



LOCKTON COMPANIES, LLC TESTIMONY

HEARING ON

**"PPACA'S EFFECTS ON MAINTAINING HEALTH COVERAGE AND JOBS: A REVIEW  
OF THE HEALTH CARE LAW'S REGULATORY BURDEN"**

SUBCOMMITTEE ON HEALTH  
ENERGY AND COMMERCE COMMITTEE  
UNITED STATES HOUSE OF REPRESENTATIVES

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Chairman Pitts, Ranking Member Pallone and members of the Committee, my name is Edward Fensholt and I am a Senior Vice President of Lockton Companies, LLC. Lockton is the largest privately-held insurance brokerage and consulting firm in the world. Domestically, Lockton employs 2,300 associates in 24 offices nationwide who serve the insurance risk needs of approximately 9,000 employer clients from coast to coast. Lockton Benefit Group ("LBG") is the employee benefits consulting arm of Lockton Companies, LLC, and provides employee benefits consulting services to approximately 2,500 of those clients.

I am the Director of LBG's Compliance Services Division, and also lead our Health Reform Advisory Practice, a multi-disciplinary team of professionals formed to steer our clients through the federal health reform initiative. On behalf of Lockton I thank you for the opportunity to appear here today to share our observations and our clients' views regarding the impact of aspects of last year's health reform law on the group health plans sponsored by our clients.

LBG provides consulting expertise related to qualified and nonqualified retirement plans, group life and disability insurance programs, voluntary supplemental benefits, dental, vision, and comprehensive group medical benefit packages. The majority of our 2,500 employee benefits clients employ us to assist in the design and administration of their group medical insurance programs.

Most LBG clients are "middle market" employers, employing between 500 and 2,000 employees, although we also have some small-group and some "jumbo" clients. Our clients include private and governmental employers, and employers across many industry segments, including construction, healthcare, manufacturing, transportation, retail, professional services firms, and the hospitality/entertainment industry.

More than half of LBG's clients maintain self-insured group health plans. The others purchase group health insurance from licensed insurance companies.

## **The PPACA and "Grandfathered" Medical Plans**

The Patient Protection and Affordable Care Act of 2010 ("PPACA") contains a "grandfather" rule designed to give substance to the President's promise during the health reform debate that "if you like your current insurance plan, you can keep it." The grandfather rule shields medical plans in existence on the date of the PPACA's passage from some of the benefit and coverage mandates imposed by the law.

The grandfather rule does not provide complete protection, however. Some of the costliest mandates apply to grandfathered and non-grandfathered plans alike. In addition, under current regulatory guidance most grandfathered plans maintained by our clients have already lost (or shortly will lose) grandfathered protection, due to even modest or routine changes.

## Grandfathered Shield is No Protection from Several Key Benefit and Coverage Mandates

Several of the PPACA's new mandates pierce the grandfather shield straightaway; that is, not even grandfathered plans are shielded from these requirements. For example, the obligations beginning in 2011 to cover adult children to age 26 (even if married and non-dependent upon the employee)<sup>1</sup>, and to eliminate lifetime and annual dollar maximums on what the PPACA terms "essential health benefits," apply to grandfathered and non-grandfathered plans alike.

Similarly, the obligations beginning in 2014 to reduce waiting periods to 90 days, and to auto-enroll eligible full-time employees in available employer-based coverage, trigger additional expenses for even grandfathered plans. Depending on the employer's industry segment, these additional expenses can be substantial.

For example, our clients in the construction and transportation industries—where we find 6-month or even 12-month waiting periods—can expect to see significant cost increases. Our actuaries tell us these clients with 6-month waiting periods currently should see a cost increase of an additional 4% in 2014; those with a 12-month waiting period should see a cost increase of nearly 25%.

Across all industry segments other than retail and hospitality, our clients can expect to experience a 4.4% cost increase attributable to the automatic enrollment requirement.<sup>2</sup>

### Additional Mandates Apply to Plans Losing Grandfathered Status

When a grandfathered plan loses its status as a grandfathered plan (on account of plan design or related changes, discussed below), additional benefit mandates and obligations apply to the plan. For example, non-grandfathered plans must comply with:

- A requirement to supply a wide variety of preventive care services at no cost (i.e., no deductible, copayment or coinsurance) to the enrollee
- A nondiscrimination rule that heretofore has not applied to fully insured (as opposed to self-insured) medical coverage
- Additional federal requirements regarding the processing of benefit claims, including a requirement to provide independent, third-party review of certain claim appeals
- An obligation to cover clinical trials (2014)

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<sup>1</sup> Under the PPACA a grandfathered plan, if it chooses to do so, may decline until 2014 to cover an adult child who has an offer of coverage from a source other than through his or her parents' employers. In LBG's experience, few employers with grandfathered plans have embraced this exception on account of the administrative burdens associated with attempting to determine whether such an alternative offer of coverage exists.

<sup>2</sup> In modeling the effect of the automatic enrollment provision, we assumed that 75% of employees who are eligible for coverage but have not affirmatively enrolled, and who are automatically enrolled by the employer, will opt out of coverage. These modeling results do not reflect the impact of the automatic enrollment feature on our retail, restaurant, hotel and entertainment industry clients. The modeling results for these clients are assessed separately because they are substantially different.

- An obligation to report quality outcomes and patient safety measures, as defined by HHS, to the federal government (2012), and
- A requirement to not discriminate in reimbursement rates etc., against providers acting within the scope of their respective licenses (2014).

Potentially the most significant of these additional mandates, in terms of cost to the plan, is the nondiscrimination rule that applies to fully insured medical coverage. Lockton has clients—such as national restaurant chains, retail establishments and other employers in the hospitality industry—who currently supply typical medical coverage to corporate staff and perhaps select others as well (such as restaurant, store or hotel managers) but who cannot afford to offer the same level of coverage (at the same rate of employer subsidies) to rank-and-file hourly employees. Maintaining the status quo, however, might subject these employers to excise taxes of \$100 per day per rank-and-file employee who does not receive an equivalent offer of coverage.

It is possible, depending on how federal regulators flesh out the requirements of the nondiscrimination rule, that these employers will simply have to terminate their existing group coverage. However, the nondiscrimination rule has yet to be interpreted by the regulatory agencies and we intend to continue to urge that as they do so, regulators develop guidance that will minimize disruption to current coverage and provide employers the flexibility they need to provide health benefits to the wide range of employees' needs and circumstances.

### Grandfathered Status is Easy to Lose

Under existing federal regulations, it's very easy for a grandfathered medical plan to lose its grandfathered protection. For example, a plan will lose that protection for making very modest, routine sorts of changes, such as:

- Eliminating or substantially eliminating a benefit
- Increasing any cost-sharing feature expressed as a percentage (e.g., increasing an enrollee's co-insurance rate from 10% to 11% of covered claims)
- Increasing fixed-dollar cost sharing amounts, other than co-payments (for example, deductibles) more than 15% above the health care inflation rate
- Increasing a co-payment more than the greater of \$5 or 15% above the healthcare inflation rate
- Reducing the rate of employer contributions (as a percentage of the total cost of coverage) more than 5% for any coverage tier, or
- Installing a new overall annual maximum on the dollar value of all benefits, where the plan did not previously have an overall annual OR lifetime maximum on the dollar value of all benefits; reducing an existing annual maximum on the dollar value of all benefits; or installing an annual maximum on the dollar value of all benefits (to substitute it for an existing lifetime dollar limit that is being

eliminated) if the new annual dollar maximum on all benefits is less than the current lifetime benefit maximum.

Initial regulatory guidance on the “grandfather” rule provided that an insured plan which merely changes group insurance carriers would lose grandfathered protection. In autumn 2010, federal authorities responded to concerns from the employer community and rescinded this rule, for changes in carriers where the new contract is (or was) effective on or after November 15, 2010.

While we appreciate the challenges facing federal regulators, and are grateful for their willingness to rescind a troublesome rule, the relief came too late for many of Lockton’s clients. Most of our clients operate their health plans on a calendar year basis, and finalized their 2011 insurance placements well in advance of November 15, while still under the belief that changing carriers meant a loss of grandfathered status. Those placements, if they involved a new carrier, thus assumed a loss of grandfathered status, and the new plan design incorporated the mandates that apply to non-grandfathered plans.

We note also that these “loss of grandfathered status” thresholds are *cumulative*. That is, a plan that makes a very modest change in 2011 and manages to retain grandfathered status, but then makes an additional modest change for 2012, must aggregate the changes to see if the thresholds described above are exceeded.

#### Most LBG Clients Lost or Will Lose Grandfathered Protection in 2011

According to a survey of LBG clients conducted late in 2010, the significant majority of our clients intended or expected to lose grandfathered protection in 2011, based on plan design changes the client intended to make in order to help reduce plan costs. Here are the survey results:

<u>Client Size (Number of Employees):</u>	<u>Percentage Expecting to Lose Grandfathered Status in 2011:</u>
<499	47%
500-1,999	73%
2,000+	69%

#### **New Survey Reflects Employers’ Concerns Regarding PPACA**

Lockton recently surveyed clients regarding PPACA and its effect on clients’ health plans this year, as well as the impact they expect it to have on their plans in the near future. This survey, completed in May, 2011, posed 12 questions to clients regarding the perceived benefits and burdens to them and their group medical plans, under the PPACA.

The response to the survey was tremendous, and some definite themes emerged. Employers of all industries weighed in, from hospitals to hospitality, from construction to universities. Employers are concerned – specifically about the potential for additional administrative obligations and the potential for additional costs.

Clients as large as 10,000 employees down to fewer than 50 employees are represented in the survey. Results of the survey are aggregated below.

### Level of Concern or Lack of Concern Regarding Impact of PPACA on Group Medical Offerings

The survey asked LBG clients to rate their levels of concern about the impact of the health reform law on their health insurance benefit offerings for their employees. Our clients responded:

- 45%** More concerned than I was last year
- 14%** Less concerned than I was last year
- 41%** No change from last year (the survey did not ask respondents to describe last year's level of concern)

### Level of Concern or Lack of Concern Regarding Specific Topics

Employers were asked to rate their levels of concern or lack of concern regarding several specific aspects of health reform. The aspect of health reform that employers cited as being concerned or very concerned about – across all industries – was: **Additional administrative obligations.** This includes notices to employees, additional plan summaries, and a variety of reports to federal authorities, including W-2 reporting of health plan values. Local governmental employers, in particular, at 86% of those government employers responding, were concerned or very concerned about this area of health reform.

In order, the aspects that rated the most concern are as follows:

- 80% Concerned or Very Concerned:** Additional administrative obligations
- 71% Concerned or Very Concerned:** Potential impact of the employer “play or pay” mandate in 2014 (potential impact of penalties, cost of expanding coverage to avoid penalties, potential need to move some full-time employees to part-time to avoid penalties, etc.)
- 63% Concerned or Very Concerned:** Cost impact of 2010-11 benefit mandates (elimination of dollar maximums, coverage of adult children, etc.)

- 60% Concerned or Very Concerned:** Potential cost impact of 2014 automatic enrollment requirement
- 58% Concerned or Very Concerned:** "Cadillac Tax" excise tax on high value coverage in 2018
- 54% Concerned or Very Concerned:** \$2,500 cap on health flexible spending account benefits in 2013, and
- 31% Concerned or Very Concerned:** Potential impact of nondiscrimination rule applicable to insured medical coverage (potentially requiring employers to offer the same level of coverage, same waiting periods, same employer subsidies, etc. to many rank and-file employees as are supplied to higher-paid employees).

Advantages (to Employers) of Aspects of PPACA

Our clients recognize that with health reform come some potential advantages. When asked to rank them, 37% found the increase in maximum permissible health condition-related wellness incentives/penalties to be the most attractive potential benefit to them, under the PPACA.

Overall, employers identified the key advantages to be:

- 37%** The increase in maximum permissible health condition-related wellness incentives/penalties
- 31%** Insurance exchanges in 2014, as providing a way for their part-time or otherwise non-benefits-eligible employees to purchase subsidized medical coverage
- 23%** Insurance exchanges in 2014, as providing a way for the employer to eliminate pre-65 retiree medical coverage, knowing the retirees will be able to purchase subsidized coverage in an exchange, and
- 16%** Insurance exchanges in 2014, as providing a way for the employer to eliminate group health insurance coverage for active employees, knowing they can purchase subsidized medical coverage in an exchange.

Increase or Lack Thereof in Administrative Obligations and Responsibilities

When asked if and how the PPACA's new reporting and disclosure obligations will affect their administrative responsibilities, employers across all industries made it clear: Yes,

**more than half** felt the health reform law will **significantly** increase administrative responsibilities.

Lockton further asked employers to quantify the cost each time they issued a new notice to employees that are enrolled in their health plan if the notice, under current federal rules, cannot be distributed electronically. The majority of responses: **from \$1-\$3 per employee.**

### Play or Pay?

In 2014, the “play or pay” mandate (the PPACA refers to it as the “shared responsibility” provision) for employers takes effect. Employers must either offer qualifying and affordable coverage to each full-time employee (defined as an employee working 30 or more hours per week) or risk paying penalties to an insurance exchange. When asked what they would consider doing in 2014, here’s how employers responded (checking any answer that applied):

- 44%** Will reduce the employer’s subsidy toward employee coverage
- 43%** Will reduce the employer’s subsidy toward dependent coverage
- 18%** Will consider terminating outright their group health plans, because the penalties payable to the insurance exchanges are far less than the employer’s current and anticipated health care spend,<sup>3</sup> and
- 17%** Will attempt to avoid penalties by hiring more part-time workers in lieu of full-time employees.

### What Would You Tell Congress If You Had the Chance?

We asked our clients, “If you could tell Congress one thing about the health reform law, what would it be?” The answers reflect that many are concerned about the cost implications of the PPACA. Here is a sampling of answers:

- “I do not believe that they considered the cost of this plan [the PPACA] to the employer in the short term. I think their only consideration was to the employees that do NOT currently have health coverage. Our rates went up an additional 7 - 9% in 2011 because of health reform.”
- “Forcing these mandates on employers will lead to many employers currently offering coverage to their employees to terminate coverage offerings due to financial hardship.”
- “It will increase our costs that we have to pass on to our employees with little increase in benefit. The mandates will add costs that we cannot control.”

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<sup>3</sup> In this regard the typical response we hear from clients about what they may or intend to do in 2014 is that, while few clients have definitely decided to terminate group coverage, few have definitely decided they will continue to offer coverage. Most clients tell us, in essence, “We may not be the first to terminate group coverage, but we won’t wait to be third, either.”

- “In the short-run, the provisions of the law are burdensome with little benefit to employer or employee. In the long-run, the law will drastically reduce access to healthcare services and dramatically increase the cost to both the employer and employee.”
- “What they are planning is only going to penalize the employers and the employees who actually are hard workers and who are trying to make a living for themselves and not relying on the government to take care of them.”
- “We currently provide healthcare coverage to our employees. The current healthcare reform act will do nothing but add cost and add administrative requirements.”
- “The reporting requirements are extremely cumbersome and will add administrative burden and cost to our operations.”
- “This plan [PPACA] doesn't fix the healthcare problems but shifts the burden to employers to take care of the issue without any type of assistance on covering the increase in costs.”

## **Conclusion**

Lockton greatly appreciates the opportunity to appear before you today. In assessing the impact of the health reform legislation, we urge you to place yourselves not only in the shoes of those Americans who need access to affordable insurance, but in the shoes of the employers who supply valued coverage to 160 million of us.

Employers are burdened and frustrated by aspects of the health reform law that add costs and complexity to their health plans, and may lead some of them to eliminate group coverage and full-time jobs.

We welcome the opportunity to work with you to mitigate these burdens on the employer community.