

Employer Mandate: Understanding the Business Impacts of Health Care Reform on Your Organization



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Today's agenda

- **PPACA requirements for 2013**
- **Employer mandate**
- **Recent guidance (12/28/2012)**
- **Compliance strategies**
- **Impact of reform and employer actions on individuals**
- **Compliance recap**

Urgent Employer Health Reform Requirements



A look ahead



Looming Plan Requirements

- Requirement for employers to notify employees of the availability of health insurance Exchanges
 - Required before March 2013
 - Delay announcement 1/24/2013; delay will not affect rest of reform
- Comply with women's health coverage expansions under preventive care rule
 - Requires in-network only at 100% coverage
 - Not applicable to grandfathered plans
 - Contraceptive coverage is controversial
 - » Steeple churches are exempt
 - » Religious employers other than churches have one-year delay and continue to fight the rule
 - » Private employers with deeply-held religious beliefs continue to battle the rule as well
 - Specific concerns: Prenatal care, for example?
 - Plan years starting on or after August 1, 2012

Other Looming Requirements

- Form W-2 reporting requirement
 - Starting with W-2 reports issued in January 2013
 - » Just report value, not taxable
 - Not required for employers that did not issue 250 W-2s in prior year
 - » IRS Notice 2012-09
- Implement \$2,500 limit on employee contributions to health flexible spending accounts (FSAs)
 - For plan years beginning in 2013 (not the tax year)
- Summary of Benefits and Coverage requirements
 - For open enrollment periods starting on or after September 23, 2012
 - Template published
 - Carriers and most TPAs will handle
 - Accelerated notice rule applies for off plan year cycle changes
 - Federal agencies not enforcing if good faith compliance
 - » For example, some are longer than allowed

Mandate & Reporting for 2014

2014 “Pay-or-play” mandate (more detail later)

- Penalties will apply for employers who either:
 - » Fail to offer health coverage; or
 - » Offer health coverage that is either “unaffordable” (as defined by PPACA) or does not provide “minimum value”
 - » Coverage not required for spouses / dependents can pay full cost
 - » Special rule for non-calendar year plans

For 2014, employers must report on health coverage of each eligible employee and family members:

- Name / Address / SSN
- All covered individuals
- Detail of coverage + other data
- Describes individual coverage and premiums for feds
 - » *Similar to Massachusetts Form 1099-HC*
- Due in January 2015 (for coverage provided in 2014)

Plan Design Changes in 2014

Coverage for certain approved clinical trials

- Grandfathered plans are exempted
- Regulatory guidance needed / Self-funded plan concern

Comprehensive prohibition on preexisting condition exclusions

Deductibles for Small Market (100 employee) plans at \$2,000/\$4,000

Complete prohibition on annual dollar limits.

- Current transition rule in effect
- Mini-med programs eliminated

Wellness Opportunity for 2014

Law increases wellness incentives from 20% to 30% of total premium (employer and employee shares)

- 30-50% of the total premium can be shifted to participants:
 - who don't participate in screening,
 - who fail biometric screening and who either
 - » don't engage in the wellness program or
 - » fail to improve their health via the program
- New guidance enables 50% differential for tobacco cessation
 - *Tobacco usage surcharge applied inclusively (e.g. 30 + 20)*
- Separate from the 9.5% affordability rule, so you can layer over the lowest employee premium for basic plan
 - Use to shift more premium to employees & to deter enrollment
- Can be imposed on family members
- Wellness regulations / HIPAA nondiscrimination continue to apply

Delay of Nondiscrimination Rules

- Delayed: Non-discrimination rules for insured health plans
 - Insured plans cannot favor Highly Compensated Employees
 - Plan testing will measure whether the plan (either on its face or in actual practice) discriminates as to benefits or eligibility
 - » Testing to be modeled after self-funded plan requirements
 - » Loopholes abound in current self-funded plan rules
 - Will apply to non-grandfathered insured plans, but currently “on hold” under an IRS non-enforcement policy
 - Effective date still unknown
- IRS will allow six (6) months after regulations are issued and then rules will take effect based on a program’s plan year
- Grandfathered plans will remain excused from compliance as long as grandfathered
 - Remaining grandfathered will be difficult/ expensive
 - Allows an employer to restrict eligibility for discriminatory plan
 - Does not affect mandate compliance

Planning for future concerns

Automatic enrollment of new employees in a group health plan

- Applies to organizations with more than 200 employees
- Effective date unknown, except that it will only apply after 2014

“Cadillac Tax” on high-cost health plans

- Effective for 2018
- 40% excise tax on employers offering coverage that is too rich
 - » Generally, plans with a value over \$10,200 single and \$27,500 family
- Some group health plans are already at these valuation thresholds due to unavoidable issues like union contracts and geography
- Government estimates 60% of plans will pay tax soon after effective date

Looming Taxes and Fees

- Comparative Effectiveness Research fees will be assessed (\$1 per covered life for first year)
 - Generally paid using IRS Form 720 starting in July 2013
 - Fees collected for Plan Years 2012 through 2018
- Reinsurance fees announced for 2014
 - \$63 per covered life regardless of plan funding
 - Three year program
- Health Insurance Industry Fee (Insured plans only)
 - Law imposes a tax on insurers based on their market share, which is used to allocate the dollar amount Congress stated in the law
 - No guidance issued
 - Estimates range from 1.5 – 2.5% of premium
 - » Stated differently, one underwriter's estimate is \$22,000 per 100 covered lives

HCR: New Fees & Taxes

	Description	Date	Timing	Payment Cycle	Targeted Plans
CER	<i>Comparative Effectiveness Research</i> : Funds Patient-Centered Outcomes Research Institute to assist policy-makers in making informed health decisions by advancing the quality of evidence-based medicine using comparative clinical effectiveness outcomes measurements. IRS has issued proposed rule.	With plan years ending after 10/1/12	Begins 2012 (Scheduled to phase out in 2019)	July 31	Fully Insured and ASO (ASO paid and remitted by plan sponsor)
Insurer Fee	Annual fee on health insurance sector, allocated by market share, to fund health insurance exchange subsidies. Fees assessed on earned health insurance premiums, with certain exclusions. No federal guidance received to date.	1/1/14	Permanent	No later than September 30 of such calendar year	Fully Insured only (Will be passed to policy holders)
Reinsurance Fee	Transitional fees to stabilize individual and small group markets; assessed on a per capita basis for both fully-insured and ASO members.	1/1/14	3 Years (2014-2016)	Fully Insured: State determined ASO: Federal, Quarterly basis beginning 1/1/14	Fully Insured and ASO (ASO funded by plan sponsor, TPA remit on behalf of ASO groups)
Cadillac Tax	Imposes an excise tax on insurers and employers who offer rich benefit coverage. 40% of value of employer-sponsored coverage exceeding \$10,200 individual/\$27,500 family. Indexed by cost of living (<i>NOT</i> medical inflation) in subsequent years.	1/1/18	Permanent	TBA	Fully Insured and ASO

Ongoing Medical Loss Ratio Rebates

Carrier filings show \$1 Billion + in rebates

- Sounds impressive, but not a windfall
 - \$14-127 average annual rebate for 2011 calendar year premiums
- Individual purchaser received biggest rebates
- Not applicable to Self-Funded plans
- Rebates *not* trigger for most participants or plans
 - Clever carriers provide payments not subject to MLR or allow for premium holidays

Employer Mandate



*What it means to your
organization*



Why many employers need help...

IRS Preamble to Proposed Regulations (12-28-12)

Employer payment liability explained

*“Section 4980H generally provides that an applicable large employer is subject to an assessable payment if either (1) the employer **fails to offer** to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan and any full-time employee is certified to the employer as having received an applicable premium tax credit or cost-sharing reduction (section 4980H(a) liability), **or** (2) the **employer offers** its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan and one or more full-time employees is certified to the employer as having received an applicable premium tax credit or cost-sharing reduction (section 4980H(b) liability).”*

Employer Mandate: A closer look

Employers with over 50 employees must offer coverage to full-time workers and children (not spouse)

- Coverage must be “affordable” for the employee
- Penalties generally lower than the cost of coverage but other financial and non-financial factors affect the decision
 - Attraction and retention of high level or crucial employees
 - Cost of compliance compared to cost of penalties
 - Income gross up for exchange coverage for certain employees
- Budgetary pressures may force government to revisit and ratchet up its original penalty thresholds
- If employer complies by offering an affordable minimum plan, an employee can waive – with no penalty to the employer
- Some employers will discourage enrollment
 - Premium cost shift to employees, leverage wellness premium shift, discourage enrollment due to 125 rules, compare cost of coverage to individual penalty, etc.

ER Mandate: “Substantially All”

Employers with over 50 employees must offer coverage to “substantially all”

- Welcome safety valve to help guard against “no offer” penalty hair trigger
- ER deemed to have offered coverage to “substantially all” IF:
 - Coverage is offered to 95% of FT employees and their dependents (or, if greater, five employees)
 - Failure does not have to be inadvertent (Employer empowered to strategically apply this rule)
- Although this rule helps avoid the no offer penalty on a month to month basis – penalties remain possible should any of the five percent receive tax credit for Exchange coverage
 - Safeguard to comply with “no offer” penalty (\$2,000)
 - Possible exposure to the “defective coverage” penalty (\$3,000)

Employer Mandate: A closer look

PPACA mandates that employers provide health coverage starting as early as January 1, 2014

- Calendar year plans: Mandate starts first day of 2014
- Other plan years
 - *If the non-January 1 plan year was in place on December 27, 2012, then apply as of the plan year*
 - *Compliance required January 1, 2014 if employer did not offer coverage to at least 33% of all employees or enroll 25% of them*
- Planning should begin well ahead of compliance date
- Measurement to identify full time workers in 2013

Total, annualized penalty will always be the lesser of:

- **\$3,000 for each FT Employee receiving premium assistance;**
or
- **\$2,000 for each FT Employee, minus the first 30**

Employer Mandate: A closer look

Change in employment status

- Employers are allowed to permit either or both of the following changes in salary reduction elections (with an appropriate amendment to the cafeteria plan):
 - *An employee who elected salary reduction through the cafeteria plan for accident and health plan coverage with a fiscal plan year beginning in 2013 is allowed to prospectively revoke or change his or her election with respect to the accident and health plan once, during that plan year, without regard to whether the employee experienced a change in status event described in Treasury Regulation Section 1.125-4; and*
 - *An employee who failed to make a salary reduction election through his or her employer's cafeteria plan for accident and health plan coverage with a fiscal plan year beginning in 2013 is allowed to make a prospective salary reduction election for accident and health coverage on or after the first day of the 2013 plan year of the cafeteria plan, without regard to whether the employee experienced a change in status.*
 - » *Plan amendments may be adopted on a retroactive basis so long as the amendments are (i) adopted no later than December 31, 2014, and (ii) are effective back to the first day of the cafeteria plan's 2013 plan year.*

How is Compliance Achieved?

To comply, an employer must offer a minimum level of health plan coverage to full-time employees and their children

- No requirement to offer spouse coverage
- The key word is “offer” – employees can still waive coverage
- What will that cost be?
 - Model costs / budget impact as soon as possible
- Carefully compare penalty exposure to the cost of compliance and weigh the decision versus intangibles
 - Tax advantages
 - Workforce expectations
 - Strapped employers may drop spousal eligibility or subsidies
- Several studies suggest that less than 7% of employers plan to pay the penalty
- [HUB International Health Care Reform Impact Tool \(HCR-IT\)](#)

Practical Impacts

- Focus of employers will be on the employees
 - Splintering of traditional employer-delivered health coverage model
 - Employers may find employees sticking with the plan but other family members shifting to Exchange coverage with tax credits
 - Most employers will shift all of dependent coverage cost to employees (full cost of spouse too, if spousal coverage offered)
 - Exchanges will use on-line system to screen for whether the employer complies with the mandate
 - » Government will use information from the group's reporting of coverage

Affordability Safe Harbors

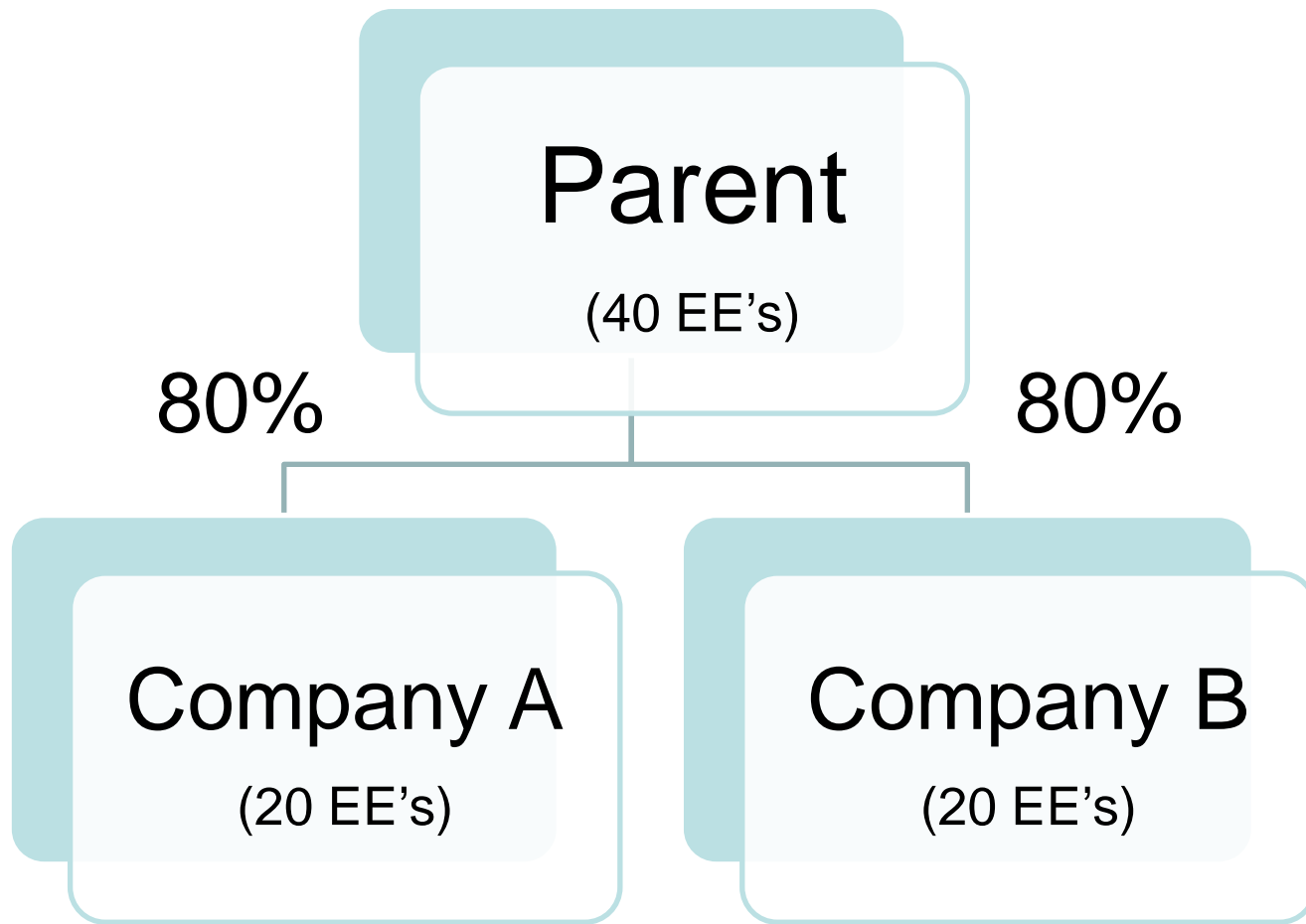
IRS: New Affordability Safe Harbors

- Employer bases contribution for employee-only coverage on no more than 9.5% of wages expected in Box 1 of Form W2
 - Box 1 income estimates will reflect some reduced amount for 125 and retirement plan salary reductions
 - Income deferrals skew final affordability number in employee's favor
 - Likely the most popular safe harbor choice
- Rate of Pay
 - Employer uses worker's hourly wage rate. Uses monthly salary for other workers
 - » Presumption of hours worked in day or week skews in employee's favor
- Federal Poverty Level
 - Coverage is affordable if the EE cost for single coverage does not exceed 9.5% of the federal poverty level for a single individual
 - » \$11,170 for 2012; higher in Alaska and Hawaii
 - » Rigid and unappealing safe harbor, but possibly helpful to very low wage groups

Localized Penalty Impact inside Control Group



Mandate Penalty Localized



Localized Penalty Example

Example

- Employers A and B are two members of a control group
 - Employer A with 40 FT employees in each calendar month of 2015
 - Employer B employs 35
 - 50% ownership and 75 employees across control group
- Employer A: No plan offered
- Employer B: Sponsors group health plan and all FT employees are eligible for minimum essential coverage (affordable and minimum value)

Conclusion

- Employer A is subject to PPACA penalty for 2015 of \$48,000
 - Equal to $24 \times \$2,000$ (40 employees reduced by 16 (its allocable share of the 30-employee offset $((40/75) \times 30 = 16)$) and then multiplied by \$2,000
- Employer B not subject to penalty for 2015
 - **\$3,000 penalty assessment (if applicable) would be charged to Employer B's EIN**

IRS FT/PT Measurement Guidance



IRS Measurement Guidance

- Formal proposed regulations allow safe harbor method to determine which employees are full-time for mandate purposes
- Presumed full-time must be offered coverage within 90 day waiting period
- For other workers, track hours worked, ideally for full 12 months
- If not possible, tracking must start by July 1, 2013, and can't end more than 90 days before the start of the 2014 plan year
- Favorable rules, particularly to industries with many variable hour workers and where no plan was offered
 - Good faith standard, reasonable protocols
 - Retail, franchise, construction, hospitality, etc
 - Generally workable standards / administratively tedious

IRS Measurement Guidance

- Variable hour employee (New): A new employee is a “variable hour employee ” if, based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week.
- Variable hour employee (Ongoing): Same as above, except service extends beyond a standard employer “measurement period.”
- Seasonal: An employer can use “a reasonable, good faith interpretation for purposes of this notice.”
 - Can the job only be performed at certain times can of the year?
 - Is the seasonal job tied to a retail position at holidays?
 - IRS to look at “seasonality” as distinguished from short term workers (e.g. duties tied to projects of short term duration)
 - » *Ski instructor or lifeguard*

Implementing Measurement Guidance

Step One: Make appropriate Employment Classifications

At time of hire, determine if a new worker is full-time or will work variable hours or perhaps be seasonal

- If full-time, put person on plan within 90 days
- If the person will work variable hours (or will be seasonal), tell the person in writing of that determination, which can be done with other materials at time of hire
- Document each type of employment status in the new employee's HR file (or benefits file if there is one)

Implementing Measurement Guidance

Step Two: Amend the health plan eligibility rules

Revise plan document to address both employees who are full-time and employees who are not designated full time at time of hire

- Variable hour workers excluded during measurement period
- “Magic words” / consistent documentation samples
- Communicate with affected employees to ensure health coverage expectations are correctly managed.

Establish internal time period during which employer will measure hours worked for any employee not designated as full-time

- Employer can choose measurement period of between three to 12 months, and may distinguish various employees on limited basis
 - Most employers will use 12 months
 - New hires
 - Ongoing employees (non-new hire) rule

Implementing Measurement Guidance

Step Three: Measure and track hours worked

For anyone not hired as full-time, measure hours actually worked during the three – 12 month period. That includes hours they will receive pay, such as vacation, sick time, jury duty, etc.

- If employer determines the employee is full-time, offer the employee coverage for at least six months, but usually employers will offer coverage for 12 months.
- If employer determines the person is working part-time hours, you would not offer coverage. But you would again begin to measure whether the person is full- or part-time, transitioning them to the usual three-12 month period you use for on-going employees.

Individual Mandate



***Impact of Reform &
Employer Actions on
Individuals***



Individual Mandate

Individual mandate starts in 2014

- Requires individuals hold health coverage or pay a penalty (limited exceptions)
 - Fines (assessed as “taxes”) for failure to purchase
 - \$95 or 1.0% of adjusted income in 2014
 - \$325 or 2.0% of adjusted income in 2015
 - \$695 or 2.5% of adjusted income in 2016
- Individual subject to penalty unless he shows evidence of coverage for at least nine (9) months of the year
 - Generous grace periods for Exchange premium payment

Supreme Court upholds individual mandate (06/28/12)

- Court cites Congressional taxing authority
 - If tax, assessments should be deductible
 - Statute specifically says “not deductible”
 - New legal challenges

Compliance Recap



*How you must prepare for
upcoming changes*



Compliance Recap

Begin employer mandate determinations and set a strategy for each decision point

Sample issues:

- Cost projections / budget measures
 - *HUB International Health Care Reform Impact Tool (HCR-IT)*
- Plan documentation changes / required notices
 - *Standard notices / Measurement period documentation*
- Identify and delegate compliance functions
 - *Leverage your strategic partners/vendors*
- Consider wellness cost differential opportunity
 - *Employers who ignore wellness operate at competitive disadvantage*

Compliance Recap

Key Concerns for 2013

- Who is full time? Count workers in 2013 to identify which employees trigger mandate
- Review use of independent contractors / 1099 workers – IRS audit area
- Variable Hour Workers – begin measuring hours and excluding coverage as appropriate
- In 2014 employer mandate will require: Affordable, minimum coverage to all full time employees (more than 130 hours per month)
 - Mandate requires: Minimum coverage offered to children to age 26 (affordability optional)
 - Mandate does not require: Coverage to spouses or any part-time workers
- Non-calendar year plans: IRS will not start penalizing employers for mandate failures until the first plan year anniversary inside 2014 (if non-calendar year plan was in place on 12-27-12)
- Employer must deliver Exchange notifications: Scheduled for March 1, but anticipate delay
- Wellness: Starting in 2014, outcomes based penalty cap moves from 20 to 30% (as high as 50% for smokers)
- Contraceptive coverage under preventative care rule
- Health FSA limit at \$2,500
- Comparative Effectiveness Research fees start July 31, 2013
- Exchanges to go on-line in October to support Individual Mandate
 - Absence of spousal coverage and Exchange option will impact plan
- Preexisting condition exclusions comprehensively removed in 2014
- Address possible risk exposure with stop loss providers / vis-à-vis clinical trial coverage

Thank You!



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Upcoming Health Care Reform webinars

2013 Health Care Reform Webinar Series

Registration information for the 2013 Second Quarter Webinar will be available in the up coming weeks at:

<http://www.hubinternational.com/employee-benefits/healthcare-reform/webinar-series/>