HEALTH REFORM BRIEF

What the Affordable Care Act Could Mean for Kansas Employers and Health Insurance

KANSAS HEALTH INSTITUTE

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From Small to Large

Many of the ACA's rules apply only to employers of certain sizes. For example:

- The requirement to provide health insurance coverage or face penalties applies to "large" employers of 50 or more full-time workers.
- The option to purchase group health insurance in insurance exchanges is available to employers of fewer than 100 workers; states can set this limit at 50 until 2016.
- Tax credits to offset the cost of insurance are available to some "small" employers with fewer than 25 full-time workers.

Online readers can select the words underlined in blue to get more in-depth information.

INTRODUCTION

When the Affordable Care Act (ACA) was passed in March 2010, the common refrain from the White House was that the health reform law would preserve, and even bolster, the system of employment-based health insurance. The Obama administration also said that people who liked their coverage would be able to keep it.

Health reform opponents are skeptical of those claims because of the possibility that employers will stop offering coverage. Others warn of effects on employment, such as businesses that decide not to hire additional workers to avoid the 50-employee threshold, which is an important cutoff for the requirement to provide health insurance. Supporters of reform point to the resources available for small employers under the law, such as tax credits and health insurance exchanges.

This brief, the sixth in a series about health reform, explains how the ACA may affect Kansas employers. Although uncertainty surrounds the future of the ACA given the pending Supreme Court ruling and the 2012 presidential election, this brief examines the law as written.

WHAT IS IN THE LAW?

The ACA includes several provisions that affect employers. These include:

- Financial penalties for employers with 50 or more full-time workers that do not provide affordable and adequate coverage to employees.
- An option for employers with 100 or fewer workers to purchase group coverage in new online marketplaces called health insurance exchanges, although the ACA does not require these businesses to offer coverage to employees.
- Tax credits for employers with fewer than 25 workers that provide health insurance to employees.
- Numerous new rules and programs affecting the cost and scope of coverage that employers provide.

KANSAS IMPACT

Large Employers Face Requirements or Penalties

One of the more contested provisions of the ACA is the requirement that employers with 50 or more full-time workers provide health insurance to employees or face financial penalties. As outlined in the law, the health insurance plan must meet guidelines for adequacy and affordability,

including a cap on the employee's contribution at 9.5 percent of annual income. However, the employer penalty depends on one additional event: At least one employee must seek coverage through a health insurance exchange and be eligible for a health insurance premium credit. The amount of the penalty depends on a number of factors, as shown in Figure 1.

Kansas is known as a small-business state because more than 70 percent of its private employers have fewer than 50 workers. However, the majority of Kansans with employment-based insurance get that coverage from large employers. So although relatively few Kansas employers may be subject to the ACA penalty, a sizable number of Kansans receive their coverage from these large employers.

It is not clear how the ACA employer penalty will affect the number of Kansas businesses that offer health insurance. Almost all large private employers in Kansas — 97 percent — already offer health insurance to their employees.

New Insurance Options, Tax Credits Through Exchange

In addition to the ACA requirements for large employers, the law allows small employers to provide coverage through the online health insurance exchange in each state. Whether it is operated by the state or by the federal government, an exchange could handle some of the administrative tasks that small businesses face when providing coverage.

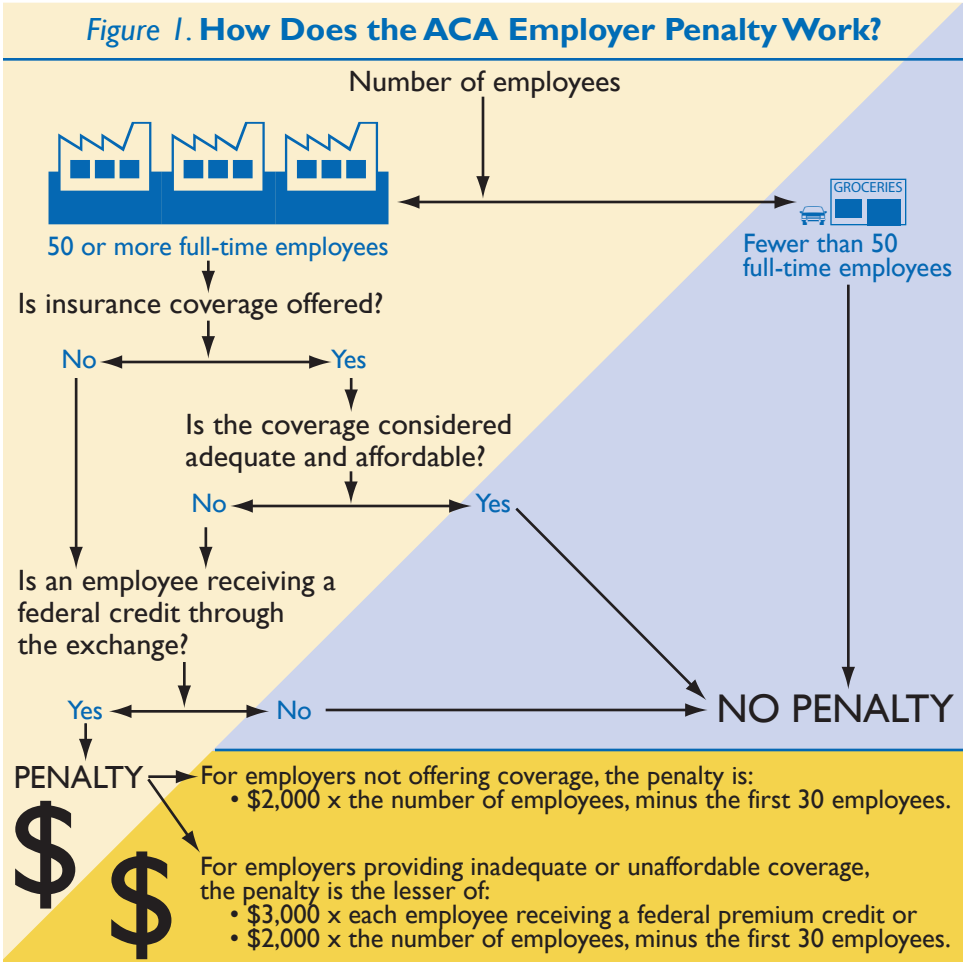
Businesses with fewer than 25 employees may apply through the exchange for tax credits to help offset the cost of coverage. These tax credits have been available since shortly after the ACA became law. But once the exchanges are operational, the tax credits will be available only to employers purchasing coverage there. In Kansas, nearly 50,000 private businesses employ fewer than 25 workers and may be eligible for credits, though eligibility depends on other factors.

The exchange also is where people can go to purchase private insurance plans provided by companies like Blue Cross Blue Shield and obtain federal tax credits or cost-sharing subsidies if they are eligible. This component of the exchange has the potential to draw people away from employment-based health insurance or to motivate small employers to stop offering coverage to their employees.

How the ACA may affect the landscape of employment-based insurance has been a much-discussed topic, reflected in a range of predictions from research and consulting firms.

A widely publicized survey indicated that roughly 30 percent of employers of all sizes reported that they would "probably" or "definitely" discontinue offering coverage after the ACA was fully implemented in 2014. However, a different study estimated that employers of all sizes are more likely to offer insurance. Among employers with fewer than 50 workers, the study found that as

Figure 1. **How Does the ACA Employer Penalty Work?**



many as 80 percent would offer coverage, up from 57 percent now. For employers with 100 or more workers, the study found that offer rates would be around 98 percent after the ACA took effect, up from 93 percent now.

Finally, a consulting group reviewed several studies and concluded that the net impact of the ACA on employment-based coverage would not be significant — ranging from a slight decrease to a slight increase. Each of the studies used a different methodology and time frame, so they cannot be compared directly. But differences in the findings highlight the difficulty of predicting the impact of the ACA on employment-based coverage.

ACA Applies Differently to Fully, Self-Insured Employers

Employers that provide health insurance fall into one of two categories: fully insured or self-insured. Fully insured employers and their employees pay premiums to an insurance company, and the insurance company is responsible for covering employees' health costs during the year — known in insurance lingo as "assuming the risk" of the plan.

Self-insured employers basically act as their own insurance companies. While employees still may pay premiums for coverage, the employer is responsible for paying all health costs that employees incur. In this case, the self-insured employer assumes the risk for the plan. Typically, only large employers self-insure because they can spread the cost of coverage among a bigger pool of workers.

In 2010, roughly 60 percent of private Kansas employers with 50 or more workers offered self-insured plans, compared with 13 percent of private Kansas employers with fewer than 50 workers. Those are similar to the national rates.

There are other differences between self-insured and fully insured plans. While state regulators like the Kansas Insurance Department have broad authority to regulate fully insured plans, they do not have the same authority with self-insured plans. With the passage of the ACA, however, the distinction is more important because self-insured plans are exempt from many of the new health reform insurance rules.

Some health policy researchers predict that employers — even small employers that historically have been fully insured through an insurance company — may opt to self-insure to avoid health reform rules. Table 1 shows some of the ACA insurance provisions and how they affect self-insured plans. Although

Table 1. **How the ACA Applies to Self-Insured Plans**

Rule	Does it Apply to Self-Insured Plans?
A health plan cannot limit what it will pay over the course of a year or a person's lifetime.	Yes
A health insurance policy cannot be canceled due to mistakes on the application.	Yes
Dependents may stay on their parents' policies until they reach the age of 26.	Yes
For every premium dollar received, insurance plans must spend 80 to 85 cents of that dollar on medical care rather than on administration or profit.	No
A health insurance plan cannot refuse to cover specific services related to a person's medical conditions.	Yes
A health insurer cannot refuse to offer coverage to an applicant because of medical conditions.	No
A health insurer cannot base the price of a health insurance policy on the person's health status.	No

Source: Congressional Research Service report.

Waiving Out of Health Reform?

ACA implementation has not always gone smoothly. One rule that eliminated annual caps on what insurers pay out in claims to beneficiaries caused a backlash among many large employers who provide what are known as "mini-med" plans. In response, the Department of Health and Human Services granted temporary waivers to employers who could demonstrate hardship from this provision. To date, 14 waivers have been granted in Kansas.

self-insured plans are excused from some ACA rules, there are consumer protections in other federal laws that apply to them.

Items for Early Retirees, Generous Health Plans

The ACA has several other provisions that affect Kansas employers.

The Early Retiree Reinsurance Program, which began in 2010, offers financial assistance to employers that provide coverage to retired workers who are not yet eligible for Medicare. The Kansas participants include 17 school districts; 15 cities and counties; 12 unions, associations and trusts; and many private employers, such as Learjet Inc., Koch Industries Inc. and Sprint Nextel Corporation.

New rules will require employers with more than 200 workers to automatically enroll those workers into the health plan. Workers then have the choice to opt out. Roughly a fifth of Kansas employers are this size and may be subject to this rule. This requirement will not take effect until the Department of Labor releases its regulations, which are expected sometime before 2014.

The so-called "Cadillac Tax" is an excise tax on health insurance plans that provide particularly generous benefits packages. This provision does not begin until 2018, and it is unclear at this point how many employers or insurance plans in Kansas would be penalized under this rule.

CONCLUSION

Small Kansas employers will face important choices if the health reform law reaches full implementation in 2014. Because employers with fewer than 50 workers are not required to offer coverage under the law, small employers may choose to discontinue providing these benefits. Alternatively, they may opt to purchase coverage for employees in the new health insurance exchange and, if eligible as an employer of fewer than 25 workers, receive tax credits to offset the cost of coverage.

Large Kansas employers with 50 or more workers will see different effects from the ACA, including the risk of penalties for failing to offer affordable and adequate coverage to their workers. Some early ACA provisions already are affecting the Kansas business community. Given the uncertainty surrounding the law, Kansas employers may have to adapt quickly to changes in insurance coverage.

More Information

This publication is the sixth in a series of briefs about the impact of health reform in Kansas. It is based on work done by Suzanne Schrandt, J.D. Other contributions were made by Susie Fagan; Duane Goossen, M.P.A.; Jim McLean; Cathy McNorton and Robert F. St. Peter, M.D. This document and the other briefs in the series are available online at www.khi.org.

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KANSAS HEALTH INSTITUTE

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KANSAS HEALTH INSTITUTE
212 SW Eighth Avenue, Suite 300
Topeka, Kansas 66603-3936
Telephone (785) 233-5443
Fax (785) 233-1168
www.khi.org

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