PRESENTATION

AFFORDABLE CARE ACT
Update for Employers

Labor & Employment Briefing

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EXPAND YOUR EXPECTATIONS℠

Select ACA Provisions Affecting Employers

2011 Plan Year	2011	2012	2013	2014	2018
Lifetime dollar limits on Essential Health Benefits (EHB) prohibited*	OTC medicines not reimbursable under Health FSAs, HSAs, or HRAs without prescriptions, except insulin	Employer distribution of SBCs to participants*	Notice to inform employees of coverage options on health exchanges (DELAYED)	Individual mandate to purchase insurance or pay penalty	Excise tax on high-cost coverage
Preexisting condition exclusions prohibited for children under 19*	HSA Excise Tax increase	Medical Loss Ratio rebates (insured plans only)*	Limit of health Care FSA contributions to $2500 (indexed)	State Insurance exchanges	
Limits on annual dollar limits on EHB*		Employer reporting of health coverage on Form W-2 (due 1/31/13) (only for employers with ≥ 250 W-2s)	Medicare tax on high income (employers begin withholding on wages over $200,000)	Transitional reinsurance contributions (approx.. $63 per participant)	
Extension of adult child coverage to age 26*			Addition of women's preventive health requirements to no cost sharing and coverage for certain in-network preventive health services**	Preexisting condition exclusions prohibited*	
Enhanced appeals procedures**					
No cost sharing and coverage for certain in-network preventive health services**				Annual dollar limits on EHB prohibited*	
Nondiscrimination rules on fully-insured health plans** (DELAYED)				Limit of 90-day waiting period for coverage	
	*Denotes changes applicable to all group health plans ** Denotes changes NOT applicable to grandfathered health plans ***This requirement applies to "full time employees"(discussed below) Delayed to 2015 for employers with ≥ 100 FTEs; to 2016 for employers with ≥ 50 to 100 FTEs			Increased cap on rewards for participation in wellness program**	
				Limits on deductibles and out-of-pocket maximums**	
				Employer responsibility to provide affordable minimum essential health coverage****	

ACA– Requirements Become Effective for 2014

Beginning for 2014 Plan Year:

- Preexisting condition exclusions prohibited for all participants.
- Annual dollar limits on “essential health benefits” prohibited. (Lifetime limits were prohibited beginning in 2011).
- Limit of 90-day waiting period for coverage – coverage must start on 91st day.
- Increased cap on rewards for participation in wellness program.

Transitional Reinsurance Program

- The Transitional Reinsurance Program provides for fees to be levied on employers and insurers that will be used to stabilize premiums in the individual market. The fee will be collected for 2014, 2015 and 2016.
- The program is funded through fees to be paid by employers (for self-insured plans administered by a TPA) and insurers (for insured plans).
- The fees for 2014 will be $5.25 a month(or $63 for the year) for each individual covered under a health care plan.
- The fee may be paid from plan assets.

Transitional Reinsurance Program

- Fees are due in the year following the benefit year. HHS proposes to allow payment in two installments: the first for reinsurance payments and administrative expenses, and the second for the U.S. Treasury.

- For example, of the $63 per capita contribution rate for the 2014 benefit year, $52.50 will be allocated to reinsurance payments and administrative expenses, and $10.50 to the U.S. Treasury. The enrollment count is due from the employer by November 15, 2014, and HHS will invoice in December 2014. The first 2014 installment will be due in January 2015. HHS will invoice another fee payment of $10.50 per covered life in the fourth quarter of 2015, which will be due roughly 30 days later.

Ninety Day Maximum Waiting Period For Coverage

- For plan years beginning on or after January 1, 2014, a group health plan or health insurance issuer offering group health insurance coverage is barred from applying any waiting period that exceeds 90 days.
- Coverage must be effective by 91st day and if that falls on weekend or holiday, then coverage must be effective before 91st day.
- A waiting period is defined as “the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.”
- For newly-hired employees, a plan may take a reasonable period of time to determine whether the employee meets the plan’s eligibility condition, including a measurement period.
- The measurement period can be no later than 13 months from the employee’s start date (or, if the employee’s start date is not the first day of a calendar month, the time remaining until the first day of the next calendar month).

Restrictions on HRAs and Minimum Essential Benefits

Stand-alone HRAs will likely violate ACA requirements such as minimum essential benefits, preventive coverage and dollar limits. Thus, HRAs will need to be integrated with group health plans to comply with ACA. To satisfy ACA:

- The employer offers a group health plan that provides minimum value;
- The employee receiving the HRA is actually enrolled in the group health plan providing minimum value (regardless of whether the employer sponsors the plan); and
- The HRA is available only to employees who are actually enrolled in the non-HRA minimum value group coverage

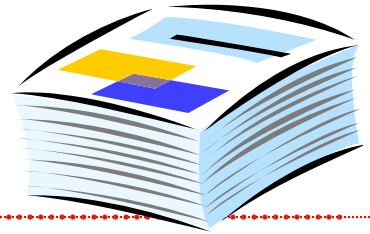
Minimum Essential Coverage – Reporting Obligation

Beginning in Q1 2016 for the 2015 plan year, employers* that sponsor self-insured health plans that provide "minimum essential coverage" will have to comply with reporting obligation under IRC § 6055. On Form 1095-B, employers must report:

1. Name of each individual enrolled;
2. Name and address of the primary insured or responsible individual who submits the application for coverage (such as a parent or spouse);
3. Taxpayer Identification Number for each covered individual;
4. Months of coverage for each covered individual;
5. Name, address and Employer Identification Number of the employer maintaining the plan; and
6. Whether coverage was enrolled through the Small Business Health Insurance Options Program (or "SHOP").

The form is due 3/31/16 if file electronically. *Applies only to employers with 50 or more FTEs.

Large Employer – Reporting Obligation



Beginning for 2015 year, employers with 50 or more "FTEs" will have to comply with reporting obligation under IRC § 6056. On Forms 1094-C and 1095-C (or a substitute form if certain requirements are met), employers must report*:

1. Name, address and EIN of the employer;
2. Certification as to whether the employer offers its FTEs and their dependents the opportunity to enroll in minimum essential coverage under the employer's plan;
3. The number of FTEs for each month during the calendar year;
4. For each FTE, the months during the calendar year for which coverage under the plan was available;
5. For each FTE, the employee's share of the lowest cost monthly premium (self-only) for coverage, providing minimum value offered to that FTE under the employer's plan. This information must be provided for each calendar month; and
6. Name, address, and Taxpayer Identification Number of each FTE during the calendar year and the months, if any, during which that employee was covered under an eligible employer-sponsored plan.

*Simplified annual reporting for employees who received "qualifying offer" which is affordable coverage and available to spouse and dependents. Employer avoids having to provide information on a month-by-month basis.

Employer Shared Responsibility Payment (Commonly Called “Pay or Play” Penalty Tax)

- For plan years beginning on or after January 1, 2015*, employers with 100 or more employees are required to provide health insurance or pay penalty tax (1/1/16 for smaller employers):
  - If employer **doesn't offer health coverage** to at least 95% (70% for 2015) of FTEs enrolls in health coverage on an exchange and obtains a premium credit, employer must pay an annual penalty of $2,000 multiplied by all FTEs, disregarding the first 30
    - The penalty is payable on a monthly, pro-rata basis
  - If employer **does offer health coverage** but it is not "affordable" or is not of "minimum value" and a low income full-time employee enrolls in health coverage on the exchange and obtains a premium credit, employer must pay an annual penalty of $3,000 for each exchange enrolled FTE (Penalty capped at $2,000 multiplied by all FTEs, disregarding the first 30 (first 80 for 2015))

Shared Responsibility Rules – Transition Rule

The transition rules allow a fiscal year plan to delay compliance until the first day of their 2015 plan year (July 1, 2015) if:

- as of any date between February 10, 2013 and February 9, 2014, at least 1/4 of ALL employees were covered under the plan; OR
- during the 2014 open enrollment period, coverage was offered to at least 1/3 of ALL employees; OR
- as of any date between February 10, 2013 and February 9, 2014, at least 1/3 of FTEs were covered under the plan; OR
- during the 2014 open enrollment period, coverage was offered to at least 1/2 or more of FTEs.

Shared Responsibility – 50 Employee Requirement

- Count all employees regularly scheduled to work 30 or more hours per week as FTE
- Count part-time employees as partial FTE:

$$\frac{\text{actual hours worked per month}}{120}$$

- The sum of all FTEs equals your Total FTE. If your Total FTE calculations result in a decimal (i.e. 10.75), round down to the nearest whole number. Total FTE = 10.75 --> Total FTE = 10
- Special rule for seasonal employees:
- If average > 50 FTEs for 120 days or less per year, and the reason is because of the seasonal employees, employer will not be considered a large employer

Shared Responsibility Rules (continued)
What Does It Mean to "Offer Coverage"?

- Employer that provides at least **95% (70% for 2015) of FTEs with health coverage**, or if greater, **coverage to all but five of its full-time employees,** is considered to offer health coverage for purposes of the pay or play penalty

- So, if an employer offers health coverage to 98% of its full-time employees:

  - Not subject to the $2,000 penalty

  - But is subject to the $3,000 penalty with respect to each low income FTE who isn't eligible for the employer's health plan and who enrolls in health coverage on the exchange and obtains a premium credit. (This is in addition to the penalty with respect to each low income FTE who is eligible for the employer's health plan but where the plan isn't "affordable" or not of "minimum value")

Shared Responsibility Rules (continued)
What Does It Mean to “Affordable"?

Health coverage must be "affordable" and of "minimum value" in order to avoid the $3,000 penalty. Coverage is deemed “affordable” if employee’s share of the monthly premium for employee-only coverage does not exceed 9.5% of one of the following safe harbors:

The 3 safe harbors for "affordability" test are:

1. Form W-2 wages (box 1 Form W-2 wages for the year divided by 12 (and pro-rated for partial years,
2. Rate of pay (employee’s monthly salary or, in the case of an hourly employee, the employee's hourly rate multiplied by 130), and
3. Federal poverty line for a single individual for the applicable calendar year, divided by 12.

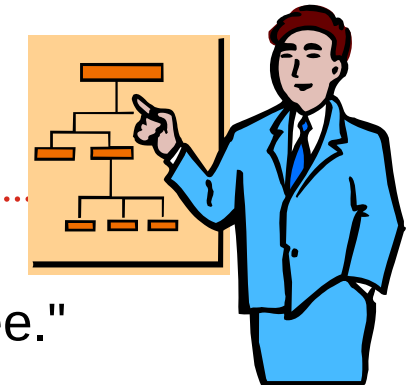
Shared Responsibility Rules (continued)
Minimum Value Test

A plan will satisfy minimum value test if it covers 60% or more of the cost of covered benefits

Proposed regulations offer three methods of determining minimum value:

1. **Calculator Method** HHS and the IRS will, in the future, offer a calculator. The plan will enter information about the plan's cost-sharing to determine whether the minimum value test is satisfied
2. **Safe Harbor Checklists Method** The safe harbors will be published by HHS and the IRS in the form of checklists to determine whether a plan provides minimum value. Each checklist will describe cost-sharing attributes of a plan in four categories of benefits:
    - Physician and mid-level practitioner care
    - Hospital and emergency room services
    - Pharmacy benefits*; and*
    - Laboratory and imaging services
3. **Actuarial Certification Method** If the plan contains non-standard features that aren't suitable for the calculator or do not fit the safe harbor checklists, the plan's minimum value can be determined by an actuarial certification

Shared Responsibility Rules (continued)
Who is the "Employer"?



- Apply common-law test to determine who is an "employee."

- All members of a "controlled group" under IRC § 414(b) or (c) are treated as a single employer.

  If a parent owns ≥ 80% of the equity in a subsidiary, or if the same 5 or fewer persons own ≥ 80% of the equity in another company or collectively own > 50% of both companies, the companies will be considered controlled groups and all employees must be combined together for purposes of calculating whether an employer is above or below the 50 FTE threshold.

- All members of an "affiliated service group" under IRC § 414(m) are treated as a single employer.

Controlled Group Issues

- Determination of applicable large employer status: made on a controlled group basis;
- Assessment of the shared responsibility penalty: made on a member-by-member basis within the controlled group.

Each employer member can independently decide which measurement method to use to determine full-time employees, including using differing measurement and stability periods under the look-back measurement method.

CAVEAT: Nondiscrimination requirements under IRC § 105(h) for self-funded plans still apply. These rules may limit an employer's ability to offer coverage to some members of a controlled group, while not offering coverage to other members, unless done on a nondiscriminatory basis.

Shared Responsibility Rules (continued)
Who is a Full-Time Employee (FTE)?

ACA defines FTE as an individual who works, on average, at least 30 hours per week. IRS guidance provides permissible safe harbor methods for applying rule:

- **New Hires.** Only count new hires as FTEs if employee is reasonably expected to work full-time as of date of hire
- **Variable Hour and Seasonal Employees.** Can generally exclude, unless the employee actually works, on average, at least 30 hours per week (130 hours/month) during a "measurement period" of between three and 12 months. If employee works the required number of hours during the measurement period, the worker must be treated as FTE during a subsequent "stability period" which must be a period of at least six months, and no shorter than the initial measurement period
- **On-Going Employees.** Can apply a measurement period/stability period test similar to above. An employee is treated as an ongoing employee (vs. a new hire) after the initial measurement period. If an on-going employee doesn't satisfy the "on average, at least 30 hours per week" test for a measurement period, employer will not be subject to penalty if it does not offer the employee health coverage for the subsequent stability period (which can't be longer than the measurement period). This is true regardless of the employee's actual hours of work during the stability period

Shared Responsibility Rules (continued)
Measurement Periods/Administration Period/Enrollment

- Measurement Periods
  - Standard Measurement Period
    - Applies to all on-going employees classified as variable hour employees.
    - Set period of 3-12 months.
    - Calculate average hours worked during measurement period for all variable hour employees employed as of first day of measurement period.
  - Initial Measurement Period
    - Applies to variable hour (including seasonal) employees hired after start of standard measurement period.
    - Number of months in period is same as for standard measurement.
    - Initial measurement period calculated from employee's date of hire. If employee not an FTE after initial measurement period, calculate under standard measurement period thereafter.
- Administration Period
  - Period commences after end of measurement period and is used to conduct enrollment of eligible FTEs.
  - Period cannot exceed 90 days.
- Enrollment
  - FTEs must be eligible for coverage for period $\geq$ measurement period, but not less than 6 months.

Shared Responsibility Rules (continued)
Summary of Tax

- $3,000, adjusted for inflation after 2014, multiplied by the number of FTEs who receive premium tax credits or cost-sharing assistance (this number is not reduced by 30)

- Penalty tax is capped at $2,000 multiplied by total number of FTEs, reduced by 30

- If an employee is offered affordable minimum essential coverage, employee generally ineligible for a premium tax credit and cost-sharing reductions for insurance purchased through an Exchange

- Employer reporting requirements (plan, type of coverage, number of full time employees)

QUESTIONS?