

Small Businesses and the Federal Health Law

The Affordable Care Act (ACA)¹ contains several provisions that directly impact small businesses. Many of the provisions – including the creation of health insurance exchanges and the availability of a small employer tax credit – aim to provide more affordable coverage options for small employers. The law also creates market-wide reforms on small group plans and places new administrative requirements on employers.

Health Insurance Exchanges and Coverage Expansions

In 2014, some states will operate new health insurance marketplaces, known as “exchanges” and other states will send their residents to a new federal exchange to shop for health coverage. Colorado will have an exchange for individuals, families and small employers that will open in October 2013. Employers with up to 50 full-time equivalent workers will be able to use the Small Business Health Options Program (SHOP), the component of Colorado’s Exchange that serves employers. Starting in 2016, Colorado’s exchange will serve employers with up to 100 full-time equivalent employees

The ACA also aims to improve access to coverage by providing subsidies for exchange enrollees and expanding Medicaid. Specifically, the law provides sliding scale tax credits for individuals with incomes between 100 and 400 percent of the federal poverty level (FPL) to limit premium spending as a percent of income. Employees who are offered coverage by an employer are not eligible for premium tax credits unless the employee’s share of the premium for single coverage exceeds 9.5 percent of their income. To further expand coverage among low-income individuals, states also have the option to expand Medicaid to 133 percent FPL.

Employer Penalty

There is no requirement that small businesses (with 49 or fewer full-time equivalent employees) offer health insurance. Beginning in 2014, the ACA imposes a penalty on employers with 50 or more employees that do not offer coverage and have at least one full-time employee² receiving a tax credit subsidy to purchase coverage through the Individual Exchange.

- For employers with 50 or more combined full-time and full-time equivalent employees who do not offer coverage and have at least one full-time employee receiving a tax credit subsidy, the fee will be \$2,000 per full-time employee. For purposes of calculating this penalty, the number of full-time employees will be reduced by 30.
- For employers with 50 or more combined full-time and full-time equivalent employees who offer coverage but that coverage is not affordable under ACA rules and have at least one full-time employee receiving a tax credit subsidy, the fee will be the lesser of \$3,000 per employee receiving a tax credit subsidy or \$2,000 per full-time employee.
- Part-time employees are included in the calculation under a special prorated formula to determine the number of full-time equivalent employees.

Small Employer Health Insurance Tax Credit

The ACA includes a sliding scale tax credit to small employers to provide financial incentives for employers to begin or continue to offer health insurance to employees. Eligible employers include those with fewer than 25 full-time employees or a combination of full-time and part-time employees and average annual wages below \$50,000³ who offer coverage and contribute at least 50 percent of the cost of their employees’ health insurance coverage, beginning in 2010.

- For years 2010-2013, employers could receive a credit of up to 35 percent of their premium contribution. For non-profit employers, the maximum credit through 2013 is 25 percent of the employer’s contribution.
- For years 2014 and beyond, employers will be eligible, for two consecutive years, for credits of up to 50 percent of their premium contribution to purchase coverage in the Exchange.
- Maximum credit is given to employers of 10 or fewer employees and average annual wages less than \$25,000.

1 The Affordable Care Act is the combination of the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 (HCERA), P.L. 111-152, enacted on March 30, 2010.

2 For purposes of the employer mandate, the ACA defines full-time employees as those who work an average of at least 30 hours per week.

3 Beginning in 2014, dollar amounts are increased by the Consumer Price Index (CPI).

Revisions to HSA/FSA Deductions

The ACA also makes modifications to health savings accounts (HSAs) and flexible spending accounts (FSAs).

- Increases the additional tax for HSA withdrawals prior to age 65 that are used for purposes other than qualified medical expenses from 10 percent to 20 percent;
- Eliminates reimbursement for over-the-counter medications from HSAs, FSAs or HRAs; and
- Limits tax-deductible contributions to health flexible spending arrangements to \$2,500 per employee.

Insurance Market Reforms

The ACA institutes significant insurance reforms that will affect the small group market.

- Beginning in 2014, all health insurance plans must guarantee the availability and renewal of coverage regardless of health status.
- Plans will be prohibited from imposing exclusions for pre-existing conditions (effective in 2010 for children under 19 and in 2014 for adults).
- In addition, group plans will be prohibited from placing annual limits on the dollar value of coverage. The prohibition on lifetime limits on the dollar value of coverage went into effect in 2010.
- In 2014, small group plans will have to meet essential health benefit (EHB) requirements⁴, as well as limit deductibles (\$2,000 for individuals and \$4,000 for families), and meet cost-sharing requirements. In addition, plans must cover certain preventive services⁵ with no cost-sharing (effective in 2010).
- Plans will be able to vary premiums based only on geography, family composition, age and tobacco use.
- In 2014, plans offering coverage must meet one of the following actuarial value thresholds: Bronze (60%); Silver (70%); Gold (80%); and Platinum (90%).
- Effective in 2010, small group insurers must spend at least 80 percent of premium dollars on claims and activities to improve health care quality.

Reporting Requirements

Employers face new reporting requirements under the ACA. For instance, employers must report the aggregate value of medical benefits, dental, vision, and supplemental insurance coverage beginning with each employee's 2012 Form W-2. Until further guidance is issued, an employer is not subject to the reporting requirement in 2012 if the employer was required to file fewer than 250 Forms W-2 for the 2011 calendar year.⁶ Employers will be required to provide written notice informing employees about the state's Exchange by a date that is yet to be determined by the federal government. This includes a description of how the employee may contact the Exchange for assistance.

Wellness Programs and Grants

The ACA creates incentives for employers to implement wellness programs. For instance, the law expands the Health Insurance Portability and Accountability Act (HIPAA) by permitting employers to vary insurance premiums by as much as 30 percent (up from 20 percent under HIPAA) for employee participation in certain health promotion and disease prevention programs. In addition, small employers are eligible for wellness grants to develop workplace wellness programs.

The Colorado Health Benefit Exchange will become Connect for Health Colorado this spring to better serve Coloradans. As Connect for Health Colorado, we will launch a new health insurance marketplace and support network in October that will allow individuals, families and small employers to compare and purchase health plans from the major providers in the state in a convenient way. We will provide high quality customer assistance by phone and in person, as well as access to new financial assistance to reduce costs. Learn more at www.getcoveredco.org.



4 EHB categories include: Ambulatory patient services; Emergency services; hospitalization; mental health and substance abuse services; rehabilitative and habilitative services and devices; prescription drugs; laboratory services; preventive and wellness services and chronic disease management; maternity and newborn care; and pediatric services (including oral and vision care).

5 Services include those with a USPSTF A or B rating; immunizations recommended by ACIP, and children's services in the HRSA guidelines.

6 Internal Revenue Service, Notice 2011-28. Interim Guidance on Informational Reporting to Employees of the Cost of their Group Health Insurance Coverage. <http://www.irs.gov/pub/irs-drop/n-11-28.pdf>.