INTRODUCTION

In March 2010, the Patient Protection and Affordable Care Act (PPACA)\(^1\) was signed into law by President Obama. Some of the provisions went into effect in 2010, with other provisions phased in each year, and full applicability of all provisions scheduled for January 1, 2014. In the meantime, numerous legal challenges to the PPACA were filed, culminating with the U.S. Supreme Court's decision on June 28, 2012, finding that key provisions of the PPACA are constitutional and allowing implementation of the Act to move forward. Some opponents of the PPACA still hope the law can be repealed with a new congress and new president elected in November 2012. While the PPACA remains a significant political issue with many opponents and proponents, the fact of the matter is that the Act has been upheld, immediate changes by Congress are unlikely, and that provisions of the law are going into effect and must be understood and complied by individuals and employers.

This article is not meant to be a comprehensive guide to full compliance with the PPACA as there is not sufficient space for a complete analysis, which would resemble a book rather than a newsletter article. This article is simply intended to highlight some key provisions. The PPACA is detailed and technical, and each business needs to seek guidance from key professionals (attorneys, accountants, insurers, etc.) in navigating the Act's many details.

OVERVIEW OF THE PPACA

In the decade between 1999 and 2009, the cost of health care offered by small businesses increased by 123%, with average annual premiums for family coverage increasing from $5,700 to $12,700.\(^2\) Many small businesses have struggled with the increasing costs and some have had to discontinue offering health insurance programs altogether. The number of uninsured individuals in the nation has continuously risen.

To combat this state of affairs, the PPACA was enacted with goals to reform our health care system by extending essential health care coverage to most Americans, and to change the way health care coverage is purchased and paid for. Only time will tell whether the reforms enacted will accomplish these purposes. Key provisions of the Act include:

1. **Individual Mandate.** By the beginning of 2014, most individuals will be required to maintain "minimum essential coverage," meaning coverage through a government program, an

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\(^1\) Also sometimes referred to as "Obamacare" or "Obama Cares."

eligible employer-sponsored plan, or an individual plan. Taxpayers failing to meet this requirement will be required to pay a penalty with their tax return.3

2. Establishment of Health Insurance Exchanges. States are required to establish "Health Insurance Exchanges" by January 1, 2014, with federal assistance. Those states not establishing their own exchange will default to a federal exchange. Exchanges are marketplaces where individuals and small employers (fewer than 100 employees) will be able to access qualified plans, compare plans, and purchase insurance. Exchanges will operate with private insurers and will be in addition to the traditional market. Currently approximately 15 states have established exchanges, and others are in varying stages of planning and implementation.

Presently, Wisconsin has taken no significant steps towards implementation of the Insurance Exchange. Illinois, on the other hand, is working to establish a partnership plan with the federal government and is in the planning process.

3. Affordable Coverage. The PPACA is intended to make coverage more affordable in several ways. First, providing levels of premium assistance to individuals purchasing coverage through exchanges and whose family income is between 100 and 400 percent of the federal poverty level. Second, certain tax credits to small businesses with 25 or fewer full-time employees who offer qualified plans are available for tax years starting 2010 (and after 2013 participate in exchanges). Finally, starting in 2014, employers with more than 50 full time employees will have "shared responsibility" for providing coverage for employees. This will be accomplished by assessing penalties to those employers who do not offer satisfactory coverage, as well as penalties to those who offer satisfactory coverage but the coverage is deemed "unaffordable" under the Act. The PPACA also requires states to expand Medicaid eligibility to individuals falling below certain poverty levels. How this Medicaid expansion actually works and whether it actually takes place in some states is questionable, in that the U.S. Supreme Court decision did strike down some of the ability of the federal government to penalize states for noncompliance by taking away all Medicaid funding.

4. Changes to Plan Terms. Starting in 2010, the PPACA made changes to coverage required of group insurance plans offered by employers. These changes include a ban on lifetime or annual limit restrictions imposing lifetime dollar limits on "essential health benefits"; a requirement that group plans must provide first dollar coverage (without co-pay or deductibles) for certain preventative services such as immunization and other services; banning the imposition of pre-existing condition exclusions for participation in group health plans; and extending dependent coverage under group health plans to children until they reach the age of 26. The PPACA also imposes new "nondiscrimination" tests on group plans preventing discrimination in favor of certain "highly compensated employees" and imposing penalties for failing to meet such tests.

5. Tax Increases. The PPACA provides for tax increases beginning in 2013 for individuals earning more than $200,000 per year ($250,000 joint). These individuals will be

3 There are exceptions including religious exemptions, illegal immigrants, incarcerated individuals, and individuals falling below certain poverty guidelines including those with incomes insufficient for filing federal income tax returns.
subject to an additional .09% Medicare Hospital Insurance tax. There will also be a 3.8% tax on "unearned income" (capital gains/dividends) for such individuals.

OTHER REQUIREMENTS OF IMMEDIATE CONCERN

While the primary provisions of the PPACA (i.e., mandates and exchanges) do not take effect until January 1, 2014, there are provisions of immediate concern as well for many employers.

1. Summary of Benefits and Coverage (SBC)

The PPACA requires that employers prepare and distribute a SBC to health plan participants no later than the first day of the first open enrollment period beginning on September 23, 2012. This is a document describing the benefits and coverage rules for each plan the employer offers. Employers need to consult with their plan administrators as to preparation of SBCs and to insure these documents will be available when required.

2. Small Business Tax Credits

As discussed above, the PPACA provides for certain tax credits for employers offering health coverage if they employ 25 or fewer full-time equivalent employees whose average wages do not exceed $50,000. The credit also requires that the employer pay at least 50 percent of the employee's premiums (single coverage). An employer who qualifies may be eligible for tax credits up to 35% of costs paid for tax years 2010 through 2013. Additional credits will be available after January 2014 for those employers participating in an exchange. The credits should be discussed with your tax preparer and may assist in planning for 2013.

3. W-2 Reporting

The PPACA requires that beginning in 2013 (for the 2012 tax year) the aggregate value of health plan coverage offered employees must be included on the employer's W-2s. This includes both employee and employer contributions. This reporting is for informational purposes only and does not affect tax liability.

4. Nondiscrimination Rules

As discussed above, the PPACA may impose penalties on plans that discriminate in favor of highly compensated employees. These rules have not been finalized, but implementation may occur once federal agencies have acted.

5. Health Care Flexible Spending Accounts (FSA)

Beginning on January 1, 2013, a $2,500 cap will be imposed on employees' annual elections to health care flexible spending accounts (i.e. cafeteria type plans). Existing plan documents do not have to be amended until December 31, 2014, even though the limitation must be followed in the interim.

CONCLUSION
This is very short summary of the PPACA and provisions that may be of concern to many small employers. The PPACA is very technical, detailed, and bureaucratic, and compliance will take time.\textsuperscript{4} This is not necessarily a criticism, however, as small businesses I have worked with have been seeking assistance in obtaining and providing health care coverage for their employees for many years, as the current system has been spiraling up in costs well beyond inflation and reducing small employers' ability to offer reasonable health care coverage. Our health care system accounts for 15% or more of our nation's GDP. Any major reform to a system this large is going to be technical, detailed, and bureaucratic. The real test is whether the PPACA will work, whether it will provide more universal coverage meeting minimum standards, and whether it will be affordable. The PPACA attempts to accomplish this goal utilizing our country's private insurance and health care provider systems. The real tests faced are the tests of time and results.\textsuperscript{5}

\textsuperscript{4} For a more detailed analysis, the author refers you to "Health-Care Reform: What you should know," by Michael Skinrud and Todd Clearly, Wisconsin Lawyer, December 2011, www.wisbar.org, a source utilized by this author in preparation of this article.

\textsuperscript{5} All opinions expressed in this article are those of the author and do not necessarily reflect those of any group or organization publishing this article. The author is solely responsible for the content herein. This article is not intended as legal advice and the author has no attorney/client relationship with any reader. This is general information only and readers are encouraged to seek specific advice and assistance from their attorneys, accountants and other professional advisors.