

The Effect of the Patient Protection and Affordable Care Act of 2009 for Insurance Brokers of Individual and Small Group Accounts



by Tom Linn and Wayne Walkotten

The general consensus in the broker community is that large group accounts (greater than 100 employees) are likely to retain the status quo despite recent Healthcare Reform. The more difficult question regards the future of small group accounts (less than 50 employees) and individual health accounts. What will be the brokers' role for these accounts? Will there be any role at all? Or will new opportunities abound? The purpose of this paper is to provide specific definition as to the new laws and regulations that will affect the insurance brokers' role in the procurement process for small group and individual health accounts.

Mitigating factors that are not addressed in this paper include: (1) the potential for popular backlash against the new legislation and partial repeals or delays in implementation, including litigation; (2) the possibility that the Health Exchanges may be cumbersome, expensive and unwieldy, thus negating the advantages they were intended to create; and, (3) the impact of dramatic or overwhelming increases in healthcare premiums. It should be noted that each state will determine its role and the use of exchanges. Therefore, the following issues tend to reflect a national view. The timing and delivery of exchanges will vary by state.



On the back of this page is a list of the major issues that will impact the broker of small group and individual accounts. We have chosen to disregard other aspects of the legislation that we felt may not have as significant an impact on the brokers' role.

It is likely that the market opportunities for brokers of small group accounts and individual accounts will remain healthy and even improve through 2013. In 2014, rich tax credits offered to small businesses and tax penalties threatening larger employers should drive even more employers to insurance brokers to seek advice regarding their health insurance purchase. The threat to this scenario lies in the real possibility that increased demand and adverse selection will drive premiums to unprecedented heights. Small businesses and individuals currently buying health insurance coverage may be forced into electing to pay the new penalties because they cannot afford the new, increased cost of health insurance. Ironically, this is exactly the scenario the new law seeks to avoid.

General Agents in the benefits space are another likely beneficiary of the new laws for two reasons. First, the additional complexity generated by the new law will drive brokers with limited benefits expertise to use General Agents that offer a high quality turnkey capability. Second, many companies may seek to control costs by utilizing General Agents to convert fixed distribution costs to a variable cost structure.

The challenge for brokers lies in optimizing their role within the new Health Benefit Exchanges for individual accounts and small group accounts starting in 2014, unless enacted sooner on a state-by-state basis. The defense that brokers must employ is the same one they have used to compete effectively for decades. They must offer better service, more consultation, more flexibility and more creativity to effectively compete in this new environment. Those who are excited about innovation and change and those who embrace the new environment should continue to prosper and grow.



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Start Date	Law	Effect for Brokers of Small Group and Individual Health Accounts
1/1/10	Tax Credits - Small employers with no more than 25 employees and average annual wages of less than \$50,000 that purchase health insurance for their employees will receive a tax credit if they pay at least 50% of the employees' premium. For 2010-2013, the credit is a sliding scale with a maximum of 35% credit paid to employers with less than 10 employees with average compensation of less than \$25,000.	Over the period of 2010 to 2013, these credits should entice more small employers to purchase group coverage for their employees, thus expanding the market opportunities for brokers in that period.
1/1/11	Medical Loss Ratio (MLR) Rebates - To ensure premium dollars are spent primarily on healthcare, the new law generally requires that at least 85% of all premium dollars collected by insurance companies for large employer plans are spent on health care services and health care quality improvement. For plans sold to individuals and small employers, at least 80% of the premium must be spent on benefits and quality improvement. If insurance companies do not meet these goals because their administrative costs (including distribution costs) or profits are too high, they must provide rebates to consumers.	While individual and small group accounts do have a more lenient standard to meet (80% vs 85%), expense compression is likely for all aspects of health insurance, including brokers' commissions. Our research indicates that MLR requirements will leave carriers with about 8% of premium available for broker commissions. Also, many companies may seek to control costs by utilizing General Agents, thus converting fixed distribution costs to a variable cost structure.
1/1/14	Employer Mandate - Employers with more than 50 employees that do not offer coverage, or offer coverage that is less than the "minimum essential coverage", will pay a fine of \$2,000 per employee if at least one employee receives government subsidized coverage through an insurance exchange. Penalties can increase to \$3,000 per employee in certain circumstances.	For those employers who already offer group health coverage, this new penalty will serve as encouragement to maintain their existing plan. The same is true for those who were seriously considering providing coverage to their employees for the first time. The overall impact will be to increase the market opportunities for brokers.
1/1/14	Individual Mandate - Requires all citizens and legal residents to obtain insurance coverage. Individuals who fail to purchase health coverage will be required to pay a penalty of \$695 per year by 2016. Penalties will phase in starting in 2014. Thus, if an individual chooses to bypass purchasing insurance, they will be subject to the penalty, and will not maintain coverage. However with the new guaranteed issue requirements, non-insured individuals could purchase coverage once they have the need.	For those individuals who already buy health coverage, this new law will serve as encouragement to maintain their existing policy. The same is true for those who were seriously considering purchasing coverage for the first time. The overall impact will be to increase the market opportunities for brokers.
1/1/14	Guaranteed Issue of Coverage - Starting in the middle of 2010, A Pre-Existing Condition Insurance Plan will provide new coverage options to individuals who have been uninsured for at least six months because of a pre-existing condition. This program serves as a bridge to 2014, when all discrimination against pre-existing conditions will be prohibited.	If consumers no longer need to purchase insurance in advance of a catastrophic health condition, many will opt to pay the penalty annually and only purchase insurance when a significant health issue arises. Overall impact will be to increase adverse selection resulting in higher premiums. Higher premiums could have a two edged result: (1) higher premiums will result in higher commission amounts per insured, and, (2) higher premiums will prompt more consumers to forego coverage and opt to pay the required penalties.
1/1/14	Expansion of Tax Credits - In 2014, tax credits for small employers are increased to up to 50% of the cost of health insurance. This credit is paid on a sliding scale with the maximum 50% paid to employers with less than 10 employees with average compensation of less than \$25,000. These credits are only available to employers purchasing coverage via the exchanges. These credits decline swiftly as average compensation and employee counts increase. Thus, most of the current buyers of group coverage will not see any benefit from the tax credit program. It is clearly aimed at assisting the smallest firms with the lowest paid workers.	These credits should entice more small employers to purchase group coverage for their employees, thus expanding the market opportunities for brokers.
1/1/14	Health Benefit Exchanges, Issue #1 - Tax credits are available for people with incomes above 133 percent and below 400 percent of poverty level (i.e. \$43,000 for an individual or \$88,000 for a family of four in 2010) who are not eligible for an employer sponsored plan or offered other affordable coverage. These credits are only available to individuals who purchase coverage through an exchange, or meet certain income and plan parameters.	While lower income individuals may have an overwhelming incentive to use the exchanges and take advantage of the subsidies offered them exclusively through the exchanges, the reality is that few of those individuals buy from brokers currently. Thus, this aspect of the law should have little impact on brokers.
1/1/14	Health Benefit Exchanges Operational, Issue #2 - It is almost certain that the exchanges will include a mechanism to compensate brokers. What that mechanism will be is uncertain and will be decided on a state-by-state basis.	Brokers will retain a role in the small group and individual marketplace with those insureds who opt to purchase from an exchange.