

# 22 QUESTIONS

## About the Affordable Care Act:

### What Colorado Businesses Need to Know

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#### **What is the Affordable Care Act? Who is impacted (small, large businesses and self-insured)?**

The Patient Protection and Affordable Care Act (PPACA) is a federal statute that was signed into law on March 23, 2010.

The law includes numerous health-related provisions to take effect over a four-year period, including expanding Medicaid eligibility, subsidizing insurance premiums, providing tax credits for businesses to provide health care benefits, prohibiting denial of coverage/claims based on pre-existing conditions, establishing health insurance exchanges, and support for medical research.

The Act includes several short- and long-term provisions designed to help small businesses pay for and maintain health insurance for their workers, and to allow workers without employer coverage to gain access to affordable, comprehensive health insurance.

Provisions include a small business tax credit to offset premium costs for firms that offer coverage, establishment of state-based insurance exchanges that promise to lower administrative costs and pool risk more broadly, and creation of new market rules and an essential benefit standard to protect small firms and their workers.

Also creates a temporary, reinsurance program to reimburse participating employment-based plans for part of the cost of providing health benefits to retirees ages 55 to 64 and their families. The insurance program will be eliminated in 2014, after the health insurance Exchanges have been established. To date, 16 Colorado companies, unions, state and local entities became eligible for early retiree subsidies.

The new law also establishes an employer responsibility requirement for employers with more than 50 full-time employees to offer health insurance coverage to full-time employees and dependents or be subject to a penalty per full-time employee.

The law also requires larger employers with more than 200 employees must automatically enroll employees into the company's health coverage. Employees who do not want to be auto-enrolled must actively opt out of the plan.

In addition, beginning in 2012, employers will be required to report the value of employer-sponsored health coverage on each employee's W-2 form.

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#### **When does it go into effect?**

Several provisions of the Affordable Care Act were implemented in 2010, including a tax credit to offset premium costs, and early retiree reinsurance program.

The expansions in public programs, creation of health insurance exchanges, and employer responsibility requirements begin in 2014.

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#### **What if you don't comply?**

Most small businesses are exempt. Employers with fewer than 50 FTEs are not subject to the provision that takes effect January 1, 2014.

A business is defined as "large" if it has at least 50 FTEs, not counting seasonal workers. Also, the first 30 employees are subtracted from the total when calculating the amount of the assessment.

The Federal government will assess a fee of \$2,000 per full-time employee – excluding the first 30 employees – on all employers with more than 50 employees who do not offer coverage and have at least one full-time employee receiving a premium tax credit.

If an employer offers coverage that is unaffordable, or exceeds 9.5 percent of an employee's household income, and the employee opts out of employer-sponsored coverage, the employer will be required to pay a penalty of the lesser of: (1) \$3,000 for each full-time employee receiving the subsidy; or (2) the number of total employees minus 30 multiplied by \$2,000.



#### **Who do you contact with questions?**

Many business associations are developing resources for their partners at a state level. In addition to these resources, there are several state and national resources.

The U.S. Department of Health & Human Services maintains a portal, [www.healthcare.gov](http://www.healthcare.gov), with information about the Act. The small business site includes information about small business tax credits, coverage options, reinsurance for retirees and more.

The IRS website, [www.irs.gov/newsroom/article/0,,id=220839,00.html](http://www.irs.gov/newsroom/article/0,,id=220839,00.html) has tips, a detailed FAQ and eligibility worksheets.

The state also maintains a website, [www.colorado.gov/healthreform](http://www.colorado.gov/healthreform).



#### **What is a Health Exchange?**

A new entity intended to create a more organized and competitive market for health insurance by offering a choice of plans, establishing common rules regarding the offering and pricing of insurance, and providing information to help consumers better understand the available options.

States have the option of joining together to form regional exchanges or allowing more than one exchange to operate in a state. Individuals and small businesses with less than 100 employees may purchase coverage through these Exchanges.



#### **How will it affect self-insured companies?**

Under self-insurance, the organization itself bears the risk for covering medical expenses. The provisions that impact self insured as well as small group insurance include:

##### **Prior to 2014**

- Prohibits lifetime benefit limits
- Restricts annual benefit limits
- Restricts rescissions
- Extends dependent coverage to age 26
- Requires uniform explanation of plan benefits
- Requires coverage for preventive services with no cost-sharing (non-grandfathered self-insured plans)
- Requires internal and external appeals processes (non-grandfathered self-insured plans)
- Requires reporting of medical loss ratio and provision of rebates (grandfathered self-insured plans)

##### **2014**

- Prohibits excessive waiting periods
- Prohibits coverage exclusions for preexisting conditions
- Prohibits discrimination based on health factors and against medical providers (non-grandfathered self-insured plans)
- Limits out-of-pocket spending (non-grandfathered self-insured plans)
- Requires coverage for clinical trials for qualified individuals (non-grandfathered self-insured plans)



#### **What's the difference between the exchange for individuals and SHOP for small businesses?**

The law provides for a separate exchange for small businesses (Small Business Health Options Program, SHOP) and one for individuals. The small group market is defined as employers with 1–100 employees. However, a state may limit small group participation to employers with 50 or fewer workers from 2014 through 2016. Beginning in 2017, all employers with 100 or fewer employees may participate in the exchange. States may allow businesses with more than 100 employees to participate after 2017.

States can also choose to combine the individual and small business exchanges.

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**Will businesses be mandated to purchase within the Exchange?**

Businesses are not mandated to purchase within the exchange. Employers though will need to provide written notice to employees regarding: (1) the existence of an exchange; (2) the employee's potential eligibility for a premium assistance tax credit and cost-sharing reduction if the benefits provided under the employer plan's share of total allowed costs is less than 60 percent; and (3) the potential loss of the employer contribution to any employer-sponsored health care plan if the employee purchases health insurance through the Exchange.

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**If so, are there penalties for non-compliance?**

There was not a penalty identified in the Affordable Care Act if an employer does not provide written notice. It is likely this will be developed as the rules and regulations are developed by the U.S. Department of Health & Human Services.

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**If not, what choices will be available for businesses that prefer not to purchase within the exchange?**

It is envisioned that a market would continue to exist outside of the exchange. Many of the insurance reforms apply to products sold inside and outside of the exchange.

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**How will an Exchange affect the insurance benefits currently offered by Colorado employers?**

Unknown yet – the essential benefit package that is to be offered in the health insurance exchange has not been defined yet by the U.S. Department of Health & Human Services.

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**Will there be vouchers, and how will they work? Do they apply to small businesses?**

An employer who offers and contributes to employee coverage must provide a free choice voucher to any employee who qualifies for the affordability exemption from the individual responsibility requirement and whose contribution under the employer plan would be between 8 and 9.5 percent of his or her adjusted gross income. The amount of the voucher must be equal to the contribution the employer would have made through its own plan. This is unlikely to affect more than a small percentage of employers.

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**Will Colorado employers be charged an assessment to cover the uninsured receiving subsidies within the exchange?**

The subsidies available to low income Coloradans, those over 133% of poverty of poverty (\$14,404 for a single adult or \$29,327 for a family of four) and 400% of poverty (\$43,320 for a single person and \$88,200 for a family of four) are fully federally funded.

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**Will all Colorado insurance carriers be allowed to offer plans within the exchange?**

All plans are required to be certified in order to be sold through the exchange. The certification requirements will be set by the U.S. Department of Health & Human Services prior to 2014. States may decide to have additional standards on plans sold through the exchanges.

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### **What will be the governance and structure of the exchange?**

The Affordable Care Act provides states with two governance options: a government agency or nonprofit. States also have the option of joining together to form regional Exchanges.

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### **Will employers be allowed to keep the insurance coverage they currently purchase?**

Group and individual coverage can be kept or “grandfathered” under reform (as long as the plan was in existence before reform was enacted in March 23, 2010).

Grandfathered plans will be required to meet some insurance reform conditions:

- Coverage must be extended to those up to age 27
- Waiting periods cannot exceed 90 days
- Lifetime limits on coverage must be eliminated
- No pre-existing condition exclusions are allowed for children
- Rescissions of coverage are not allowed
- Before 2014, only annual limits approved by the HHS secretary are allowed

If an employer makes any significant changes in coverage, the plan can no longer keep its grandfathered status including a change in insurance carriers, or increases cost sharing, copays, deductibles, or co-insurance.

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### **Who is eligible for the business tax credit? How much is the tax credit?**

Small employers that provide healthcare coverage are eligible if:

- They have fewer than 25 full-time equivalent employees (FTEs) for the tax year
- The average annual wages paid are less than \$50,000 per FTE
- The employer pays at least 50% of the premium cost under a “qualified arrangement”

Credits are available on a sliding scale. Employers with ten or fewer employees and average wages of less than \$25,000 are eligible for the full credit.

In 2010-2013, eligible small employers can receive a tax credit for up to 35 percent of their contribution to each employee’s health insurance premium, and tax-exempt small businesses are eligible for a tax credit of up to 25 percent of their contribution.

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### **How does the change in pre-existing condition exclusions affect the coverage I offer my employees?**

Insurers and health plans are prohibited from denying coverage, excluding certain categories of coverage, or charging high premiums due to an individual’s pre-existing conditions. These prohibitions generally become effective in 2014.

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### **Will there be limits on what insurance companies can charge me or my employees?**

Guaranteed issue—requiring insurers to take all applicants, including people with pre-existing conditions—will eventually apply to everyone. If you currently offer coverage there is no change now in how pre-existing conditions are handled. Beginning in 2014, qualified health plans will no longer be able to deny coverage or charge a different premium based on pre-existing conditions, health status or claims history.



### **What does the new law do to control costs?**

The law attempts to control and stabilize costs in a variety of ways by expanding coverage to those previously uninsured to reduce cost-shifting; combining the purchasing power of small businesses and individuals through the exchanges; and investing in wellness initiatives.

The new law also encourages development of more efficient and cost-effective payment and delivery models for the long-term. This includes the creation of advisory boards to explore ways to lower healthcare costs; testing of different models of paying doctors and hospitals to reward patient outcomes, rather than number of visits and tests ordered; and research into the relative effectiveness of various treatments for specific conditions and illnesses.



### **Will there be malpractice reform under this new law?**

The law establishes a demonstration grant program for states to develop, implement and evaluate alternatives to the current system. The new grants will help states and health care systems test models that: (1) put patient safety first and work to reduce preventable injuries; (2) foster better communication between doctors and their patients; (3) ensure that patients are compensated in a fair and timely manner for medical injuries, while also reducing the incidence of frivolous lawsuits; and (4) reduce liability premiums.



### **Does the law offer incentives to create or participate in wellness programs?**

Wellness initiatives are encouraged—the Affordable Care Act provides for a 5-year, \$200 million grant program to small employers who initiate wellness programs, and allows employers to vary cost-sharing based on employee participation in these programs.

**Sources:** Small Business Majority; Patton Boggs: Impact of Health Reform on Employers; The Commonwealth Fund: Realizing Health Reform's Potential; Congressional Research Service: Self-Insured Health Insurance Coverage.



### **Where to go for more information**

Details on the health reform law are available at [colorado.gov/healthreform](http://colorado.gov/healthreform). Questions can be emailed to [healthreform@state.co.us](mailto:healthreform@state.co.us).

