Health Care Reform and its Implications for Our Collectively Bargained Plans

For CWA Leaders

September 2010

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This presentation is focused on how reform affects self-insured plans. Different rules may apply for insured plans.

What We Will Cover in This Presentation:

- Health Care Reform – What we achieved
- Whether and when our plans will change as a result of reform (grandfathering)
- Key provisions that will affect our plans and our members
- Timeline for implementation of reform
- Implications for collectively bargained plans

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Health Care Reform – What We Achieved

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National Health Care Reform Signed March 23, 2010

- The Affordable Care Act - not our bill, but it moves us forward, building on the current system
- Changes phased in over several years
- Will change the playing field for bargaining

REUTERS/Kevin Lamarque

Where Americans Will Get Their Health Coverage with Reform

Before Reform	Source of Coverage	After Reform
47%	Employer Sponsored Plan	46%
18%	Medicare	18%
10%	Medicaid/SCHIP	15%
9%	Buy Individual Coverage	7%
-	Health Care Exchanges	7%
16%	Have No Coverage	6%

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Reform Brings Needed Improvements for Others

- Family, friends, laid off members without insurance, and small businesses benefit from secure, affordable options
- Medicare solvency extended 12 years
- Insurance regulations create a fairer system
- Primarily financed by taxing the rich, not the middle class
- Expect positive effects that stabilize the system

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Reform Brings Needed Improvements for Union Members

- We keep our plans.
- Some reforms may apply to our plans.
- Improvements in the bill may raise plan costs initially, but
- The hidden cost of 32 million uninsured in our plans will offset costs, and
- Cost controls will moderate cost trends long term

Whether And When Our Plans will Change as a Result of Reform

This presentation is focused on how reform affects self-insured plans. Different rules may apply for insured plans.

Assumptions Used in this Presentation

- Regulations are still being developed -- expect this information to be updated
- There are different rules for insured and self-insured plans -- since the majority of our members are in self-insured plans, this presentation focuses on those plans
- Effective dates for reform measures generally rely on the "plan year" -- this presentation assumes that plan years begin on January 1

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Are Our Negotiated Plans Affected by Reform?

- Any plan in operation when the bill was signed into law on 3/23/10 will be "grandfathered" – treated differently than non-grandfathered plans
- Certain reform measures apply to all plans, including grandfathered plans
- Other reform measures apply only to non-grandfathered plans
- New plans established after 3/23/10 are treated as non-grandfathered plans

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Some Plan Changes will Cause the Loss of “Grandfathering”

- Elimination of coverage for a particular condition
- Increases in co-pays, deductibles, etc that exceed medical inflation +15%
- Increased Co-Insurance
- Decreasing employer share of costs
- Imposition of new annual limits
- Changes already agreed upon in bargaining agreements effective prior to 3/23/10 will not cause loss of status

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Collectively Bargained Plans & Grandfathering

- Collectively bargained plans in effect on 3/23/10 treated as grandfathered plans
- Changes already agreed upon would not affect status
- Grandfathered status lost if future negotiated plan changes exceed limits set in law
- Parties may negotiate to make changes before law requires them
- Parties may not negotiate terms that negate provisions of the law

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Does Losing Grandfather Status Matter?

- Employer will have to make additional changes, including:
  - First dollar coverage of preventive care
  - Emergency room coverage without pre-authorization or network penalties
  - Access to OB-GYN or Pediatrician without referral
  - Internal and external appeals processes
- Additional provisions could add costs
- OR, if the plan has already adopted many of the provisions, the additional changes may not be viewed as a cost burden

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Key Provisions that will Impact Our Plans and Our Members

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Dependent Coverage to Age 26

- Nearly all plans that now cover dependents will be required to extend that coverage to age 26 by 1/1/11
- Coverage must be the same premium and out of pocket costs as for other dependent children
- Do not have to be students, can live elsewhere, can be married (but spouse and grandchildren not covered)
- Grandfathered, self-insured plans are not required to offer coverage to dependents who can get it from their own employer until 1/1/14
- Plans that do not cover dependents are not required to offer this extended coverage

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Phase Out Lifetime and Annual Dollar Limits

ALL PLANS MUST:

- Provide unlimited lifetime coverage *for essential health benefits*, by 1/1/11
- Increase annual limits to not less than
  - $750,000 by 1/1/11
  - $1.25 million by 1/1/12
  - $2.0 million by 1/1/13
- Eliminate annual limits by 1/1/14

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Essential Health Benefits

- Ambulatory Patient Services
- Emergency Services
- Hospitalization
- Maternity and Newborn Care
- Mental Health and Substance Abuse Treatment
- Prescription Drugs
- Rehabilitative Services and Devices
- Laboratory Services
- Pediatric Services, including dental and vision care
- Preventive and wellness services
- Chronic Disease Management

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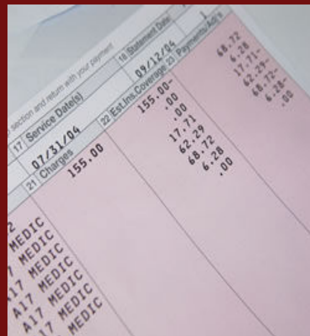
Health Savings Accounts & Flexible Spending Accounts



- Limits pre-tax health FSA contributions to $2,500/yr in 2013, indexed for inflation
- Raises penalty to 20% in 2011 if HSA funds used for non-medical claims
- Stops reimbursement of over-the-counter meds in 2011, unless prescribed

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Reform & Retirees

- By 1/1/11 Medicare covers prevention & screenings with no deductibles or co-pays
- “Doughnut hole” in Medicare Rx plan closed by 2020
- $5 billion trust to reimburse employers for high-cost claims of retirees age 55 - 64

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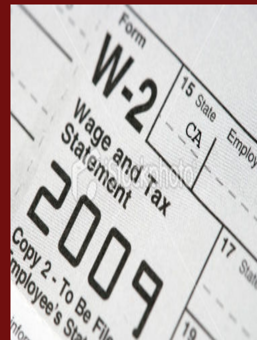
Report Cost of Coverage on 2011 W-2 Statements

- Employers will be required to report the total cost of medical benefits provided to employees
- Reporting is done for informational purposes
- Benefit value is not subject to tax



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Excise Tax on High-Value Health Plans

- High-value health plan = costs exceed thresholds of $10,200 for single coverage and $27,500 for family coverage in 2018
- A 40% tax is applied to the cost *above* the thresholds beginning in 2018
- Thresholds indexed to CPI + 1% in 2019; CPI only beginning in 2020
- Adjustments for age and gender and separate threshold for retirees will reduce the tax
- Separate vision and dental plans excluded; contributions to health savings accounts included

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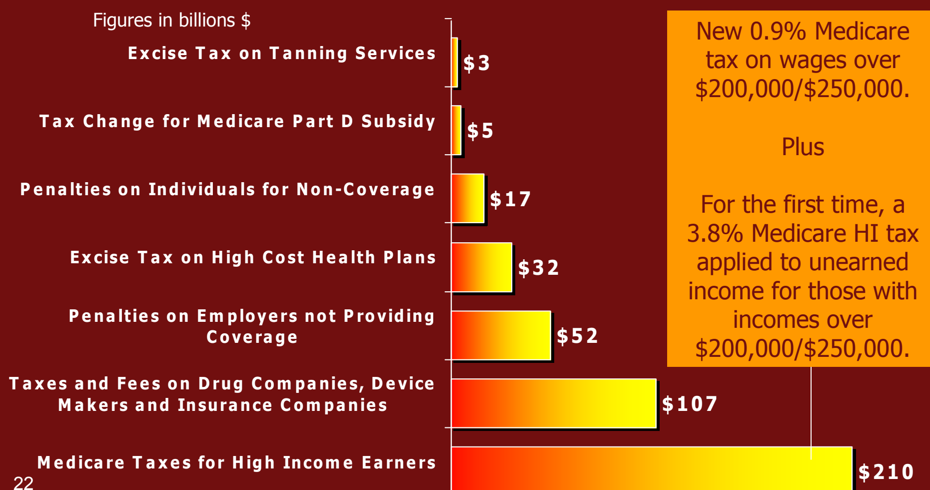
Main Revenue Source: Medicare Tax on Wealthy



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Timeline for Implementation of Reform

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This presentation is focused on how reform affects self-insured plans. Different rules may apply for insured plans.

When do Health Reforms Take Effect?

- Most plan changes are phased in over the next four years
- Some system changes take effect in 2010
- Plan changes start with the first plan year after 9/23/10; usually 1/1/11
- Additional plan and system changes take effect most years until 2018 when the excise tax on high value plans starts

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Health Care Reform Timeline
Beginning 2010

Changes for Retirees:

- Reinsurance trust established to reimburse employers for portion of retiree medical costs
- $250 rebate for seniors who hit Medicare Part D "doughnut hole"

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Health Care Reform Timeline
Beginning 2011

All Plans Must:

- Extend coverage of adult children to age 26
  - Until 2014, self-insured plans can exclude these dependents if offered coverage from own employer
- Eliminate lifetime dollar limits
- Raise annual limit on essential health benefits to no less than $750,000
- Maintain coverage despite errors in application (no rescission except for fraud, mainly insured plans)
- Cover children (to age 19) with for pre-existing conditions

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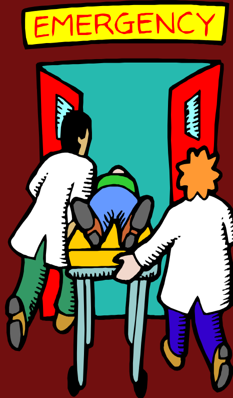
Health Care Reform Timeline
Beginning 2011



Non-Grandfathered Plans Must:

- Provide first dollar coverage of preventive care
- Cover emergency room care without pre-authorization, whether in or out of network
- Cover OB-GYN or Pediatrician visits without referrals
- Establish an internal and external appeals process

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Health Care Reform Timeline
Beginning 2011

Other System Changes:

- Up to 35% tax credits for small businesses that pay at least half the cost of coverage
  - Fewer than 25 full time equivalent employees
  - Average wages $50,000 or less
- Over the counter drugs not covered by FSA unless prescribed
- Health Savings Account withdrawal penalty of 20%
- Phase out of Medicare D doughnut hole continues

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Health Care Reform Timeline
Beginning 2012

All Plans Must:

- Raise annual limit on essential health benefits to no less than $1.25 million
- Report cost of 2011 coverage on W-2 forms
- Give 60 days' notice of material modifications
- Provide annual summary of benefits to applicants and participants
- Pay $1 per participant to fund comparative effectiveness research

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Health Care Reform Timeline:
Beginning 2013

All Plans Must:

- Raise minimum annual limit to $2 million on essential health benefits
- Cap Health FSA Contributions at $2500

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Health Care Reform Timeline
2013 Continued

System Financing Changes:

- New rules for tax treatment of Medicare Part D subsidy for employers
- Medicare payroll tax increased for high wage employees (over $200,000 single/$250,000 joint filers)
- Medicare tax applied to unearned income (dividends, sale of stock, etc) of the wealthiest taxpayers (over $200,000 single/$250,000 joint filers)

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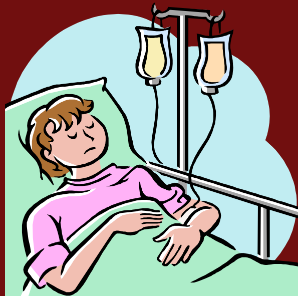
Health Care Reform Timeline
Beginning 2014



No Plan Can:

- Exclude anyone for a pre-existing condition
- Impose a coverage waiting period of more than 90 days
- Impose an annual dollar limit on essential health benefits

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Health Care Reform Timeline
Beginning 2014

Non-Grandfathered Plans Must:

- Limit out-of-pocket maximums to same amounts set for High Deductible Health Plans
- Allow payment for clinical trial services
- Provide payment for all providers acting within the scope of their license (can't limit payments to MDs and not Chiropractors for example)

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Health Care Reform Timeline
2014 Continued

Other System Changes:

- Individuals must have health coverage or pay a penalty
  - Premium and cost-sharing subsidies for low and middle income individuals available
- Health Insurance Exchanges operational
- Medicaid eligibility expanded
- Maximum tax credits for Small Businesses (<25 FTEs) that pay ½ of cost of health coverage increase to 50%
- Individual insurance market reforms: guaranteed issue, premium rating restrictions, waiting period limits, no annual dollar limits, etc.

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Health Care Reform Timeline
2016 & 2018

Other System Changes:

- 2016 -- Sale of health insurance allowed across state lines
- 2018 – Excise tax on high-cost health plans assessed

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Implications for Collectively Bargained Plans

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Changes to Collectively Bargained Health Plans

- No changes required to plans before 1/1/11
- Effective 1/1/11, plans must cover children to age 26, eliminate lifetime maximums, begin to phase out annual maximums and impose new rules for health care FSAs and HSAs.
- More changes required in later years.
- Changes can be bargained or implemented unilaterally

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Implications for Bargaining Under the NLRA

- Health benefits a mandatory subject of bargaining (except retiree benefits)
- Union can demand to bargain over implementation of reforms, but may have to consider trade offs
- If in reopener, union and management cannot agree, employer must implement changes required by law anyway
- Union can allow employer to implement changes, but must consider the consequence of giving up bargaining rights

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Implications for Bargaining Under RLA Contracts

- If contract is **closed**, and there is no health care re-opener clause, bargaining over these changes takes place only by mutual agreement
- If bargaining does not take place, or agreement is not reached, employer must unilaterally implement the required changes; remainder of contract stays in place (severability)
- If contract is **open** for negotiations pursuant to Section 6 of the RLA, either the union or the employer can propose changes to the contract on any topic, including health care
- Even if agreement is not reached, employer must unilaterally implement the required changes

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Implications for Bargaining in the Public Sector

- All provisions of the new law apply to public sector health plans
- Implications for collective bargaining depends on the statute governing each unit
- Does union have statutory right to bargain over health care?
- Employer must implement changes whether bargained or not

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Get Information from Employer

Whether or Not You Plan to Bargain:

- Ask employer and/or plan administrator about their plans for implementation (including intention regarding grandfather status)
- Verify the changes they plan to make are required by law; no additional changes
- Determine whether plan is insured or self-insured
- Determine whether dental and vision plans are integrated with medical plan

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Check Contract for Pertinent Clauses

- Any contract clauses or sections relating to health care
- Reopeners
- “Me too” clause
- Past Practice
- Management Rights
- Joint health care committees
- Benefit terms
- Savings/Severability Clause
- Letters of Understanding

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Preparing to Bargain over Implementation of Reform

- The law requires that the provisions of health care reform must be implemented by the employer
- The union is not obligated to reopen the contract in order to implement health care reform provisions
- So, determine whether you want to negotiate over implementation
- If so, request to negotiate over implementation
- Prepare a data request

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Anticipate Management Resistance to New Benefit Costs

Some Reforms May Increase Costs

- Coverage of children through age 26 – estimated 0.7% increase
- Elimination of lifetime and annual limits
- Change in tax treatment of Medicare RDS
- Excise tax on high value health plans

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Be Aware of Reforms that May Ease Plan Costs

- Retiree reinsurance which reimburse employers for some retiree health expenses
- Improved Medicare preventive care coverage
- Small business tax credits which reduce the net cost of coverage
- Improved Medicare Part D may offer cost effective alternative to retiree drug plan
- Health Insurance Exchanges may be viable, cost effective options for smaller employers

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Grandfathering Creates New Dynamic for Bargaining

- Negotiated plans will be grandfathered, so some reform requirements do not apply
- Employers may consider benefits of grandfathering vs costs of more changes
- Some employers may not see a reason to remain grandfathered – consequences may not be severe, for example:
  - 100% coverage of preventive services
  - Internal and external appeals process
  - Access to any ER regardless of network
- Employer may want to shift cost of new provisions (whether grandfathered or not) to other parts of the contract

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Conclusion

This presentation is focused on how reform affects self-insured plans. Different rules may apply for insured plans.

Summary

- Lots of changes from reform; some will affect our plans
- No change to collectively bargained plans until 1/1/11
- Choice to be made whether to bargain or to allow management to impose changes
- Grandfathering could be a leverage point in bargaining – depends on employer and plan
- In any event, get information to monitor management implementation plans

Resources for Bargainers

- Materials to be developed by CWA:
  - Sample letter requesting bargaining
  - Sample data request
  - Tip sheet for bargainers

- CWA will post materials and powerpoint on website:
  - www.cwa-union.org/healthcare

  Valuable information from the Federal Government:
  - www.healthcare.gov

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Questions & Comments

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