



Health care reform offers challenges, options for rural users

By Sara Bredesen, Regional Editor | stbrede@gmail.com | Posted: Monday, November 11, 2013 10:11 am

WAUSAU — The Patient Protection and Affordable Care Act is one of the most politically charged pieces of legislation around and has even been challenged in the Supreme Court, but there are ways to make it work for people in agriculture, according to Mary Ellen Schill, an attorney with the law firm Ruder Ware in Wausau.

“Health care is a tangled web, and we’re just a part of it,” Schill told a small audience gathered Nov. 5 at Northcentral Technical College as part of the school’s Agricultural Seminar Series in conjunction with Partners for Progressive Agriculture and Marathon County UW-Extension.

The ACA, sometimes referred to as Obamacare, was signed into law in 2010 with the goal of making sure all Americans have access to quality, affordable health insurance.

Under the ACA, plans written after March 23, 2010, can no longer set lifetime or yearly limits on health care; can’t deny coverage for pre-existing conditions; can’t drop a person for being sick or making a mistake on an application; must provide free preventative services; and must provide certain essential health services like emergency care, hospitalization, prescription drugs, maternity and newborn care.

Plans written or modified after March 23, 2010, that don’t meet those legal requirements must either be revised and a new plan offered to subscribers, or they must “go away,” Schill said.

The ACA offers a “marketplace” of approved insurance carriers that have applied and met requirements of the new law.

Some rural employers question whether they are subject to the shared responsibility provisions of the ACA that requires employers with 50 or more full-time equivalent employees to either offer insurance coverage or pay a penalty, Schill said.

“It’s quite possible in the family farming context that this isn’t going to be applicable, but say you have some common ownership; maybe they own a farm, maybe they own a country store, maybe they own a trucking company, maybe they have a gravel pit,” Schill said. “Same or common ownership, even though all those are separate legal entities, are all added together for purposes of determining whether there are 50 or more full-time equivalents.”

Agricultural and holiday seasonal laborers are exempt from the calculation of part-time employees if they work less than four months in a year, but an employer will have to be ready to prove seasonality of the work, Schill said.

Be careful also with contract labor, she said. No matter what it's called on paper, if the employer has the right to control the work, it can be considered employment for purposes of ACA calculations.

All individuals are required — with some hardship and religious exceptions — to be covered by insurance in 2014 or pay a penalty. Small businesses and low-income individuals will receive tax credits and subsidies to help pay premiums.

If an individual goes to the health care marketplace for coverage, that information is tied to the employer.

Employers should begin now keeping records of employee hours, whether or not they expect to fall under the 50 FTE threshold, Schill said.

“As an employer, at the end of each year, you're going to get one of these notices that's going to say here's your penalty — and it's going to be scary, and you can't ignore it,” she said.

The notice will tell how many employees went to the health insurance marketplace for premium assistance and will ask why you as an employer shouldn't have to pay a penalty, she said.

“Your first answer is, ‘Well, I'm a small employer. I have less than 50 (FTEs),’ ” Schill said.

“You're going to have to be able to prove that. If you're waiting to hire the lawyer then, or hire the accountant then, that might be a little too late.”

Notices can start coming as soon as Jan. 1 and might come periodically during the year notifying employers that an employee went to the marketplace for coverage.

“Don't ignore any of those, because that is your opportunity to set the record straight about that employee,” Schill said.

Calculations of full-time employees and FTEs do not include owners, family members, leased employees, or anyone who owns 2 percent or more of a company's stock. Employer mandates of the ACA are delayed until 2015, but insurance expectations will be based on 2014 employment records. Employers should recalculate each year, Schill said.

When fully implemented, a large employer will have to pay a penalty for failing to offer insurance to 95 percent of full-time employees if any one of those full-time employees goes to the exchange for coverage, or if the employer offers a plan that is not affordable or doesn't meet minimum requirements.

Although penalties don't start until 2015, the 2014 rate is \$166.67 a month per full-time employee beyond the first 30. Schill said some employers might have it in mind to pay the penalty rather than deal with insurance.

“It could be cheaper in the long run, but you have to figure the net tax effects of writing a check to the feds that’s not deductible, versus writing a check out to the insurance carrier, which is,” Schill said.

In 2015, small employers will have the option of offering insurance plans to their full-time employees from the Small Business Health Options Program of the ACA and aggregating premium payments in a monthly lump sum calculated by SHOP.

Individuals are required to have insurance in 2014 or pay penalties, which apply on a monthly basis beginning March 31.

“Open enrollment started Oct. 1 for a couple of people across the United States,” Schill said with a wry laugh. “It’s going slowly but surely.”

Wisconsin Gov. Scott Walker was among 36 governors to opt out of developing a state-run marketplace, so Wisconsin’s is a federally run program, Schill said. Approved insurance programs in the marketplace are based on geographical areas around the state so that a Janesville hospital plan is not offered in central Wisconsin, for example.

“Certain parts of the state have lots of options,” Schill said. “There are some counties where there’s one carrier.”

She said there are still outside-the-market carriers selling group and individual policies and carriers that are taking a wait-and-see stance before applying for certification in the federal program.

One of the results of Wisconsin not creating its own marketplace is that less funding was made available for training Marketplace Navigators to help people through the process of enrolling. In broad terms, coverage is divided into “metal levels” of bronze, silver, gold and platinum. At the bottom end, bronze plans offer lower premiums but higher user co-pays, while the top end platinum plans come with higher premiums but lower co-pays.

In all cases, Schill said, tobacco users can be charged up to 50 percent more in premiums for a plan.

Because of problems with the online portion of the ACA, most program deadlines have been set back. Individuals have until Dec. 7 to enroll.

“We’ve got what we’ve got. It’s been declared constitutional. It’s sort of up and running, and I think the next month or so will be very interesting,” Schill said.