

## NPP

## PATIENT PROTECTION AND AFFORDABLE CARE ACT: UPCOMING DEADLINES REQUIRE EMPLOYER ACTION

After months of anticipation and seemingly endless public debate, the U.S. Supreme Court announced its decision upholding the key individual mandate provision of the Patient Protection and Affordable Care Act (PPACA). While the significance of the decision cannot be overestimated, the real import is its practical effect on employers.

Although many compliance deadlines are almost a year and a half away, these are no ordinary changes in law. Employers who waited to act until the decision was announced should be scrambling to meet compliance deadlines, some of which have already passed. The following is a brief outline touching upon the most important issues for employers over the next 18 months, including a year-by-year summary of some of the more significant impending changes ushered in by PPACA.

### The Not-So-Calm before the Individual Mandate Storm

As enacted, the hallmark of PPACA is the “employer shared responsibility excise tax,” which will require employers with 50 or more employees to provide health insurance that meets certain affordability requirements beginning Jan. 1, 2014, or else pay a per-employee penalty. This employer mandate is meant to increase the availability of health insurance for the American public, thereby making it easier to comply with the individual mandate. At this point, the government agencies charged with implementation, mainly the Internal Revenue Service and the Department of Labor, have issued little guidance for employers and practitioners.

However, while this excise tax may be at the forefront of their minds, employers must be vigilant to keep up with even more pressing deadlines. They should have implemented systems to report the cost of employer-sponsored health insurance coverage on employee 2012 W-2's due in early 2013. In addition, employers with insured and self-insured

non-grandfathered group health plans already should have confirmed that their internal and external claims and appeal processes comply with new requirements added by PPACA. Beyond that, beginning in September 2012 employers with self-insured plans must prepare a new summary of benefits and coverage that complies with new reporting requirements to participants and beneficiaries. To date, the Department of Labor has provided ample guidance regarding these requirements, giving employers no excuse but to implement the changes immediately.

In 2013, employers must comply with a number of changes in law. These changes include a 0.9 percent increase in the FICA tax for employees earning more than \$200,000; fees imposed on self-insured health plan sponsors; loss of deductions for retiree prescription drug expenses; required amendments to cafeteria plans with Flexible Spending Arrangements; and notice requirements related to state health insurance exchanges. As more guidance is finalized and released by the implementing agencies, employers will gain a much better grasp of exactly what is required of them.

## Getting to 2014

Whether PPACA survives into 2014 in its current form depends primarily on which party is in power after the 2012 election. There are a number of likely scenarios. If President Obama wins reelection and the Democrats retain control of the Senate, then PPACA likely will be implemented as drafted, and regulations will continue to be promulgated. If the President is reelected but the Republicans gain control of the Senate, PPACA's fate will depend on the extent of the Republicans' majority. It would require 60 votes to repeal the act. President Obama is likely to veto the repeal, so the Republicans would need 67 votes to overturn the veto. However, even with less than 60 votes, the Senate can affect the legislation with budget reconciliation bills. The Senate could pass legislation affecting the funding of PPACA implementation with a simple majority.

On the other hand, even if Republican candidate Mitt Romney is elected, he and Congress still would need 60 votes in order to repeal the PPACA. Without that, the Republican president could use his executive order power, but it is unclear to what extent that power could affect enacted legislation. With control of the executive branch, however, the Republican president could stall implementation and create large loopholes by means of regulation. However, this would open the president to legal challenges that the legislation was not being implemented as enacted.

## Next Steps

Going forward, employers must be mindful of the changes that already have gone into effect as a result of PPACA. And, in the coming months, employers must keep up with volumes of guidance issued by the implementing agencies and begin to tailor their operations with an eye toward future compliance.

The bottom line is that very soon, employers will have to make difficult decisions that balance the costs and tax benefits of providing health insurance for employees with the costs and burdens of paying newly implemented penalties for failing to provide insurance. But by considering these issues early and in conjunction with PPACA's other changes in law, employers will be better able to find tailored solutions to these complex problems.

Selected Highlights of PPACA Issues and Deadlines

Deadline	Issue	Brief Description
<b>2012 Form W-2</b>	Reporting cost of coverage	Beginning with the 2012 year, employers will be required to report the cost of employer-sponsored health insurance coverage on each employee's Form W-2. The IRS has provided guidance.
<b>2012</b>	Internal claims and appeal processes (non-grandfathered plans)	Employers must incorporate the internal claims and appeals processes set forth in new regulations and update such processes in accordance with standards established by the Department of Labor.
<b>Aug. 1, 2012</b>	Medical loss ratio rebates	Employers must create systems and procedures for handling rebates paid when a health plan's medical loss ratio – that is, the percentage of premium dollars used to improve health care quality – does not meet minimum standards.
<b>Sept. 23, 2012</b>	Summary of benefits & coverage (SBC)	Self-insured plans and insurance providers will be required to provide a detailed summary of benefits and coverage to employees. Extensive regulations regarding the new SBC rules, including sample notices, can be found here.
<b>Jan. 1, 2013</b>	FICA tax increase on employees	Employers must account for a 0.9 percent increase in FICA tax through withholding for those employees earning more than \$200,000 (or \$250,000 on a joint return).
<b>Jan. 1, 2013</b>	Notice of exchange option	Employers will be required to notify employees of the availability of health insurance available through state-run exchanges as an alternative to any insurance provided by employers. Guidance is expected in the near future regarding the specific requirements of such notice.

<p><b>July 31, 2013</b></p>	<p>Imposition of research fees</p>	<p>Self-insured health plan sponsors and insurance providers will be required to pay fees to fund research related to comparative clinical effectiveness studies.</p>
<p><b>Jan. 1, 2014</b></p>	<p>Employer shared responsibility excise tax</p>	<p>Beginning in 2014, employers with more than 49 employees will be required to provide health insurance that meets certain affordability and coverage requirements or else to pay a per-employee penalty. Penalties are scheduled to range between \$2,000 and \$3,000, depending on whether the employee is exchange-eligible. The IRS is expected to provide guidance in the near future.</p>

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