Understanding your obligations for Affordable Care Act implementation

During Professional Days at GA2013, with the Association of UU Administrators, we presented a comprehensive update on the Affordable Care Act and how we expect it to impact our congregations, whether or not they are in the UUA Health Plan. Our information is imperfect, because large blocks of regulation have not yet been written. However, the broad outlines of how implementation will proceed, and some of the details, including draft forms, are now available. The best way to use this update is to open the (ACA Presentation - June 2013) Powerpoint slides (posted on the web in PDF format), flip though it, and use these notes to expand the detail in the slides.

Dates are going to be an issue, but not an insurmountable one. The Exchanges, if all goes according to plan , will open on October 1. The UUA Health Plan will set its final rates and plan designs on October 4, and all of those details will be live online on November 1. For the month of October, any of your employees interested in comparison shopping the UUA plan against the Exchanges will have to use 2013 data as an approximation.

We expect the regulatory landscape to evolve rapidly over the summer, and as we learn new information, we will publish additional updates. For now, congregations should carefully review the section "Decisions you have to make before October" and begin the planning process. Jim Sargent, the director of the UUA Health Plan, and Richard Nugent, the Director of the Office of Church Staff Finance, are always available to answer your questions.

Affordable Care Act – the jargon (slides 6 and 7). Many of these terms have been around for a while, some are new, and some have taken on new meaning in the context of the Affordable Care Act. The slide presentation begins with these, because understanding this highly specific insurance language is critical to being able to follow ACA rollout.

- **PPACA, ACA, RomneyCare, Obamacare** – A rose by any other name.....all of these refer to the Patient Protection and Affordable Care Act, generally shortened to just "Affordable Care Act", the law that puts expanded health insurance availability into play, changes the rules about how insurance companies can limit that access, and mandates certain benefit revisions and standardization.

- **Small Employer** – For ACA purposes, a business that employs fewer than 50 full-time equivalent people. Churches are employers under this law, but very,very few of our congregations meet the 50 employee rule, unless they have related, controlled businesses. The small employer test is the measure for applying the mandate to offer coverage, and the fines that go along with non-compliance.

- **Exchanges** – The new insurance markets that will be operational in all 50 states and the District of Columbia. Some will be operated by the state, some under a state-federal partnership, and

most by the federal government. The accuracy of "…will be operational…" depends on who you believe – the US government or ACA detractors.

- **Individual Mandate** – The requirement that everyone have health insurance, or pay a penalty. There are some very limited hardship and religious exemptions, but basically "everyone" means "everyone".

- **SHOP** – Small (business) Health Options Program, the new market for small employers that prefer to buy all of their employees' health insurance through an exchange. SHOP will come with the benefit of a small employer tax credit built into the rates, but at least for 2014, the number of options an employer could elect may be very limited, with large state to state variation.

- **FLSA** – Fair Labor Standards Act. This is not new legislation, but it will be the body of regulation that is amended to regulate hours rules and other provisions of the ACA

- **IRS, HHS, DOL** – The three federal agencies that are writing the regulations that implement the ACA. The ACA, as passed by Congress, was a framework for implementation, but vast "How To" sections were left as "to be determined" by the Internal Revenue Service, the Department of Health and Human Services, and the Department of Labor. Most experts estimate that, in the end, there will be 30,000 pages of new regulations, half of which have not yet been written.

- **Church Plans** – Exactly what it sounds like – plans sponsored by religious denominations. The UUA plan qualifies. In the past, insurance laws have given broad preference to Church plans, based on the good the plans have done providing insurance within their denomination. The laws have provided Church Plans with great flexibility in how benefits were shaped to fit individual denominations. In the case of the ACA, except for specific relief for denominations that opposed adding coverage for abortion, Church Plans have been cut no slack at all.

- **ERISA Plans** – The general term for large self-insured plans (like ours) that are regulated by the Federal government under the Employee Retirement Income Security Act of 1974, rather than by individual states. The good news about ERISA plans is that they have the ability to offer a uniform set of benefits nationwide – a critical feature for us, and for the large unions that are the principal sponsors of these plans. The principal downside in ACA discussions, is that ERISA plans are not eligible for any of the subsidy funds that will be available through the Exchanges. This disparity is being challenged by both labor unions and religious denominations, but any corrective legislative action is highly unlikely for 2014.

- **Medicaid** – The joint state-federal program that provides health insurance for broad categories of people who qualify based on federal poverty guidelines. Medicaid is closely tied to the operation of the Exchanges, since one of the underlying principals of ACA economics is the expansion of Medicaid to included people earing up to 133% of the federal poverty level. Many states are not going to comply with Medicaid expansion, which pushes many more people than originally planned into the Exchanges. And just to make it into an administrative nightmare, work is not proceeding well on the integration of Medicaid eligibility systems and state

Exchange eligibility systems. One critical change to Medicaid rules, regardless of whether a state expands eligibility for 100% to 133% of FPL, is that *everyone* who qualifies based on income is eligible, not just those in specific categories, such as women with dependent children.

- **FPL** – Federal Poverty Level. There is a chart in the slide show that shows some of the points on the sliding scale, based on family income and family size. The IRS will use a more detailed version of the chart to calculate both eligibility for subsidies and the size of the subsidies.

- **PTC's** – Premium Tax Credits, aka "subsidies". They wound up with "Tax" in their name, because the IRS is tasked with monitoring how they are paid out and whether or not people claiming a PTC were eligible for it. The final settling up is done when the person files their federal income tax return.

- **MAGI** – Modified Adjusted Gross Income, and another indication of the IRS role in calculating eligibility. The specifics are in the slide show.

- **Age Rating** – A common feature of individual health insurance policies, less common in group insurance plans, providing for a cost differential of no more than 3:1, oldest compared to youngest. The UUA plan has always used age banding, and two years ago we brought the plan into compliance with the 3:1 rule.

- **Minimum Value Rule** – Requires that all insurance plans cover at least 60% of eligible charges submitted by doctors, hospitals, and other providers. The UUA plan is always in the 90% range. The rule is applied in the aggregate, based on the actuarial value of the plan, not by measuring claims payout at the individual subscriber level.

- **EHB's** – Essential Health Benefits, as defined in the ACA, guaranteeing that all plans will include at least a minimum amount of coverage for hospitalization, doctors visits, preventive health services and other commonly used medical services. "Minimum" doesn't mean "good", but it does offer protection to consumers who in the past might have had to purchase policies with large coverage gaps.

- **SBC** – A Summary of Benefits and Coverage, as standard document that all plans have to provide to members every year, to make it easier to comparison shop.

- **Navigator** – The official term for people hired by the Exchanges to walk people through the process of applying for coverage. Tens of thousands Navigators will be hired nationally, a tall order for October 1, but a worthy concept.

Things your employees will ask you (slides 11 – 17). These are at least the highlights. We're also certain that there will be questions you can't answer, and given the pace of regulatory release and the absolute deadline of October 1, there are going to questions we can't answer either. However, the Health Plan has a lot of expert resources to draw on, so don't be afraid to ask for clarification.

- **Do you – my employer – have to offer me health insurance?** Unless you are the rare congregation that controls enough related entities to reach the 50 employee threshold, the answer is "no" (and even for large employers, that requirement has been put off to 2015). That's the legal answer; the ethical answer is one for your congregation to discuss.

- **Is there a penalty if I don't have health insurance?**

    - Yes – 1% of income (min $95) in 2014, 2% (min $325) in 2015, 2.5% (min $695) in 2016, indexed after that, with a 3X maximum family penalty.

- **Can I buy coverage on the Exchange?** Yes, anyone can buy coverage on the Exchange, even if their employer already offers health insurance. BUT, and this is a big "but", just because you can buy coverage on the Exchange doesn't mean you qualify for a subsidy.

- **Will the congregation be penalized if I do?** Absolutely not, not even if you qualify for a subsidy.

- **Am I eligible for a subsidy?** Let's look at the bullets on the slides. Here are the criteria for NOT being eligible for a subsidy --

    - **Covered by Medicare or Medicaid** – Both programs are already subsidized, so no further subsidies will be available

    - **Covered by other government coverage**, e.g., CHIP, TRICARE, VA, etc.

    - Offered an **affordable** employer plan that covers **minimum value** -- Note that there are two criteria. The "minimum value" rule is a given for any plan on the Exchange. "Affordable" has a very specific meaning under ACA: the net cost to the employee, *after your contribution*, for *single* coverage, for the *lowest cost plan* you offer, does not exceed 9 ½ % of the MAGI for their *family*. Take a look at the examples – because the affordability test applies only to the cost of single coverage, measured for the lowest cost plan you offer – which may not be the plan the employee is in – some employees are in for a nasty surprise.

    - **Enrolled in an employer plan** (even if not an "affordable" plan). Includes SHOP plans.

    - **Married filing taxes separately.** With the June 26 Supreme Court ruling on DOMA, there are going to be some evil outcomes. Because eligibility for a subsidy is verified by the IRS based on federal income tax filings, it is likely that regulations will be written allowing same-sex couples in any of the twelve states (soon to be thirteen when California is sorted out) and the District of Columbia to file jointly, and therefore be eligible for a PTC. Civil unions will not be extended the same right. And in the 34 states where same-sex marriage is banned, couples will have to wait for (or sue for) legislative relief.

    - **MAGI > 400% FPL**

- **MAGI <100% FPL** These people will go to Medicaid. In the states that accept Medicaid expansion, the cutoff is 133%.

  Everyone else is eligible for a PTC – a subsidy – but you as the employer have no part in paying it. Payment goes from the government to the Insurer that the employee selects on the Exchange, and the employee is responsible for settling up with the IRS when they file their tax return.

Your ACA obligations as an employer start October 1 (slides 19 and 20)

- **Notification** – "New Health Insurance Marketplace Coverage Options and Your Health Coverage". This is a mandatory notice, with no exception for small employers. It has to be given to each of your employees, regardless of where they currently get their health insurance, or their hours, or how much they earn. If you currently offer the UUA plan, or any other plan that has age rating, you will have to give a customized Notice to each of your staff. Slide 20 is a completed, notated sample. You will have to make a good faith effort at answering the last section regarding your intentions for 2014.

- **Help with the Exchange application, Appendix A** -- Employees may ask for help with this, especially if they believe they qualify for a subsidy. Your best approach is to show them that the information requested in Appendix A matches what you have provided in your mandatory notice.

  There has been discussion among the church plans about the possibility of employer penalties for non-compliance, and so far the only answer is, "We don't know." One thing that is certain is that you must keep adequate documentation – keep a copy of the notice you give to employees, and document every interaction you have with them regarding benefits – when was the offer made? was it accepted? rejected? when?

- **Respond to government inquiries** – You can expect an IRS or DOL inquiry (it's still unclear which agency will own this) if one of your employees gets coverage on the Exchange. That's probably the tip of the iceberg.

Decisions you have to make before October (slide 21) Yes, October is not far away. The Exchanges, in some form, are going to start selling in October, as close to October 1 as they can. Their launch will be preceded by a significant advertising blitz, beginning around mid-August. The blitz may come earlier in some states, depending on local funding. Your employees will be aware of the ACA launch

- **What plans will you offer? What do you offer now?**

- **The UUA Health Plan Subscriber Agreement**. If your congregation currently participates in the UUA Health Plan, you have an Employer Agreement that specifies the plans you offer. You will have an opportunity in early October, after the Health Plan Trustees meet and finalize 2014 open enrollment terms, to submit a new Agreement that includes whatever new Silver level plan the Trustees approve.
- **Setting the floor on "affordability"** The lowest cost plan you offer sets the standard for calculating affordability. The Health Plan open enrollment period runs for the month of November, so your employees will have plenty of time to study their options.

➢ **What will you do with your contributions?**

- The "affordability" calculation looks at the net cost to an employee, after your contribution.

- Your contribution level impacts eligibility for a tax subsidy under SHOP. The current small business tax credit rules include a safe harbor provision – as long as the congregation pays at least 50% of the employee-only cost for everyone, you may apply for the credit. However, when the final SHOP rules are published, there will likely be significantly strengthened contribution rules.

➢ **Will you explore SHOP?**

- Keep in mind that on the Exchanges that the federal government operates – and that's most of them -- employers will be limited to a single plan choice in 2014. The state-run Exchanges may off more flexibility. Also, the typical Exchange plan will be a high deductible plan, with an individual deductible well above the $2,400 in the UUA plan.

➢ **Will you stop offering health insurance altogether?** Some employers are already talking about this – making a strictly economic decision about benefits. The UUA Health Plan has spent the last seven years helping congregations expand the coverage they offer staff, so while we recognize this option we do not endorse it. Beyond the justice and equity issues, though, there are other things to consider --

- **Contractual issues** – You may have a contract with some of your staff that requires employer-provided health insurance. Sending someone to the Exchange, even if you subsidize their purchase, would not satisfy contract terms.

- **Employee relations issues** – Make up your own worst-case scenario.

- **Tax implications for staff** – The health insurance contributions you make now for your staff are not taxable income. If you let your employees find their own coverage, any payment that you make to them to assist with their purchase of coverage, on the Exchange or anywhere else, is taxable income.