Health Insurance
Spring 2013

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University of Houston Law Center
40 Minutes
40 Minutes

- What does PPACA/ACA/Obamacare do in next few years
- Emphasize vocabulary, resources, citations to help you do research
- Rigidly refuse to answer questions until the end
- Not deal with provider-insurer issues
- Ignore Medicare, Medicaid, TRICARE, Workers Comp, Indian Health
- Start with 10 Questions about the Affordable Care Act
Presentation in three minutes: Part 1

- Your employer is not legally obligated to provide you health insurance, but they may have to pay taxes if they fail to do so or provide lousy coverage

- Your employer can drop your spouse from coverage without penalty

- Your employer can not base your premium on your health but can increase your premium a lot for not participating in “wellness”

- Texas will not have health insurance exchanges. In 2014 you will need to get Exchange coverage in Washington, D.C.

- Exchange premiums will be based on age, family size, location and tobacco, not on your health

- Exchange premiums will range from $12,000 - $32,000 for a family of 4

- If your family makes under 4 FPL, you will get a subsidy to buy health insurance through an Exchange

- You will be taxed, lightly at first but then more heavily, if there is not a government-approved reason for not having health insurance

- Emergency rooms still have to treat you even if you don’t have insurance, but they will send you a large bill

- Texas is not expanding Medicaid
Presentation in three minutes: Part 2

- To resolve a health insurance dispute you will need
  - a copy of your health insurance contract or plan
  - a copy of your “EOB”
  - know whether your plan is provided by your employer or not
  - if it is employer provided, is it
    - self-funded
    - grandfathered
- There are new sources of help
  - in shopping for and obtaining insurance
  - in appealing claim denials more efficiently
  - You can find the law to know your rights in more detail
  - Get a lawyer who specializes in this area
  - health insurance law is unbelievably complicated
I. Can employers drop coverage?

- Yes, the law does not require even large employers to provide health insurance coverage
- Most will not
  - moral sense / employee morale and health
  - tax penalty under 26 U.S.C. 4980H ($2,000/$3,000)
- But some definitely will
  - paying tax may be cheaper than providing coverage
  - most now expect health insurance to be more expensive
  - even the sick can get coverage through an Exchange (if they can afford it)
  - current estimate from CBO is 7 million people will lose this coverage
2. Can my employer drop spousal coverage?

- Yes, the Affordable Care Act does not require spousal coverage
- As it turns out, spouses who do not have coverage through another job tend to be fairly high risk
- Employer can also increase employee contribution for spousal coverage
- Can not drop children under 26
3. Can my employer base my premium on my health?

- Not directly
- But ...
- employer can offer rewards of 20/30/50% off total cost of insurance for meeting standards designed to promote health or prevent disease. Reasonable alternative standard or waiver must be available for insureds with verified difficulty factors.  
  
  (29 CFR 2590.702(f))
4. How do I get health insurance from an Exchange?

- Texas is not creating Health Insurance Exchanges
- You will have to get it from the federal Exchange in Washington, D.C.
- Enrollment starts October 1, 2013
  - there may be limited open enrollment periods for some insurers (Oct 1 2013-March 31 2014; thereafter October 1 201x to Dec. 7, 201x)
5. What will determine how much I pay for coverage through an Exchange?

- Three rating categories
  - age: maximum 3:1 ratio (annual bands)
  - family size: 1, 2, 3, 4, 5+
  - tobacco: maximum 1.5 ratio
  - location

- Not health, not genes, not history
6. How much will health insurance cost in an Exchange?

- Short answer: no one knows exactly
- CBO: 10-13%
- Milliman (leading actuarial firm): depends hugely on income (down 83% if under 250% FPL but up 30% if over 400% FPL)

<table>
<thead>
<tr>
<th></th>
<th>Age 31</th>
<th>Age 63</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single adult</td>
<td>$4,324</td>
<td>$12,206</td>
</tr>
<tr>
<td>Family of 4</td>
<td>$12,503</td>
<td>$32,770</td>
</tr>
</tbody>
</table>
7. Is there a subsidy to buy health insurance?

- Yes, but it applies ONLY if you get health insurance through an Exchange

- Two forms of subsidies: premium tax credits and cost sharing reductions.
  - Both depend on your household income and family size
  - You get a refundable tax credit
  - If you are under 250% FPL, you get an enhanced contract with lower out-of-pocket costs
8. Will the federal government actually tax me if I don’t have approved health insurance?

- Maybe (26 U.S.C. 5000A)
- Health insurance must be deemed affordable for you (lowest cost Bronze < 8% of household income)
- For 2014, tax is greater of $95 per uninsured family member (up to $285) or 1% of household income minus filing threshold ($9,750 to $19,500)
- By 2016, tax is $695 per uninsured family member or 2.5% of household income minus filing threshold ($9,750 to $19,500)
- Tax capped at price of “Bronze Plan” for the uninsured
- Possibly no tax for less than 3 months without coverage
- You won’t go to prison or have a lien put on your property for not paying the tax; but IRS may reduce a refund or bring an unpleasant court case against you
- Exceptions for illegal aliens (they can’t get coverage), incarcerated persons, members of a “Health Sharing Ministry,” members of Indian tribes
9. Will emergency rooms still have to treat me if I don’t have insurance?

- Yes, federal statute called EMTALA still in force
  - basically requires treatment until you are stable
- But hospital can (and will) send you a (large) bill
- Insurance you obtain after the ER visit will almost never provide coverage
10. Could Medicaid expansion help me?

- Not in Texas
- Texas has exercised the option provided by the United States Supreme Court in 2012 and refused to expand Medicaid
# Guide to major federal health insurance laws

<table>
<thead>
<tr>
<th>Act</th>
<th>When</th>
<th>Abbreviation</th>
<th>Summary</th>
<th>Relevant Codifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Health Service Act</td>
<td>1942</td>
<td>PHSA</td>
<td>Regulates insurance provided by employers and to individuals</td>
<td>42 U.S.C. ch 6A</td>
</tr>
<tr>
<td>Employee Retirement Income Security Act</td>
<td>1974</td>
<td>ERISA</td>
<td>Regulates insurance provided by employers (&quot;plans&quot;); pre-empts state insurance laws</td>
<td>42 U.S.C. § 12181+</td>
</tr>
<tr>
<td>Consolidated Omnibus Budget Reconciliation Act</td>
<td>1986</td>
<td>COBRA</td>
<td>Accords limited rights to persons losing employer-provided health insurance</td>
<td>29 U.S.C. § 1161+</td>
</tr>
<tr>
<td>HIPAA</td>
<td>1996</td>
<td>HIPAA</td>
<td>Limits health insurance underwriting (important until 2014) (amends ERISA &amp; PHSA)</td>
<td>42 U.S.C. § 300gg+</td>
</tr>
</tbody>
</table>
How to find and read PPACA

http://www.law.cornell.edu/uscode/text

The secret codification table is at
http://uscode.house.gov/classification/tbl111pl_2nd.htm
### What has already happened?

<table>
<thead>
<tr>
<th>#</th>
<th>Change</th>
<th>Provision</th>
<th>When</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interim federal insurance for persons with pre-existing conditions</td>
<td>PPACA § 1101, 42 U.S.C. § 18001</td>
<td>June 21, 2010</td>
<td>No new applicants accepted</td>
</tr>
<tr>
<td>2</td>
<td>Internet website providing chart on “affordable health insurance options”</td>
<td>PPACA § 1102, 42 U.S.C. § 18002</td>
<td>July 1, 2010</td>
<td>healthcare.gov</td>
</tr>
<tr>
<td>3</td>
<td>Rescissions only for fraud or intentional misrepresentation</td>
<td>PPACA § 1001; PHSA § 2712; 42 U.S.C. § 300gg-12</td>
<td>September, 2010</td>
<td>was already the law in Texas</td>
</tr>
<tr>
<td>4</td>
<td>Annual caps for essential health benefits limited</td>
<td>PPACA §10101(a); PHSA § 2711; 42 U.S.C. § 300gg-11</td>
<td>September, 2010</td>
<td>We are up to $2 million per year</td>
</tr>
<tr>
<td>5</td>
<td>Lifetime caps prohibited on inessential health benefits</td>
<td>PPACA §10101(a); PHSA § 2711; 42 U.S.C. § 300gg-11</td>
<td>September, 2010</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>No cost sharing for five categories of preventative care</td>
<td>PPACA 1001; PHSA § 2713; 42 U.S.C. § 300gg-13</td>
<td>September, 2010</td>
<td>Apps and websites to help</td>
</tr>
<tr>
<td>7</td>
<td>Emergencies and PCP Designation</td>
<td>PPACA § 10101(h); PHSA § 2719A; 42 U.S.C. § 300gg-19a</td>
<td>September, 2010</td>
<td>You can get sick out of town; you can see your OB/GYN first</td>
</tr>
<tr>
<td>8</td>
<td>Federal cost restrictions in group and individual markets</td>
<td>PPACA § 10101(f); PHSA § 2718; 42 U.S.C. § 300gg-18</td>
<td>January 1, 2011</td>
<td>You may get an MLR check</td>
</tr>
<tr>
<td>9</td>
<td>New claims processing rules</td>
<td>PPACA § 10101(g); PHSA § 2719; 42 U.S.C. § 300gg-19</td>
<td>January 1, 2011</td>
<td>Cheaper than going to court</td>
</tr>
</tbody>
</table>
Interim federal insurance for persons with pre-existing conditions

pcip.gov

Plan already blew through the allocated money even though enrollment less than half of what was projected
Finding coverage?
The grandfathering issue

Grandfathering under the Affordable Care Act (ACA), 2011 and 2012

- Percentage of Firms with At Least One Grandfathered Plan*
  - 2011: 72%
  - 2012: 58%

- Percentage of Covered Workers in a Grandfathered Health Plan*
  - 2011: 56%
  - 2012: 48%

* Estimate is statistically different between 2011 and 2012 (p<.05).

Some notation

Applies even to grandfathered plans

Does not apply to grandfathered plans
Rescissions Only For Fraud
Rescissions Only For Fraud

- In most states insurers *already* did not have the right to rescind other than for fraud

- Texas *already* required proof of deceptive intent or fraud to rescind
  - Texas rescission rate had been 0.2%
Annual Caps

• Simply not true that annual caps are gone
  • but we are up to $2 million in 2013
  • no new waivers being granted (2% of employees are in waiveried “mini-med” plans)
• Annual caps not prohibited by PPACA on inessential health benefits
Lifetime Caps

- Truly gone
“Free” Preventative Services

 Might drive up health care costs and premiums

PHSA § 2713

Interim federal cost restrictions

- In effect through 2013
- Insurers must rebate premiums to customers to the extent that expenditures on “other non-claims costs” (excluding State taxes, licensing and regulatory fees) exceed x% of premiums
  - For group coverage, x=20
  - For individual coverage, x=25
- State can lower these numbers
- Secretary of HHS can raise them if they would “destabilize the existing individual market in such state”
  - Texas requested waiver.

PHSA § 2718
Emergencies & PCP Designation

**Emergencies**
- in network cost-sharing
- no prior authorization needed
- no “terms and conditions” other than cost-sharing (!)

**PCP Designation**
- Can pick any available participating PCP
- Can pick pediatrician for kids
- No gatekeeping for obstetrician or gynecologist visits
Claims Processing

Rules

- Prior law
- Texas law applied to individual policies and employer “insured policies”
- Federal law applied to self-insured policies from an employer
Unification
Unification

Internal appeals
## Unification

<table>
<thead>
<tr>
<th>Internal appeals</th>
<th>![Stamp with Error]</th>
</tr>
</thead>
<tbody>
<tr>
<td>External review</td>
<td>![Multiple eyes]</td>
</tr>
</tbody>
</table>

*PHSA 2719*
### Unification

<table>
<thead>
<tr>
<th>Internal appeals</th>
<th><img src="image" alt="Error Stamp" /></th>
</tr>
</thead>
<tbody>
<tr>
<td>External review</td>
<td><img src="image" alt="People's Law School" /></td>
</tr>
<tr>
<td>Court</td>
<td><img src="image" alt="See You in Court" /></td>
</tr>
</tbody>
</table>
Internal appeals

• notify enrollee “in culturally and linguistically appropriate manner” of internal and external appeals and availability of government-subsidized help

• must use the “2560.503-1” rules

• enrollee must “receive continued coverage pending the outcome of the appeals process”
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!)
## 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
- 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
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
Texas external review

28 TAC 19.1721
http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?
tac_view=5&ti=28&pt=1&ch=19&schn=R&rl=Y

• Available for ...
  • medical necessity, appropriateness, setting, level of care, effectiveness
• Use random “independent review organization”
• Paid for by health insurer (except $25)
• You can use (and probably should strongly consider using)

30 dense pages of procedures

Saturday, April 6, 13
A new resource

http://www.texashealthoptions.com/  1-855-TEX-CHAP
Court

- You will need a lawyer
- ERISA preemption
- ERISA remedies
- Texas remedies
ERISA Preemption

- State law remedies “pre-empted” for claims relating to an ERISA plan (employer provided health and other benefits)
- Concurrent jurisdiction in state or federal court
- Defendant likely to “remove” you to federal court
ERISA Remedies

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

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
- very difficult to get punitive damages

Not available when your employer provides the relevant health insurance
What happens next

• Medical deduction threshold increased to 10% (2013)
• Individual mandate (2014)
• Employer failure to provide (2014)
• Employer inadequate provision (2014)
• Medicaid expansion (2014) (but apparently not in Texas and other states due to Supreme Court ruling part of PPACA unconstitutional and modifying the penalty)
• Excise taxes
• Continuing court challenges to entirety and to pieces
  • “taxes” must originate in the House; this bill came from the Senate
  • employer trigger unlawful in states such as Texas because federal government can not subsidize health insurance exchange premiums
An attorney quiz

What do the numbers 2560.503-1 and 2590.715-2719 mean to you? [CFR sections that governs claims and appeals of adverse decisions]

How are employers permitted to alter my premiums based on my meeting “wellness” requirements [read 9 CFR 2590.702(f)]

How did PPACA change EMTALA? [it didn’t]

• Does the attorney ask for the basic information: contract, EOB, employer provided, grandfathered, self-funded

• Don’t hire anyone who starts in on “fair”
Other Resources

- thomas.loc.gov
- http://www.tdi.state.tx.us/ (Texas Department of Insurance)
- http://www.statutes.legis.state.tx.us/ (Texas Insurance Code)
- http://www.txhealthpool.com/ (Texas Health Insurance Pool)
- http://www.texashealthoptions.com (Consumer Health Assistance Program)
- http://healthreform.kff.org/ (Kaiser Family Foundation Health Reform Site)
- http://www.law.cornell.edu/uscode/ (Almost all federal laws; not 100% up to date)
- http://scholar.google.com/ (click on legal opinions button; tons of cases; secondary materials)

Other Statutes

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<tbody>
<tr>
<td>American with Disabilities Act</td>
<td>1990</td>
<td>ADA</td>
<td>Provides minimal protection against discrimination by health insurers against disabled</td>
<td>42 U.S.C. § 12201</td>
</tr>
<tr>
<td>Genetic Information Non-Discrimination Act</td>
<td>2008</td>
<td>GINA</td>
<td>Bars health insurers from discriminating on the basis of non-manifest genetic predispositions</td>
<td>42 U.S.C. § 300gg-1(b)</td>
</tr>
</tbody>
</table>
The End