ObamaCare Mythbusters
with Atlanta Area Trends

Presented by:

Michael L. Schenk, Esq.
Benefits Compliance Consultant – East Area
Michelle Sullivan, CEBS
Senior Vice President

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Today's presenters

Michael L. Schenk, Esq.
Wells Fargo Insurance Services USA, Inc.
Benefits Compliance Consultant – East Area

Michael Schenk is a Benefits Compliance Consultant for the East Area of Wells Fargo Insurance Services USA, Inc. His responsibilities include assisting with the benefits compliance function in support of the Wells Fargo Insurance Services professionals in the Eastern half of the United States with respect to health care reform, ERISA, tax, and other legal compliance needs of their customers' health & welfare benefit plans.

Prior to joining Wells Fargo in June 2009, Michael worked for 12 years in the employee benefits practices of a large national law firm as well as a large Carolinas-based firm.

Michael has extensive experience relating to the design, drafting, compliance, and training support for all types of health & welfare, and fringe benefit plans, as well as tax-qualified and nonqualified retirement plan. He is a frequent public speaker on various employee benefits topics.

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Today's presenters

Michelle Sullivan, CEBS
Wells Fargo Insurance Services USA, Inc.
Senior Vice President – Atlanta, GA

Michelle H. Sullivan is a Senior Vice President and Practice Leader of Wells Fargo Insurance Services and has over 20 years experience in Employee Benefit planning.

Michelle specializes in working with larger privately held and publicly traded companies. Her primary focus is the design, negotiation, implementation and ongoing servicing of employee benefits programs. She has significant experience working with national accounts with more complex needs.

Michelle joined Wells Fargo after serving as Regional Vice President of an insurance carrier where she was responsible for sales, renewals and net profitability of the southeastern region, which was comprised of five states generating over one hundred fifty million dollars annually.

Michelle has a M.S. degree in Actuarial Science and Risk Management from Georgia State. She earned her CEBS designation from the Wharton School at the University of Pennsylvania and graduated cum laude with a B.A. degree in English from Clemson University.

She is a member of the Atlanta Association of Life Underwriters where she served on the board for several years. She is also a member of the International Foundation of Employee Benefit Plans. Michelle is active in charitable, civic, school and business associations and serves on the Board of Directors of the Atlanta Ballet and Skyland Trail.

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Federal mandates

- **Myth #1 – Grandfathered plans avoid many important federal mandates**
  - **Fact: There are numerous changes applicable to all group health plans regardless of grandfathered status**
    - No lifetime dollar limits on essential health benefits (2010/2011)
    - Phase-out of annual dollar limits on essential health benefits (2010/2011)
    - Phase-out of pre-existing condition limitations (2010/2011)
    - Prohibition on rescissions of coverage (2010/2011)
    - Extension of dependent coverage to adult children to age 26 (2010/2011)
    - Imposition of medical loss ratio requirements on insured plans (2011)
    - Uniform explanation of coverage distribution requirement (2013?)
    - Limitation on maximum service eligibility waiting periods (2014)
    - W-2 reporting of value of health coverage (2012 or 2013)
    - Limits on deductibles and out-of-pocket maximums (2014)

Federal mandates

- **Myth #1 – Grandfathered plans avoid many important federal mandates – cont'd**
  - **Fact: There are very few significant changes <u>avoided</u> by staying grandfathered**
    - Application of IRC §105(h)-like nondiscrimination rules to insured plans (2012?)
    - Provision of preventive care services without cost-sharing (2010/2011)
    - Application of revised appeals and external review procedures (2010/2011)
    - Application of new access to certain health care provider rules (2010/2011)
    - Plan quality reporting obligation (2012/2013?)
    - Clinical trial participation rights (2014)

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Federal mandates

- **Myth #2 – Nondiscrimination rules that apply now to self-insured plans, and will apply soon to non-grandfathered insured plans, prohibit all discrimination in benefits**
  - **Fact: Current rules allow limited discrimination (and anticipated rules are expected to as well)**
    - Plan should be allowed to exclude several group of employees from consideration
      - Less than 3 years of service
      - Under age 25
      - Part-time and seasonal
    - Of those remaining, the top 25% ranked by pay are HCIs and remaining 75% are non-HCIs
    - Need to get benefits to 40% of the non-HCIs
    - "Reverse" discrimination is expected to always be allowed

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Employer "play or pay" mandates

No minimum essential coverage for all full-time employees (and dependents) and at least one employee obtains subsidized exchange coverage

$2,000 annually ($166.67 per month) per total number of full-time employees
- Exclude first 30 FT Employees

Applicable large employer
- 50 or more full-time equivalent employees

$3,000 annually ($250 per month) per each full-time employee that receives premium tax credit / cost-sharing reduction from an exchange (but penalty capped at level as if no minimum essential coverage offered)

Offers some coverage but employee still obtains subsidized exchange coverage

Full-time employees
- "Full-time" is an employee who works on average 30 or more hours per week
- DOL, IRS, and HHS to issue final guidance (comments being solicited per IRS Notice 2011-36)
- No exception for seasonal employees if working 30 hours or more per week

Employees' eligibility for premium tax credit or cost-sharing reduction
- Income cannot exceed 400% of the Federal poverty level, **and**
- Employer does not offer:
  - "Minimum value" coverage that pays at least 60% of benefit costs), **AND**
  - Coverage that is "affordable" (employee premiums < 9.5% of employee's household income)

Minimum essential coverage

Includes (along with certain other programs) the following:
- An eligible employer-sponsored plan (a group health plan or group health insurance coverage offered by an employer that is a governmental plan or any other plan offered in a state's small or large group market)
- A grandfathered health plan

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Employer "play or pay"

- **Myth #3 – Employers can get out of being a "large" employer by splitting up into smaller entities with different EINs**

  - **Fact: Virtually all employee benefits legal rules require entities under "common control" to be viewed as a single employer**
    - Parent-subsidiary at 80% control
    - Brother-sister with 5 or less individuals owning 80%
    - Some ownership (e.g., employees/managers) is disregarded
    - Affiliated service group where one substantially serves another

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Employer "play or pay"

- **Myth #4 – Employers have to cover all full-time employees with medical coverage**
  - **Fact: The key consideration is whether an employer offers coverage to all full-time employees**
  - **Fact: Many employees will not impact an employer's cost in premium contributions or penalties:**
    - Work less than 30 hours per week and ineligible
    - Covered under spouse/parent plan
    - Covered under Medicaid (ACA expands eligibility)
    - Covered under Medicare/Tricare
    - Those electing no coverage, including Exchange coverage
      - Particularly if individual mandate penalty is low or waived

Employer "play or pay"

- **Myth #5 – ACA forces employers to offer more generous health benefits in 2014**
  - **Fact: ACA encourages employers to offer LESS rich benefits than most offer currently**
    - ACA only requires a 60% "actuarial value" plan to meet "minimum value" threshold
    - Virtually all plans are currently well above 60%
    - "Cadillac" tax in 2018 will result in tax penalties of 40% of excess of value of employer benefit offerings exceeding thresholds

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Employer "play or pay"

- **Myth #6 – ACA forces employers to contribute more towards health coverage premiums for all coverage tiers**
  - **Fact: To meet "affordable" coverage requirement, ACA only requires employer contributions towards the lowest cost plan premiums so that employee premiums are less than 9.5% of income for <u>self-only coverage</u>**
    - Most plans already meet this threshold, even for coverages well above 60% actuarial value
    - ACA does not require any employer premium contribution for tiers other than self-only

Employer "play or pay"

- **Myth #7 – It will be cheaper for many employers to not sponsor a plan and pay penalty rather than maintain a plan**
  - **Fact: For most employers, the net cost of potential employer premium subsidies for full-time employees for minimum value (60%), "affordable" (employee cost below 9.5% of income) self-only coverage is less than $2,000 – Example:**
    - Self-only coverage at $4,200 per year ($350/month)
    - Employee making $25,000 per year so premium must at or below $2,375
    - Employer subsidy is $1,825 ($1,186 net after 35% tax break for taxable employers)

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Employer "play or pay" mandates

Planning Tip – Manage staffing and work hours carefully

- Penalties are based on actual full-time ≥ 30 hours per week employees
- Minimize the number of full-time employees (but perhaps hire more part-time, seasonal, and/or use leased employees for certain functions)
- Start considering changes in staffing policies now?

Planning Tip – "Do the math" on dropping coverage; address strategy/philosophy/finance considerations for your business

- **"Affordable" coverage may be easier than you think**
- Current reasons for offering coverage will still apply, including overall competitive pressures to attract and retain best possible (and healthiest) workforce to maximize productivity
- **Identify the "sweet spot"** in terms of the level and allocation of employer subsidies to find optimal balance between tax subsidies available for employer-provided coverage and for new Exchange coverage
- Sample strategy: Offer "minimum value" plan that is "affordable" and then offer supplemental benefits that are "excepted benefits" to selected groups of employees to let them buy lower cost-sharing features

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Reform takes effect over several years

- **Benefit coverage changes**
  - Preventive Care at 100% in network
  - Dependents < age 26
  - No pre-ex < age 19
  - Prohibits rescissions except fraud
  - No lifetime limits/ annual limits on essential benefits
  - Patient protections
  - Grievance and appeals updates
- **Temporary high-risk pool**
- **Uniform MLR definition (NAIC)**
- **Federal rate review process**

- **Guaranteed issue**
- **Individual coverage mandate**
- **Individual subsidy**
- **State individual and small group exchanges operational**
- **Rating rule changes**
- **Insurer taxes**
- **Employer "Pay or Play" Mandate**

- **Essential health benefits**
- **Medicaid expansion**
- **90-Day maximum waiting period**
- **Auto-Enrollment**
- **Annual reporting of employee coverage**
- **Definition of full-time employees**
- **Wellness incentives**

2010 | **2011** | **2012** | **2013** | **2014** | **2015 – 2019**

- **Minimum MLR requirements**
- **Medicare Advantage plans begin to have payments frozen**
- **Medicare Advantage cost sharing limits effective**
- **Pharmaceutical fee**
- **Rate review implementation**

- **Patient Centered Outcomes Research fee**
- **MLR reporting goes "live"**
- **Administrative Simplification begins to phase in**
- **Uniform summary of coverage**

- **Medical Device fee**
- **Exchange coverage notice**
- **FSA Cap**
- **Tax deduction for Medicare Part D subsidy eliminated**

- **Increased penalties on individual mandate**
- **Increased insurer taxes**
- **States must allow groups with <100 employees into exchanges (2016)**
- **"Cadillac tax" (2018)**

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Benefit trends in Atlanta

Medical

- Adoption of "defined contribution" approach to providing medical coverage
- Implementation of high deductible health plans with a health savings account or a health reimbursement account
- Transition to self funding away from conventionally insured

Disability

- Employees shift from insuring 66.6% of income to 50% of income – allowing employees the option to purchase additional coverage themselves

Voluntary

- Continued focus on allowing employees to purchase "voluntary" products through payroll deduction
- Life, dependent life, critical illness

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Questions and answers

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