Health Insurance:
Special Edition on the Affordable Care Act

The People’s Law School
Spring 2014

Professor Seth J. Chandler
University of Houston Law Center
Ground Rules

• I promise to try to leave at least 10 minutes for questions

• Please write down questions that occur to you and make them really short

• Think about whether your question would help other people too

• Slides will be available within 72 hours of this talk on the People’s Law School website

Some slides have changed somewhat since the talk to correct errors and take account of new information
Focus on the Affordable Care Act

• Every poll shows that most people do not understand it

• Forgive me if this is too basic

• I will do my level best not to inject personal opinion

• may use term “Obamacare”; do not mean anything negative by that

• Will try to provide research tools

• Will not be discussing Medicare, Medicaid, and a variety of other forms of health insurance
What’s already happened that will continue

- No lifetime limit on benefits
- No annual limit on benefits
- Dependents may stay on adult policy until age 26
- Rights to appeal
- Medical loss ratio limits with rebates
- Rescissions made illegal nationwide except for fraud / failure to pay premiums
- but insurers may “cancel”
What is now happening

- Open enrollment for 2014 is over, sort of
- If you don’t have health insurance, you may owe a tax for 2014
- Still may be possible to enroll
- About 5 million purchasers on average for 2014
- Still “special enrollment” for marriage, baby, moving, losing MEC coverage
- No expansion of Medicaid in Texas
Can I still enroll for 2014 without special enrollment?

If you were "in line" to get coverage by midnight, March 31, 2014

If you tried to enroll in health coverage any time before midnight on March 31 and didn’t finish, you can still get coverage for 2014.

You might not have finished enrolling in time for reasons like these:

• You couldn’t start or continue your application because of heavy traffic to HealthCare.gov or the Marketplace call center
• You encountered maintenance periods that kept you from using the site
• You were blocked by error screens or similar technical issues
• You tried to get an appointment with a Navigator or other application assister but they had no times available before the deadline
• You sent in an application by mail and didn’t get an eligibility result before the deadline

• Maybe
What do I need to say?

Continue with your application or contact the Marketplace Call Center

If you didn't finish enrolling for reasons like the ones above, you can do one of the following to continue:

- **Log in to your online Marketplace application** and continue the enrollment process. Pick up where you left off. Before you finish enrolling, you’ll see a statement that you tried to enroll before March 31 and didn’t finish. If you continue past that point, you're confirming that statement.

- **Contact the Marketplace Call Center**. Be sure to tell the customer service representative that you tried to enroll before March 31. They can help you finish enrolling by phone. Call 1-800-318-2596 (TTY: 1-855-889-4325) 24 hours a day, 7 days a week.

**Act by April 15**

You must finish your enrollment by April 15 to get coverage for 2014. If you enroll by April 15, your coverage will begin May 1.

If you enroll this way and your coverage begins May 1, you won’t need to pay the individual shared responsibility payment for the months of 2014 that you didn’t have health coverage.
What does Exchange Insurance cover?

• Depends in Texas on HMO v. PPO (we don’t have much in the way of POS or EPO)

• Depends partly on Metal Tier

• but free “preventative care”

• and 100% insurance after that

• typical exclusions (49 of them for medical! 36 exclusions for pharmaceuticals)

Getting details on the plans can be very difficult. I still can’t figure out how to get details on Blue Cross plans. Here’s the URL for a Cigna plan:

The fine print

Fired off an e-mail to TDI complaining about this
How bad is it going to be if I don’t have coverage?

- get coverage via Medicare/Medicaid/CHIP/TRICARE/COBRA/Peace Corp/Student Health Insurance (for 2014)/THIRP/Federally recognized tribal membership

- you are excused if you lack coverage for just 3 months or less


- Health Sharing Ministries

- Commit a serious crime and go to prison (in some states, not Texas, this will entitle you to Medicaid!)

- expatriate yourself or renounce your American citizenship
The new hardship exemption

**Hardship Categories and Documentation**

You may qualify for a hardship exemption if you experienced one of the following:

<table>
<thead>
<tr>
<th>Hardship number</th>
<th>Category</th>
<th>Submit this documentation with your application</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>You were homeless.</td>
<td>None</td>
</tr>
<tr>
<td>2</td>
<td>You were evicted in the past 6 months or were facing eviction or foreclosure.</td>
<td>Copy of eviction or foreclosure notice</td>
</tr>
<tr>
<td>3</td>
<td>You received a shut-off notice from a utility company.</td>
<td>Copy of shut-off notice from a utility company</td>
</tr>
<tr>
<td>4</td>
<td>You recently experienced domestic violence.</td>
<td>None</td>
</tr>
<tr>
<td>5</td>
<td>You recently experienced the death of a close family member.</td>
<td>Copy of death certificate, copy of death notice from newspaper, or copy of other official notice of death</td>
</tr>
<tr>
<td>6</td>
<td>You experienced a fire, flood, or other natural disaster that caused substantial damage to your property.</td>
<td>Copy of police or fire report, insurance claim, or other document from government agency, private entity, or news source documenting event</td>
</tr>
<tr>
<td>7</td>
<td>You filed for bankruptcy in the last 6 months.</td>
<td>Copy of bankruptcy filing</td>
</tr>
<tr>
<td>8</td>
<td>You had medical expenses you couldn’t pay in the last 24 months.</td>
<td>Copies of medical bills</td>
</tr>
<tr>
<td>9</td>
<td>You experienced unexpected increases in necessary expenses due to caring for an ill, disabled, or aging family member.</td>
<td>Copies of receipts related to care</td>
</tr>
<tr>
<td>10</td>
<td>You expect to claim a child as a tax dependent who’s been denied coverage in Medicaid and the Children’s Health Insurance Program (CHIP), and another person is required by court order to give medical support to the child.</td>
<td>Copy of medical support order AND copies of eligibility notices for Medicaid and CHIP showing that the child has been denied coverage</td>
</tr>
</tbody>
</table>

- As a result of an eligibility appeals decision, you’re eligible either for: 1) enrollment in a qualified health plan (QHP) through the Marketplace, 2) lower costs on your monthly premiums, or 3) cost sharing reductions for a time period when you weren’t enrolled in a QHP through the Marketplace.

- You were determined ineligible for Medicaid because your state didn’t expand eligibility for Medicaid under the Affordable Care Act.

- You received a notice saying that your current health insurance plan is being cancelled, and you consider the other plans available unaffordable.

- You experienced another hardship in obtaining health insurance.

* I’m signing this application under penalty of perjury, which means I’ve provided true answers to all the questions on this form to the best of my knowledge. I know that I may be subject to penalties under federal law if I provide false and/or untrue information.
How bad is that tax going to bite?

- The good news: it is not awful for 2014
- You don’t pay until 2015
- IRS can not use usual collection methods if you do not pay
- their main weapon is to reduce your refund
- They may be able to apply your 2015 withholds to your 2014 underpayment -> conventional nasty tactics for 2015 “underpayment”
Laura

- Laura is a single mother age 30 with a 6 year old, Tommy whom she claims as a dependent on her tax return. They live in Harris County, Texas. Laura earns $24,000 (pre-tax) a year working two jobs one of which provides health insurance for $100 a month for herself (and extra $150 for Tommy) and the other of which does not. She has a history of asthma, usually triggered by cats. She doesn’t purchase the health insurance from her job. She gets child support from the father. He’s supposed to pay $4,000 a year but the bum is behind and generally pays only $2,000. And he doesn’t provide health insurance either. Laura’s cell phone bill is $60 per month.
Laura’s dilemma

- Child support does not count as income, so it’s irrelevant.

- The employer’s insurance would cost her 5% of her monthly income and is thus “affordable.” Only if coverage for Laura would cost more than 9.5% of her monthly income is it “unaffordable.” So, under the law, she can’t usually can’t get subsidized health insurance on an exchange.

- BUT … If the employer-provided insurance does not cover 60% of total allowed costs, it is considered too cruddy to count as employer-provided health insurance and Laura can get subsidized insurance on the Exchange (26 U.S.C. sec. 36B(c)(2)(C)(ii) and regulations pursuant thereto).

- HOW ON EARTH IS LAURA TO KNOW? The Obama administration has said that, notwithstanding the ACA, employers don’t have to say how much their insurance costs; so far as I can figure out, it is pretty much on the honor system.
If she wants to purchase without a subsidy

- She could try to get a bronze HMO policy for herself and her Tommy, it would be $230 per month for the cheapest one but it has a $5,000 deductible, a $12,700 family deductible, 20% coinsurance once the deductible is used up, but it does have 100% coverage once Laura spends $12,700.

- She could also try off the Exchange but the fact that she has a pre-existing condition can count against her for 2 more years; moreover, insurers off the Exchange can gender rate; her being a woman age 30 will hurt (see http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf for details)
What if Laura’s employer didn’t offer coverage?

• If only her employer didn’t provide coverage, Laura could do much better. The government thinks she can afford about $83 per month for health insurance. Since the second lowest Silver Plan in Rating Area 10, which includes Houston, is $329 per month, the government will advance pay her insurer the difference of $246 per month.

• Laura could thus get that bronze policy on the Exchange for free, but it would still have nasty cost sharing.

• Laura could also buy a Silver Policy with cost sharing reductions. It will be almost a “Platinum policy.” It has a premium of $329 per month, an individual deductible of $1500, a family deductible of $4500 and no cost sharing after that. So her net cost will be $83 per month or $996 per year. So, she knows she’s out about $1,000; worst case she is out $5,500.
What if Laura decides not to buy coverage?

- She owes the greater of $1.5 \times 95 = $142.50 or 1\%$ of her income minus the “filing amount”, which is $12,500 for a “head of household = $115 this year

- If she continues, by 2016 she will owe the greater of $1.5 \times 695 = $1042.50 or 2.5\%$ of $(24,000-12,500) = $287.50

- Unless she can claim a hardship exemption
  - maybe Laura has been the victim of recent domestic abuse that she can say prevented her from obtaining coverage?
  - maybe Laura could get a shut-off notice from a utility company that she can say prevented her from obtaining coverage?
  - maybe Laura was very upset about the recent death of a close family member and her grief was so great she just couldn’t focus on getting coverage?

Pay $142.50 in additional taxes
One other option for Laura

- Arkansas has expanded Medicaid
- Reduce her income to < 133% of FPL ($20,900)
Am I eligible for Medicaid here in Texas?

- Probably not in Texas
- Texas could have elected to expand Medicaid to cover people up to 133% of poverty line, but elected not to
- If you were not eligible for Medicaid before ACA you are not eligible now
- Nearest states that expanded Medicaid are Arkansas and New Mexico
What happens next?

• Interesting things may happen when small businesses get renewal notices from group health insurers

• 35% of small businesses provide health insurance; no requirement in the ACA that they do so

• When those plans renew, they must provide EHB unless the small business “self insures”

• SHOP Exchanges theoretically available

• May result in different networks, different terms, price hikes for some, dropped coverage for others
What if I was wrongly denied health insurance?

• On an Exchange, in theory, you can appeal


• Off an Exchange, you can complain to TDI or, if the denial was based on a prohibited category such as race, you can sue, but EXTREMELY difficult to prevail
How much is it going to cost next year?

The Short Answer

- No one knows
How much is it going to cost next year?
The Longer Answer

• Gross Price factors remains the same

• Subsidy remains essentially the same

• But no one knows what the gross price is going to be
  • insurers will be subsidized less by federal government
  • in theory the individual mandate is bigger
  • but insurers will have their initial experience
What if your income turns out to be different than expected?

- Subsidy is based on an estimate of your income for the following year; you are guessing today what your income will be in 2014.

- If you underestimate your income and get too big a subsidy:
  - IRS will reduce your refund in 2015; but no tax liens; refund reduction limited from $600-$2500 based on your income.
  - No apparent requirement that you give back reduced out-of-pocket payments based on heightened actuarial value.

- If you overstate your income and get too small a subsidy:
  - you get a bigger refundable tax credit in 2015.

- If you overstate your income in order to achieve eligibility in states such as Texas?
  - not clear.

I'm signing this application under penalty of perjury, which means I’ve provided true answers to all of the questions to the best of my knowledge. I know that I may be subject to penalties under federal law if I intentionally provide false or untrue information.
My employer is keeping coverage; what will happen to me?

• Hopefully nothing, but ...

• Employer can cut your hours and render you ineligible under its group plan

• may have contractual protections, but nothing in ACA

• Employer can eliminate spousal benefits entirely

• Employer can impose wellness
Doesn’t my employer have to provide health insurance?

• Not yet!

• Although 26 U.S.C. 4980H requires some employers to pay a significant tax if they do not provide adequate health insurance, to employees and dependents starting in 2014, President Obama suspended this provision until 2015; suspension indirectly being challenged in court

• And maybe never

• Need to average 50 “full time employees” in the preceding year

• hence the layoffs and part-timing today
What if I have a claims dispute?

- GET A COPY OF YOUR POLICY and the EOB
  - not just the summary

- Affordable Care Act constrains the type of internal appears that the insurer must provide

- Provides for external independent review


- If you go to court, there is not likely to be a bonanza at the end of the rainbow
The 2560.503-1 Rules

- no fees for pursuing claims
- attorneys and representatives allowed
- specific EOBs
- no more than two appeals as prerequisite to lawsuit
- "full and fair review" of adverse decisions
- free access to records; some "discovery"
- 180 days to appeal (usually)
- appeal must be resolved within 72 hours (urgent) to 60 days (post-service)

- no deference
- state law may also be used sometimes (complicated!)

http://ecfr.gpoaccess.gov find 29 C.F.R. 2560.503-1

PHSA 2719
# 2560-503-1 Timelines

<table>
<thead>
<tr>
<th>Claim Type</th>
<th>Initial Decision</th>
<th>Extensions</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urgent</td>
<td>up to 72 hours</td>
<td>Nope</td>
<td>Pronto kick back of defective claims</td>
</tr>
<tr>
<td>Concurrent</td>
<td>24 hours*</td>
<td>Nope</td>
<td></td>
</tr>
<tr>
<td>Pre-Service</td>
<td>15 days</td>
<td>15 days</td>
<td></td>
</tr>
<tr>
<td>Post-Service</td>
<td>30 days</td>
<td>15 days</td>
<td></td>
</tr>
</tbody>
</table>

*Beware:* There are comparable deadlines for claimants!
External Review

- asymmetric binding
- probably binding on insurer
- not binding on insured (basically)

- in Texas, must comply the state external review procedures
- this may change in 2014 and slightly stricter standards may be imposed

PHSA § 2719

GET A LAWYER!

Tx. Ins. Code sec. 4202.001 & regs
External review rules

- FAST! 5 days for life threatening; 20 days otherwise
- Odds of winning = 50%
- [http://www.tdi.texas.gov/forms/finmcqa/lhl009urairoreq.pdf](http://www.tdi.texas.gov/forms/finmcqa/lhl009urairoreq.pdf)
- Include a two page letter
ERISA Remedies

- What insurer owed you in the first place
- Interest
- Attorneys fees (discretionary)
- No punitive damages

You can also get the court to order the Plan to provide coverage
Texas Remedies

- Breach of contract
- Bad faith breach of insurance contract
- Arnold & Aranda
- Texas Insurance Code Chapter 541
- conceivably consequential damages

Not available when your employer provides the relevant health insurance due to a law called ERISA
Things few other people are telling you

- Check the solvency rating and complaint ratios of the insurer
- All plans of the same metal tier are NOT alike
- Consider the network adequacy of the plan
- Don’t necessarily rejoice anymore when you get a small raise; you can fall of a tax credit or reduced cost sharing cliff
- Find out about the plan’s internal appeals process
- Check non-exchange insurers
  - particularly if you are male and under 50
Where do I find the law?

- [http://www.law.cornell.edu/cfr/text](http://www.law.cornell.edu/cfr/text) (regulations)

Beware of political propaganda masquerading as consumer help
Beware of smiley faces ;)
Finding an attorney

• This is a specialty area
• Unfortunately, not many lawyers know this material well
• Don’t be afraid to quiz them based on what you have learned here
• If you now know more than they do ...
The End
The cutting room floor
How do I sign up in Texas?

- healthcare.gov
- phone: 1-800-318-2596; TTY: 1-855-889-4325
- Various “navigators”
  - Gateway to Care (832-360-1234)
  - The Montrose Center (713-800-0819)
  - Legacy Community Health (in person)
Maybe I use tobacco a little bit

- ACA was supposed to turn smoking into a yet-more expensive habit.

- What counts as tobacco use?: “tobacco use means use of tobacco on average four or more times per week within no longer than the past 6 months” ; E-Cigarettes do not generally use tobacco!

- Can have a huge effect on net premiums.

- Example: 42 year old person earning $20,000 per year in Texas. If they do not smoke, they can get a silver policy for a net of about $90 a month. If they smoke, they may have to pay $208 per month. If they did not smoke, they might get a bronze policy for $5 a month. If they smoke, they would have to pay about $90 a month.

- Tobacco cessation treatment should be free preventative care

My suspicion is that we are going to discover that no one in the United States uses tobacco.
Who is eligible for insurance on an Exchange?

- What the law says
  - must reside in Texas
  - must be a citizen or national of the US or a lawfully present alien
  - can not be incarcerated in Texas
  - What does not matter

- health / pre-existing condition
  - age
  - pay taxes
  - income
  - whether you have other health insurance
Wellness: articulated as a reward, but ...

- Participatory programs
  - few limits on what the employer can require that you do
  - questionnaires OK at least if not unbelievably intrusive

- Health-contingent programs: walk 30 minutes a week; achieve 29 BMI
  - reasonable alternative on request (additional time)
  - reward can not (usually) exceed 30% of the total cost
  - must be reasonably designed to promote health or prevent disease

- What if you don’t comply?

Generally non-taxable if received from an employer
Wellness: Participatory programs

- Few limits on what the employer can require that you do
- Questionnaires OK at least if not unbelievably intrusive
- Probably permissible in individual health insurance
Wellness limitations

- The being criticized for being too fat program
- The 6 minute mile requirement
- The nicotine free requirement
- "has a reasonable chance of improving health or preventing disease"
- "not overly burdensome"
- "not a subterfuge for discrimination based on a health factor"
- must be a "reasonable alternative standard"
Wellness: Carrot and Stick

- Can be a true reward or can be a “negative reward”, i.e. exemption from a $1000 “surcharge” that you otherwise incur
- Can apply to behavior off the job like smoking or drinking
- Total reward can not exceed “applicable percentage” of total cost of policy (i.e. employer contribution + employee contribution)
  - applicable percentage is generally 30% but 50% for tobacco
- This can be A LOT OF MONEY
Wellness: Health-contingent program

- activity based
- outcome based
- alternative on request (additional time)
- must be reasonably designed to promote health or prevent disease
- must have at least one opportunity per year
- probably not permissible in individual health insurance
The Kaiser Calculator