



3560 East Nine Mile Rd.
Warren, MI 48091
586-759-2140

Joint Labor Management Committee

Working Together to Build the Best Roofs



News Update

August 5, 2011

The Patient Reform and Affordable Care Program's Impact on Contractors

When Senator Pelosi told fellow legislators they would have to pass the bill to learn what's in it she was unknowingly framing the PPACA's future. Contractors will not know how PPACA impacts them until guidance interpretations become available during phase in.

Multi-employer contribution plans, *insurance plans jointly managed by unions and employers*, are not exempt from the Act. Recently there has been much discussion about "waivers" granted to unions and some large employers like McDonalds. Prior to passage of the PPACA, insurance companies could place limits on what they would be willing to pay for a person's health care per year. The Act's limit phase-out started this year, with new rules saying that all insurance plans must offer at least \$750,000 in pay-outs per year. The number goes up every year so that by 2014 no limit at all will be allowed. The waivers that have been granted are specifically to delay this portion of the Act until low wage workers, those typically with low limit insurance, can purchase insurance through state exchanges and receive tax credits.

Both multi-employer contribution plans and non-union healthcare plans can be grandfathered. This section of the bill is what allows President Obama to state that if you like your current plan you can keep it. Well sort of. Grandfathered health plans are basically defined as health plans that were offered on or before March 23, 2010 and have not had a material change. It may be too late to have your plan grandfathered if any of these fatal plan changes were made after September 23, 2010.

- Elimination of all or substantially all benefits to diagnose or treat a particular condition.
- Increase in the "percentage" cost sharing requirement.
- Increase in a fixed amount cost sharing (other than copays). The Rule is referring to an increase in a deductible or out of pocket limit, generally, subject to a permissible increase (*medical inflation based on the medical component of the Consumer Price Index plus 15%*).
- Increase in the fixed amount of any copay (e.g. \$30.00 per office visit) if it exceeds the greater of medical inflation plus \$5.00. The Rule's example would permit and increase in office visit copays from \$30 to \$40, based on the medical inflation definition described in the Rule.
- Decrease in the employer contribution toward the cost of the plan by more than 5% below its contribution rate on March 23, 2010.
- Decrease in the employer contribution in excess of 5% where the contribution is based on a formula such as \$3.50 per hour worked, or commission benchmarks.
- Any addition of an annual overall limit by dollar value for the plan itself, where the plan has no annual limit.
- A decrease in the dollar value of an annual plan limit, whether there is a lifetime limit or not.
- A decrease in the dollar value of an annual overall limit that is lower than the lifetime limit.

PPACA includes the following requirements, penalties and benefits for employers:

- Employers with more than 200 full time employees must automatically enroll new full-time employees in coverage.
- Assess employers with 50 or more full-time employees that do not offer coverage and have at least one full-time employee who receives a premium tax credit a fee of \$2,000 per full-time employee, excluding the first 30 employees from the assessment.
- Employers with 50 or more full-time employees that offer coverage but have at least one full-time employee receiving a premium tax credit, will pay the lesser of \$3,000 for each employee receiving a premium credit or \$2,000 for each full-time employee, excluding the first 30 employees from the assessment. (*Effective January 1, 2014*)



Local 149

1640 Porter Street
Detroit, MI 48232
313-961-6093

(Continued on next page)



Uncertainty

Employer costs for PPACA are the culmination of many factors:

- What coverage an employee opts for.
- Employee contributions as a percentage of pay.
- The size of the contractor based on full time employees.
- The cost of government mandated changes that will impact "grandfathered" policies.
- The cost of mandates like this:
- Section 7(r)(1) is added to the FLSA which requires employers to allow a place "other than a bathroom, that is shielded from view and free from intrusion" for unpaid break times for nursing mothers to express breast milk, for one year after the child's birth.
- Ongoing administrative interpretations and mandates as the Act is phased in.
- The "paperwork" burden of monitoring and managing compliance including IRS reporting requirements.

As a group of policy wonks stated:- *existing and future federal/state mandated benefits will likely be unaffordable.*

- Exempt employers with up to 50 full-time employees from any of the above penalties
- When the President signed legislation voiding parts of the Act's W2 reporting requirement **vouchers** for low wage employees were also eliminated which is a positive event for multi-employer plans. Unions had feared that vouchers would have encouraged younger employees to opt out of the higher cost multi-employer contribution plans in favor of lower cost state exchanges.
- Provide small employers with no more than 25 employees and average annual wages of less than \$50,000 that purchase health insurance for employees with a tax credit.
- **Phase I:** For tax years 2010 through 2013, provide a tax credit of up to 35% of the employer's contribution toward the employee's health insurance premium if the employer contributes at least 50% of the total premium cost or 50% of a benchmark premium. The full credit will be available to employers with 10 or fewer employees and average annual wages of less than \$25,000. The credit phases-out as firm size and average wage increases.
- **Phase II:** For tax years 2014 and later, for eligible small businesses that purchase coverage through the state Exchange, provide a tax credit of up to 50% of the employer's contribution toward the employee's health insurance premium if the employer contributes at least 50% of the total premium cost. The credit will be available for two years. The full credit will be available to employers with 10 or fewer employees and average annual wages of less than \$25,000. The credit phases-out as firm size and average wage increase.

How PPACA's obligations and penalties will be managed for multi-employer contribution plans that lose their grandfather status has not been fully disclosed. This should be reason for contractors to pause and wonder how they should address health care reform in upcoming negotiations that extend beyond January 1, 2014. For example:

- What will happen if employees decide to opt out of the fund and get into an exchange?
- Who will be responsible for payment of penalties?
- What if the fund does not meet the definition of a "qualified health plan"?
- What impact will grandfathering have on coverage obligations and **contribution cost**?
- What if the new rules will render the fund unsustainable and it ceases to exist mid-contract?

There are not really answers to these questions yet. There are just too many variables that are not yet defined. An attorney written article suggested a "mid-term re-opener" in the collective bargaining agreement that allows the employer, at its option, to reopen the agreement and bargain to address these issues once regulations are finally issued.

Another issue for both union and non-union contractors is part-time workers. All hours for part time workers will be added and divided by 120 hours per month to determine how many "equivalent full time" positions exist. Although there is no penalty per-se for part time employees part time hours could alter the contractor's "small" employer status and subsequently applicable regulations and costs. As many contractors are prone to large workforce changes part time hours are a potential problem.

To further complicate compliance 27 States are fighting PPACA on grounds that it is unconstitutional. Florida has stopped the enactment of all PPACA mandates. At issue is that PPACA mandates individual coverage. The Supreme Court has previously ruled that under the Commerce Clause the Federal Government has authority to regulate, prohibit and tax but not mandate that individuals have to purchase a product from a private industry based on citizenship. If allowed to stand PPACA could open the door for future legislation that mandates other purchases. Secondly States believe unfunded mandates included in PPACA are illegal. The Supreme Court in April stated that it will not fast track PPACA legal issues but would wait out the process. This means the Court will most likely not hear the case until 2012.

In a March meeting in Washington, regulators and policymakers from several key agencies and associations sat down to discuss critical issues. Among the comments released - *existing and future federal/state mandated benefits will likely be unaffordable.*

At this time the financial impact of PPACA on contractors can not be fully determined. If the Act survives a Supreme Court decision we can expect legal challenges on many of the Act's mandates. Unless repealed look for many years of confusion and unpredictable cost.