Special Enrollment

- ❑ New HIPAA Special Enrollment and Notice Requirements
 - Must provide enrollment period of at least 30 days
 - Must provide written notice to eligible adult children
 - May be provided to parent employee on behalf of adult child
 - May be included as part of regular enrollment materials BUT must be “prominent”
 - Must offer all benefit options available to similarly situated dependents who did not lose coverage
- ❑ Can use “normal” open enrollment period for 2011 plan year, but it has to be for at least 30 days



Free Choice Vouchers



Wellness Plans

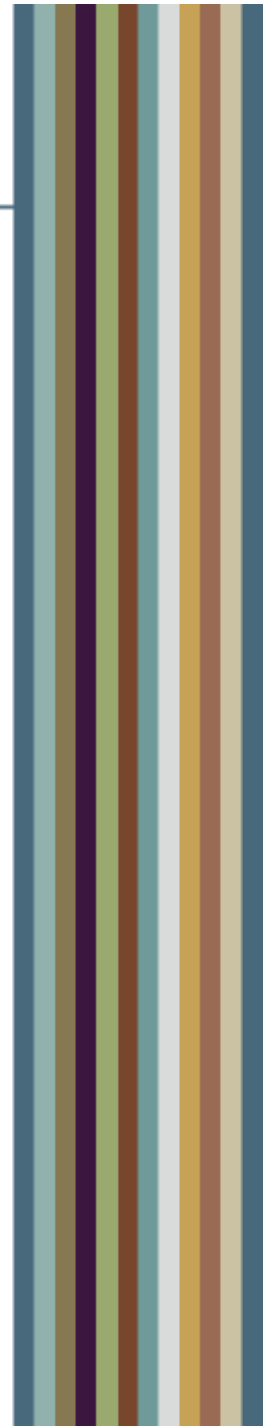
- HIPAA incentives to participate in a wellness program increased from 20% to 30% of premium
 - Level of incentive may be increased to 50% of premium in the future
- GINA prohibits the provision of incentives for “genetic information”
 - Must bifurcate HRA and not provide incentive for questions soliciting information regarding family medical history

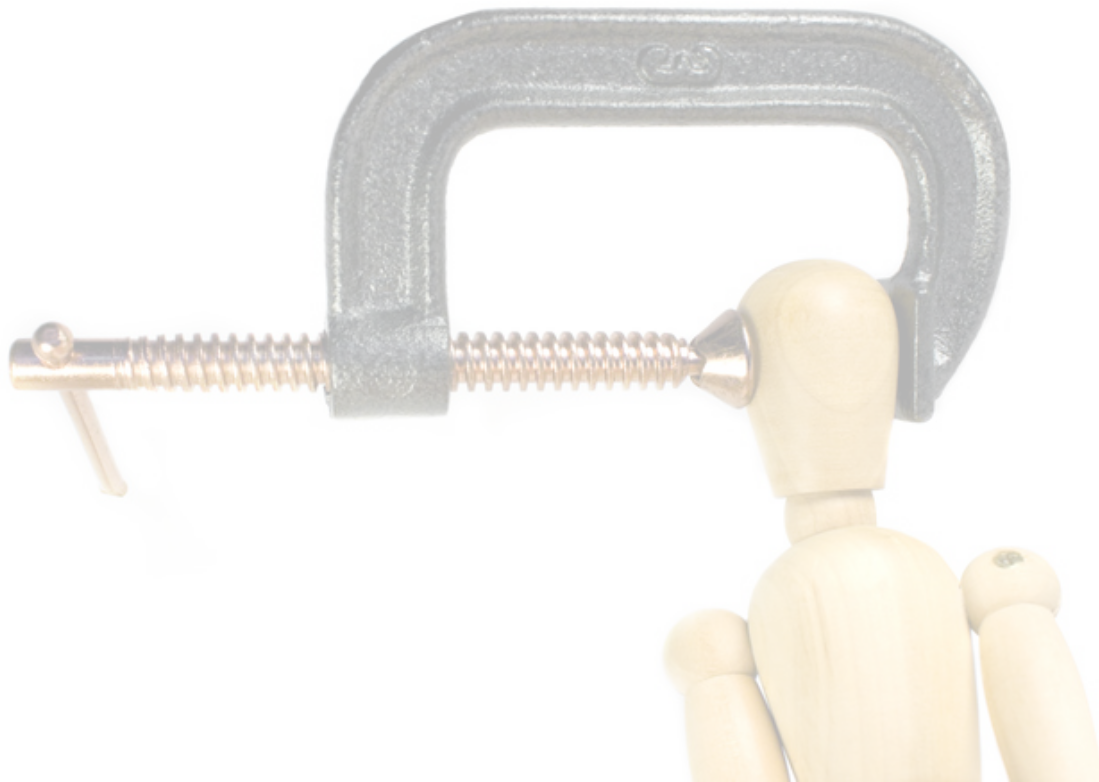




Health Care Documentation & Notices

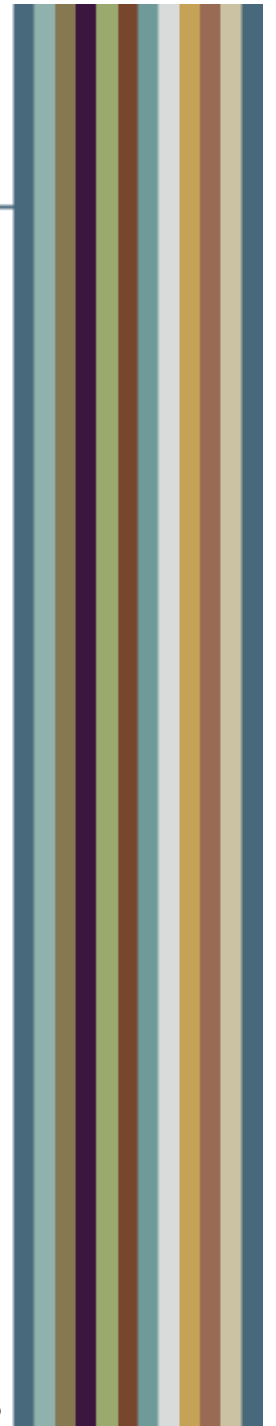
- Must provide employees with detailed summary of benefits and coverage (2012)
- Must be in a uniform format not to exceed four pages, and presented in a “culturally and linguistically appropriate manner” such that the average plan enrollee can understand
- Must include definitions, description of coverage that includes cost sharing for each of the categories of benefits, the exceptions and limitations of coverage, deductibles, coinsurance and copays, and a web address/contact # for more information
- Material modifications cannot be made without notice prior to effective date of change
- Employer fine of \$1,000 per enrollee for willful violations
- Effective January 1, 2012





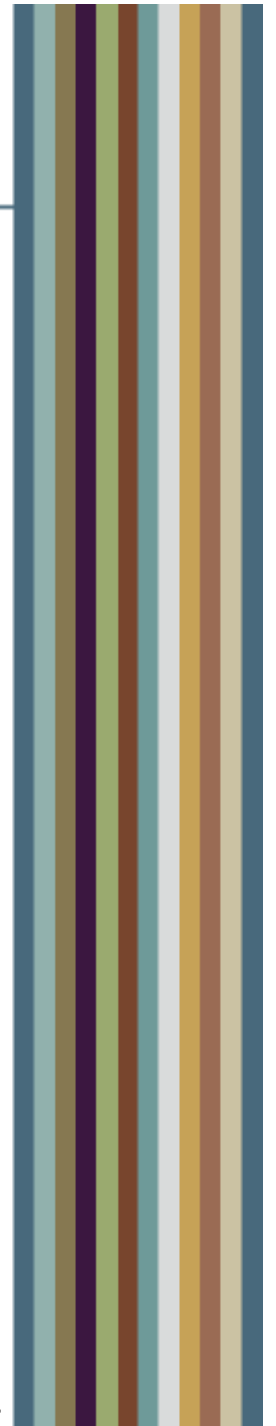
Health Coverage Requirements

- Lifetime caps are banned (2011)
 - 3/5 of employers have lifetime benefit maximums in their PPO plans
 - 25% of HMO's have lifetime caps
- Annual limits must be “reasonable” as of 2011, and not permitted beyond 2014
- Employers will have to discontinue cost-sharing on preventive care, even something as modest as a \$10 copay (2011)
- Appeals process for denial of coverage (2011)



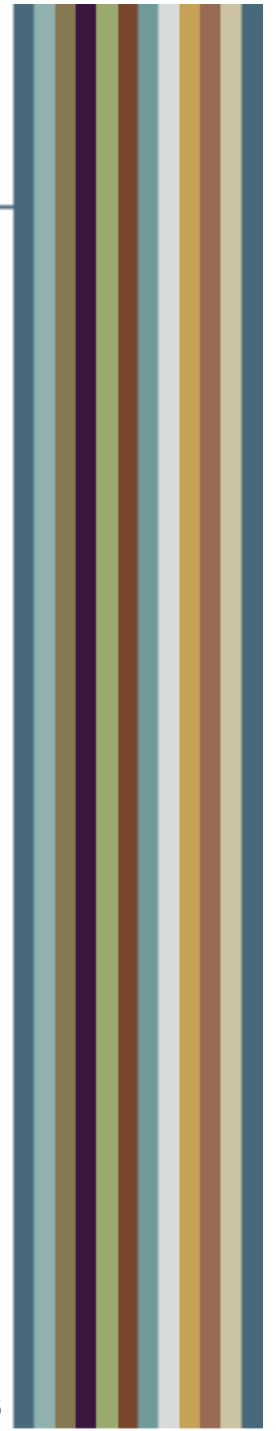
Health Insurance Exchanges

- State-established health insurance exchanges must begin to operate on January 1, 2014. Will operate as virtual marketplace for individuals and eligible employers to purchase health insurance
- In 2014, employers with up to 100 employees can purchase insurance through an exchange. States can limit it to employers with 50 or fewer employees up to 2016. By 2017, states can allow employers with more than 100 employees to purchase insurance through an exchange



Immediate Steps To Take

- **Vulnerability Analysis**
 - Detailed analysis of your workforce to determine how the Act specifically will affect you
 - Where employees currently working in excess of 30 hours per week are provided health coverage
 - Review independent contractor classifications
 - Determine the number of Full-Time Equivalents
 - Review collective bargaining agreements, if applicable
- **Review Policies, Practices and Employee Handbooks**
 - Update to include necessary notice requirements and non-discrimination provisions





Questions/Comments?

Kara M. Maciel

(202) 861-5328

kmaciel@ebglaw.com

Adam Solander

(202) 861-1884

asolander@ebglaw.com

Epstein Becker & Green, P.C.

www.ebglaw.com