By David Leo, President of WMI® Mutual Insurance Company & WMI TPA®

Hold On to Your Hat ...

Early in July 2013, while Congress was out on a brief recess, the Obama administration surprisingly announced it would delay the "play or pay" employer mandate of the Affordable Care Act (ACA or Obamacare) for one year in order to give large employers more time to understand and adjust to the law, and to give regulators more time to implement it. While this is great news for large employers, I would caution that they not pop the corks on the champagne bottles just yet. The Obama administration didn't eliminate the employer mandate altogether, they merely postponed the inevitable for an additional 365 days.

The large employer sector, which is defined as employers that employed an average of at least 50 "full-time employees" on business days during the preceding calendar year, welcomed the employer mandate postponement with great enthusiasm. However, the delay was strongly criticized by individuals, small employers, and even labor unions, all who are still subject to the law and its January 1, 2014 implementation date. The preferential reprieve was also uniformly denounced by Republicans in the House of Representatives, who cried foul and promptly voted to delay the individual mandate as well.

In addition to questions surrounding the fairness of the employer mandate delay, there are also questions as to whether the Executive Branch of government has the legal authority to *sua sponte* delay an integral part of a law passed by Congress and signed by the President. Legalities aside, there is no question the delay will have a tremendous impact on employee access to health insurance, and an even greater and more direct financial impact on the implementation of Obamacare.

The non-partisan Congressional Budget Office (CBO) recently estimated the one-year employer mandate delay will cost the federal government $12 billion ($10 billion in lost penalty revenue, and $2 billion in additional premium subsidies for the one million individuals who otherwise would have gotten their insurance from their employers in 2014). While I'm happy for large employers that they have been granted a one-year reprieve of the most onerous component of Obamacare for them, it's hard for me to see the justification for not extending this same stay of execution to small employers and individuals who are at least as financially strapped, and even more befuddled by the ACA. Either the law is ready for implementation or it is not, and I believe the Administration's decision to delay such a critical component of the law is resounding evidence it is not.

So what is the status of the ACA for individuals and small employers, and what does it mean for them as the January 1, 2014 deadline approaches? Well, in short, those folks should hold on to their hat, because things are going to get quite a bit more regulated (and quite a bit more expensive). Here are a few things they should know as we approach D-day:

- **Individuals** are required to carry "minimum essential" health insurance coverage or pay a tax equal to the greater of 1% of household income or $95 per person ($47.50 for children age 18 or younger) up to three persons. I'm sure we can all do simple math, but for those of you keeping score at home, if you are married with one child under age 18, and you earn $50,000 per year (after exemptions and standard deductions), you are required to carry qualifying insurance coverage or pay a penalty of $500 (since 1% of your income is greater than $237.50). Oh, and by the way, this percentage increases to 2% in 2015, and 2.5% in 2016, so in 2016, the penalty would increase to $1,250!
- **Small Business Health Options Program (SHOP)** Exchanges will be up and running. These insurance marketplaces will enable individuals and employees of small employers (which in this case is expanded to include employers with up to 100 full-time employees) to purchase qualifying insurance and receive premium subsidies if they qualify. Eligibility for the subsidies is based and calculated on adjusted gross income (AGI), and the subsidies phase out as an individual earns more money.
- **Non-grandfathered individuals** will be transitioned into a qualifying bronze, silver, gold or platinum "metal" plan with limited cost sharing and government-mandated "essential benefits." They will also be moved to a modified community rate where they will be charged a premium amount that is entirely independent of their health status and risk. For most individuals, these changes will mean they will see an increase in their premiums; however, higher-cost individuals will see a reduction in premium.
- **Non-grandfathered small employers** will be transitioned into a qualifying metal plan, will be moved

... and Your Wallet!

into a community rated pool, and will be moved to a modified composite rate for all employees. In other words, these employers will be moved to a new insurance policy with different benefits (which in some cases will be richer benefits, but in most cases, will be inferior benefits); they will all pay the same premium amounts (with adjustments for coverage type (*e.g.*, single vs. family), geography and tobacco use); and the rate for oldest employees will be 300% of the rate of the youngest employees. Again, this is bad news for younger employees and healthier groups that have historically had lower premium rates, and it is good news for older individuals and less healthy groups that have had higher premiums.

- **The following taxes and fees** will apply in 2014 and will presumably be passed on to small employers and individuals: (1) Transitional reinsurance fee of $63 per covered person (note: per covered person means per covered employee, spouse and child (*i.e.*, per bellybutton), not just per employee); (2) Patient-Centered Outcomes Research Institute (PCORI) fee of $2 per covered person; (3) Annual fee on health insurers of an undetermined amount but which will generate a combined amount of $8 billion; and (4) Risk Adjustment Program fee of an unknown amount that will shift profit from profitable insurers to unprofitable insurers.

Regardless of your political persuasion and whether you support or oppose the Affordable Care Act, it's hard to argue the costs for most individuals and for most employer groups won't be higher in 2014. For many, this is a necessary evil whose time has come. For others, it's excessive government intervention and the intrusive introduction of socialism into the health care system. I'll leave it to you to decide whether the ACA is a good thing or a bad thing, but before I close, I'd like to note a couple observations I've made over the past month that I find both interesting and troubling:

- In Contra Costa County California, 7,000 individuals applied for about 200 jobs in an Obamacare call center. After all the hiring had been done, about half of the lucky applicants who were offered a job were disappointed to learn their positions would be part-time … with no health benefits.

- Detroit, Michigan recently entered bankruptcy proceedings. In an effort to reduce its $5.7 billion outstanding retiree health care costs, the city is considering sending the retirees who are too young to qualify for Medicare to the Obamacare marketplace for their health insurance coverage. Such an enormous influx of subsidized participants would dramatically overload the system and unduly burden the Obamacare Exchanges. This legitimate, albeit devious, strategy could also create a disturbing template for other bankrupt cities like Stockton, California, and cash-strapped cities like Chicago, Illinois.

- Historically, many early retirees have struggled to find affordable health insurance while waiting for Medicare to kick in at age 65. Likewise, many companies and regulatory entities have offered their retirees health insurance for life. With the implementation of the Obamacare Exchanges, where premiums of older individuals are limited to 300% of the youngest rate, and younger individuals subsidize the costs of older individuals, many of these older individuals (and the companies and regulatory entities that carry their benefits) are tempted to transition to the Obamacare Exchanges where they can obtain qualified health insurance, premium tax credits, cost-sharing subsidies, and subsidized premium rates. In many (if not most) cases, those older individuals are not the young and healthy individuals envisioned by the Obamacare architects when they developed the Exchange marketplaces and calculated premiums and subsidy estimates. As a result, unless the Exchanges attract younger and healthier individuals, it won't be long before they enter into the dreaded insurance death spiral where costs skyrocket, healthy individuals flee, and the system collapses.

I hope my comments in this article have not been misconstrued as opposing the President's effort to provide affordable health care to everyone. It's hard (and foolish) to argue against something so noble and right. That said, I do hope my ranting has exposed serious doubts as to whether the ACA is a good law, whether it will work as promised, and whether it will be a good thing for individuals, families, employers, and the country. After years of working with the ACA, I can honestly say I don't believe it is. I don't accept the assumptions upon which the ACA was predicated or upon which it is currently being touted, and while I hope my assessment is wrong, I'm quite certain it's not. I guess only time will tell.

As Always ...

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