

# Preparing for the Affordable Care Act

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Photography by Brian Ambs

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**New healthcare mandates codified by the Patient Protection and Affordable Care Act (PPACA) have left the nation's employers scratching their heads, baffled by the nuances and penalties in the law. Employers are faced with the problem of how to address the mandates that are in place and prepare for those to be established in 2014. The partners at Vorys, Sater, Seymour and Pease have made it their business to know the intricacies of this law and its implications for employers of all sizes.**

"Regardless of what you think about healthcare reform and the Affordable Care Act, it is happening," says Victor A. Walton, Jr., a partner at Vorys. "And no matter what your opinion of the new mandates may be, they will be paid for through very strict enforcement."

President Barack Obama signed the PPACA, commonly called "health reform" and "Obamacare," into law in 2010. Considered one of the most significant regulatory healthcare laws in history, its mandates seek to increase accountability in the healthcare industry and decrease the number of uninsured Americans. However, it has also created some unique challenges for employers.

"We're encouraging not only our healthcare clients but also employers in all industries to assess right now their level of ACA compliance," says Jolie Havens, a partner at the firm. "Employers may think they still have a lot of time to figure it all out, but they really don't. There are some very significant decisions to be made now – decisions that can impact overall employer culture and staffing models and drive internal tracking and external reporting obligations for employers. Because ACA requirements are so nuanced and application is so employer-specific, you need legal counsel who is specialized in this area, and Vorys has over 40 attorneys who can offer that relative to various aspects of ACA compliance."

The preparations employers will face in order to comply with the new law will be unique to each business, according to Vorys partner Michael J. Bronson. "There is no specific amount of time to set aside or magical formula we can give you to adequately prepare for these mandates. If there appears to be a crack in compliance, you need to address it right away."

Healthcare issues affect everyone and, ready or not, employers must address the mandates introduced by the PPACA.

"The attorneys working in the firm's healthcare services area have experience in the industry that is both broad and deep," says Havens. "We pride ourselves at Vorys on being very practical and being able to discuss not only academically what the mandates may be, but also understanding our clients' businesses and their industries. That is absolutely a key component to giving meaningful advice about this law that affects us all."

Healthcare providers also face additional compliance challenges under the law. One of the most significant changes for healthcare providers codified within the PPACA is the revision to the federal False Claims Act's Public Disclosure Defense, which has traditionally barred realtors from bringing allegations of fraud based upon information accessible by the public domain.

"There are so many complexities and nuances proposed by the Affordable Care Act," explains Bronson. "In addition to the compliance issues detailed in this law, a major theme is combating healthcare fraud and abuse on the back end. To address those issues, Congress has created some significant amendments to the federal False Claims Act. Under that statute the Department of Justice has been recovering billions of dollars a year. These amendments serve to reduce the scope of or even eliminate the defenses that have been available to healthcare providers in False Claims Act cases."

The penalties for even a simple clerical error in medical billing can be severe. "If you, as a healthcare provider, have been overpaid, whether you billed the government in error or the government has er-

roneously overpaid you, an innocent mistake can quickly become a false claim," says Walton. "The penalties for these errors are quite harsh, often three times the amount you have mistakenly kept. The employer mandates coming into play in 2014 are similarly draconian, and if you don't meet these obligations, you are looking at some significant penalties. Mistakes can multiply very quickly, especially in the healthcare industry."

According to the partners at Vorys who specialize in health care litigation, now is the time to address concerns and mandates brought forth by these reforms, as well as establish new compliance procedures.

"The amendments to the False Claims Act are designed to reduce defenses, expand liability, and encourage whistleblowing, having the effect of significantly increasing the number of lawsuits and False Claims Act cases as the ACA matures," says Havens "These changes were effective immediately upon the implementation of the law and leave many employers vulnerable to lawsuits."

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