Health Insurance:
Special Edition on the Affordable Care Act

The People’s Law School
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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

• funny Jimmy Kimmel video comparing “Obamacare” to the “Affordable Care Act”

• Will try to provide research tools
What’s already happened that will continue

- No lifetime limit on benefits
- Effectively, 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

- Exchange opened on October 1, 2013
- healthcare.gov
- No expansion of Medicaid in Texas
- the issue of people earning less than 133% of FPL
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

Monday, October 7, 13
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)
How much does it cost?

• **Gross Price**
  - Depends on “metallic tier”: Platinum, Gold, Silver, Bronze or Catastrophic
  - Depends on age
  - Depends on tobacco use

• **Net Price**
  - Depends on household income
    - depends on MAGIc
  - advance on a tax credit to help pay premiums
  - cost sharing reductions via special contract
The Kaiser Calculator
Some simple examples

- Family of two adults, age 56 and 42, two children. Household income > $100,000
- Gold plan = $1,055 per month (no subsidy)
- Family of one adult, age 42, and two children. Household income is $56,000
- Silver plan: gross = $638; net = $426 per month

- Family of one adult, age 59, smoker. Income is $22,000
- Bronze plan: gross = $433; net = $42 per month
What does Exchange Insurance cover?

- Typical Bronze policy (Blue Advantage Bronze HMO 006) [[ $306 per month for me; would be $643 for my family of 4; and $774 if I put my 25-year old adult kid on it]]

- $6,000 per person deductible; $12,000 per family deductible: thus I would be out over $9,672/$19,716/$21,288 before I received any benefit from the insurance

- but free “preventative care”

- and 100% insurance after that

- pay “allowable amount” on claims

- typical exclusions (49 of them for medical! 36 exclusions for pharmaceuticals)
Typical Silver Policy

- Blue Choice Silver PPO 004 ($579.27 per month for me)
- $3,000 per individual deductible; $9,000 per family deductible
- $6,350/$12,700 OOP limit in network; $12,700/$25,400 OON [but see next slide]
- $35/$55 copays for primary care/specialist; $500 ER visit
- Out of network you pay 60%
- Pharmaceuticals $10/$50/$100
- Lots of exclusions again
- Claims right to terminate all policies with 90 days notice (probably legal)
A special feature of Silver Policies: Reduced Cost Sharing

- Only available for silver policies purchased on an Exchange
- not bronze, not off Exchange
- Ceiling on out of pocket limit reduced from $6,350 to ...
  - $2,117 if income is 1 - 2 x FPL
  - $3,175 if income is 2 - 3 FPL
  - $4,233 if income 3 - 4 FPL
  - otherwise unchanged

a myCigna Health Flex 2750 TX Silver policy currently has a $6,350 OOP limit; so this could really help; turns Silver into Gold or Platinum

42 U.S.C. sec. 18071
Typical Gold Policy

- Molina Healthcare
- No deductible but $20/$55 copays
- 20% coinsurance on hospital visits
- $6,350/$12,700 OOP limit
Things I have been told on the phone that are not true

• “There are no exclusions anymore”

• “We don’t use contracts”

http://www.tdi.texas.gov/consumer/complfrm.html

Be careful!
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
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: 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
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
When do I have to decide by?

- March 31, 2014 for Exchange coverage (most likely)
- but in the future by December 31 of the preceding year
- but every month you wait delays the inception of coverage
- no tax if only 3 months without coverage
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.
What really happens if you don’t have approved health insurance?

• “Shared Responsibility Payment” under 26 U.S.C. sec. 5000A (“the individual mandate”)

• Two examples

• Laura

• Sean
Laura

Laura is a single mother with a 6 year old, Tommy whom she claims as a dependent on her tax return. Laura earns $24,000 a year working two jobs one of which provides health insurance for $100 a month and the other of which does not. 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 solution

• 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.” So she can’t get health insurance on an exchange

• She owes the greater of $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 $1,042.50 or 2.5% of ($24,000 - $12,500) = $287.50
• Sean, age 50, thinks Obamacare is stupid. He refuses to buy coverage for himself, his 47 year old wife, Wendy, his 23 year old daughter, Dawn, who lives at home and smokes cigarettes and his 8 year old kid, Junior. Sean earns $40,000 a year. Wendy earns $30,000 a year but has health insurance through her job. Dawn earns $9,000 a year working part time and taking classes in accounting at the local community college. Sean claims Dawn as a dependent on his tax returns because he provides more than half of her support.
Sean’s solution

- Sean could afford insurance on the exchange. We have 2.5 uncovered persons (2 adults + 1 “half price” child).

- We have $70,000 in household income -- Wendy counts even though she has health insurance but Dawn’s income does not count because it is under the filing threshold.

- For 2014, the tax is the greater of $237.50 or 1% of $70,000 = $505.

- For 2016, the tax is the greater of $1737.50 or 2.5% of $50,500 = $1,262.50.

- Note: if Sean earned $300,000 a year his tax would be capped at the average price of a bronze policy for his family (absent the insured Wendy) (my guess is that this would be about $4,500).

- Alternatively, Sean could swallow his objections to “Obamacare” and buy a Silver Policy for a gross premium of about $7878 and a net premium of about $6,650. He will get a reduced out-of-pocket limit too [see earlier slide].

pay $505 in additional taxes
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
  - 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.
Loopholes

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

• Health Sharing Ministries

• Commit a serious crime and go to prison

• Go to a foreign country, go to a consulate and renounce your American citizenship
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
Am I eligible for Medicaid?

- 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
- Arkansas being creative
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)

For the full text, visit [ecfr.gpoaccess.gov](http://ecfr.gpoaccess.gov) and find 29 C.F.R. 2560.503-1.
## 2560-503-1 Timelines

<table>
<thead>
<tr>
<th>Claim Type</th>
<th>Initial Decision</th>
<th>Extensions</th>
<th>Other</th>
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<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>
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<td>Pre-Service</td>
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</tr>
<tr>
<td>Post-Service</td>
<td>30 days</td>
<td>15 days</td>
<td></td>
</tr>
</tbody>
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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
External review rules

• FAST! 5 days for life threatening; 20 days otherwise

• Odds of winning = 50%

• [http://www.tdi.texas.gov/forms/fnmcqa/lhl009urairordreq.pdf](http://www.tdi.texas.gov/forms/fnmcqa/lhl009urairordreq.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

- Might want to get major surgeries, treatments done sooner before risk of Exchange collapse can materialize

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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 ;)

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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

Best way to say “Thanks”
Go to http://www.surveymonkey.com/s/PFN2RQW and take my 10-question survey