Legally Speaking
Special Edition

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Paying for the Patient Protection and Affordable Care Act

March 31, 2014, the final day (with limited exceptions) for open enrollment under the Affordable Care Act, has passed. It is estimated that over 7 Million people signed up for health insurance coverage through the Federal and State Insurance Marketplaces. While that 7 Million figure is good news for the Obama Administration, as well as insurance providers, we now turn to how we pay for it all. The Affordable Care Act will be paid largely through a series of fees on insurance providers (several of which are expected to be passed on to consumers), and in time for Tax Day, a combination of expiring tax breaks and new taxes. Let's take a closer look:

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Fees Under The Affordable Care Act

Patient Centered Outcomes Research Institute (PCORI) Fee

What does it do?
It raises funds for the PCORI, which funds research that evaluates and compares health outcomes, clinical effectiveness, risks and benefits of medical treatment and service, with the ultimate goal of enabling people to make more informed health care decisions.

How much does it cost?
Year 1 (Health Plan Years ending between 9/30/12 - 9/30/13) - $1/covered life per year.
Year 2 (Health Plan Years ending between 10/1/13 - 9/30/14) - $2/covered life per year.
Years 3 through 2019- Indexed to increase by the projected per capita amount of national health care expenditures as determined by the Treasury Secretary.

For how long?
Through 2019.

Health Insurance Provider Fee

What does it do?
Intended to help fund the subsidies that will enable lower income individuals and families to obtain health insurance through the healthcare exchanges.

How much does it cost?
2-3% of Health Insurance Carrier Premiums, with the goal of raising the following amounts:
2014 - $8 Billion
2015 - $11.3 Billion
2016 - $11.3 Billion
2017 - $13.9 Billion
2018 - $14.3 Billion
2019 and beyond - The previous year's amount, increased by the same rate of annualized premium growth.

For how long?
Permanent.

Transitional Reinsurance Program Assessment Fee

What does it do?
Collects funds to stabilize premiums where risk of adverse selection (those with the greatest need for insurance, and thus highest cost to cover, are most likely to seek coverage, and the least profitable members to cover) is greatest. In other words, it is expected that many of the new enrollees in health insurance coverage will likely be higher cost and higher risk patients than previously covered patients (due in part to the elimination of pre-existing conditions/health history as a basis to deny coverage or charge higher premiums). In certain markets, these individuals will enroll in higher numbers, and this is intended to help stabilize premiums in those markets. The cost will be assessed to insurance companies for each member they cover. The Department of Health and Human Services will collect the funds and then disburse them accordingly.

How much does it cost?
The total amount to be collected is $25 Billion, spread out over three years as follows:
2014 - $12 Billion anticipated to be the equivalent of $5.25 per member, per month, or $63 annually)
2015 - $8 Billion
2016 - $5 Billion

For how long?
Through 2016.

Risk Adjustment Program

What does it do?
In order to understand Risk Adjustment, it is important to understand the concept of Risk Selection. Risk Selection is an insurer's desire to avoid enrolling individuals in poorer health or at higher risk, in order to avoid paying the higher costs associated with their medical care. This has become moredifficult to do with the elimination of pre-existing conditions or an individual's medical history being a basis to deny coverage, or charge higher premiums (sometimes effectively pricing these people out of the market). Still though, insurers could market their plans in certain ways to discourage certain high risk individuals from enrolling (not offering coverage for certain drugs, only offering low premium/high deductible plans that tend to be more attractive to healthier individuals). In order to help discourage, and offset, this behavior, each year the Department of Health and Human Services will determine the "average risk" of each state's insured individuals, and then the plans in states with relatively low average risk scores will pay fees to help offset the costs of states with higher average risk scores, aimed to help stabilize premiums and discourage Risk Selection.

How much does it cost?
To be determined.

For how long?
Permanent.

Risk Corridors Program

What does it do?
In an effort to prevent insurers from setting premiums too high in order to cover the uncertainty of any costs they may incur, there is a temporary Risk Corridor Program set up for 2014-2016. The goal is to require 80% of premium costs to be spent on actual health care expenses and expenses related to improving health care. (The remaining 20% can be allocated to other expenses, including overhead costs). Those that have costs that are less than 97% of the target amount (80% of premium costs) will pay the equivalent amount that they are under that threshold to plans that are greater than 103% of the target amount, to help stabilize their premiums.

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Similarly for individual and small group insurers, if they do not come within 3% of the target goal, (up to 85% in large group markets) they must refund the difference to their members. This is known as the **Medical Loss Ratio.**

How much does it cost?
Depends on the individual plan.

For how long?
Through 2016.

Healthcare.gov User Fee

What does it do?
Helps generate funds so that the oversight and operation of the Health Insurance Marketplaces, including Healthcare.gov, can become self-sustaining by 2015 and beyond.

How much does it cost?
Insurers must pay 3.5% of the monthly premium for each policy sold, as a user fee for the ability to sell plans on the Health Insurance Marketplaces.

For how long?
Indefinite.

Medical Device Tax

What does it do?
It is an excise tax on the sale of medical devices.

How much does it cost?
Medical device manufacturers must pay 2.3% of the sale price of medical devices sold after December 31, 2012.

For how long?
Permanent (although this has been the subject of intense debate as to whether or not it should be repealed).

Tax credits and deductions that expire in 2013

- ***Section 179 Expenses***: Section 179 of the Internal Revenue Code allowed business owners to take immediate deductions for purchases of business equipment, rather than depreciating it over time. That immediate deduction was $500,000, but has now been lowered to $25,000 for 2014.

- ***Bonus Depreciation***: On top of Section 179, bonus depreciation allowed business owners to immediately deduct an additional amount of 50% of the purchase price of business equipment, rather than depreciate it over time. This 50% has been lowered to 0% for 2014.

- ***Charitable IRA Contributions***: Individuals were allowed to make distributions, directly from their IRA to a qualified charity, and avoid paying any tax on the distribution. This had previously expired at the end of 2011, but was reinstated for 2013. It has since expired again, and is no longer an option in 2014.

- ***Wage Tax Credit for Hiring Reservists***: Businesses were encouraged to hire qualified military reservists, and were offered a tax credit for doing so. This expired in 2013.

- ***Work Opportunity Tax Credits***: Businesses were encouraged to hire individuals from certain targeted groups, that have traditionally faced certain barriers to employment (including ex-felons, food stamp recipients, and welfare recipients). This expired in 2013.

- ***Residential Energy Tax Credits***: Tax credits were available to individuals that made certain qualifying energy efficiency imporvements to their homes. This also expired in 2013.

- ***Accelerated Deduction for Real Property Placed in Service***: Another form of accelrated deduction for business owners using real property in their business has been reduced from $250,000 in 2013, to $0 in 2014.

- ***Research & Development Tax Credits***: Certain Research and Development expenses incurred by businesses were able to qualify for tax credit. This is one of the more scrutinized tax credits out there. It has expired numerous times in the past, and expired at the end 2013.

- ***Itemized Deduction of Sales Tax***: For inidviduals that itemize deductions on Schedule A of their personal tax returns, the ability to deduct sales tax paid, expired at the end of 2013.

NEW 2013 Taxes

Medicare Surtax and the Net Investment Income Tax

Who does it apply to?
Individuals with modified adjusted gross income (MAGI) in excess of:
$125,000 for Married Filing Separate
$200,000 for Single and Head of Household
$250,000 for Married Filing Joint

And

Net Investment Income

What is Net Investment Income?
The term Net Investment Income is broad, but generally includes, dividends, interest, annuities, royalties, rents and gains from the sale of property.

If an individual or couple does not exceed the MAGI thresholds, these taxes won't apply. If an individual or couple do not have Net Investment Income, these taxes won't apply.

However, if you meet BOTH thresholds, you will pay a new 3.8% tax on the Net Investment Income (hence the Net Investment Income Tax). In addition, you will also pay .9% on applicable income in excess of the threshold amounts, the Medicare Surtax.

Finally, other miscellaneous taxes and expiring tax breaks:

- 2.3% tax on medical device manufacturers (for devices sold after 12/31/12).

- 10% tax on indoor tanning services.

- Over the counter medicines no longer qualify for FSA, HSA and the like.

- FSA contributions reduced to $2,500 (from $5,000).

- Medical expense deduction raised from 7.5% floor, to 10%.

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