Health Care Reform: Laying the Groundwork

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Norbert F. Kugele
nkugele@wnj.com
(616) 752-2186

April A. Goff
agoff@wnj.com
(616) 752-2154
Overview

• Which employers are subject to the play or pay penalties?
• How do you determine which employees must be offered coverage in order to avoid play or pay penalties?
• How do you determine whether the coverage offered is affordable?
• What are the minimum value requirements for employer-sponsored coverage?
• What are the notice requirements for employer-sponsored coverage?
• What are the Employer fees to fund the Patient Centered Outcomes Research Institute?
• What are the Employer fees to fund reinsurance programs to stabilize the individual market?
• What coverage mandates go into effect in 2014?
Employer Play or Pay Mandate
Overview

• Individual mandate goes into effect in 2014
  - Individuals subject to additional tax if fail to have minimum essential coverage
• Exchanges start offering coverage in 2014
  - Subsidies available to individuals between 100% - 400% of the federal poverty level
  - No subsidies available to individuals who are offered affordable, minimum essential coverage through employer

Tax Code Section 4980H—employer responsibility requirement
  - Large Employers subject to penalties if fail to offer minimum essential coverage at affordable rates and with minimum value
Who is Subject to § 4980(h)?

- Applies to Large Employers:
  - An employer that employed an average of at least 50 FTEs on business days during the preceding year
  - Take into account all common law employees

- Excludes:
  - Sole proprietors
  - Partners in a partnership
  - 2% S corporation shareholder

- Do not count hours of service for which an employee receives compensation from a foreign source.
Aggregation Rules Apply

Take into account:

- Controlled groups of corporations (parent-subsidiaries, brother-sister corporations)
- Partnerships and proprietorships under common control
- Affiliated service groups
- Any other group identified in regs (which to date have not been issued)

Note: only apply for purposes of determining whether the employer is subject to 4980H requirement
Workers from Staffing Agencies

Question: who is the common law employer of the worker?

- Who trains and supervises the employee?
- Who disciplines the employee?
- Who hires/fires the employee?

IRS working on anti-abuse rules for staffing arrangements designed to evade 4980H requirements
Counting Employees and FTEs

Count number of full-time employees (including seasonal)

- All employees providing at least 30 hours of service per week or 130 hours for the month

Add number of FTEs during the month

- Identify all employees (including seasonal) who are not full-time employees
- Calculate aggregate number of hours of service for these employees (but no more than 120 per month), and divide by 120

Perform the calculation for each month of the year.

Add up monthly totals and divide by 12.
Seasonal Employees

May be able to back out certain seasonal employees:

- If the number of full-time employees + FTEs exceeds 50 for four months or less
- and the employees in excess of 50 are seasonal employees,
- Then not considered to employ more than 50 employees

Seasonal Employee not clearly defined.

- Type of work that is “exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.”
- good faith interpretation permitted
Who Must Be Offered Coverage?
Who must be offered coverage?

To avoid penalties, must offer coverage to full-time employees and their dependents:

- Dependents mean the children of the employee
- NOT required to offer coverage to spouse

Can miss a small percentage/number of employees.

- Greater of 5% or 5 full-time employees
“Full-time employee” means someone employed on average at least 30 hours of service per week, including:

- Hours while working
- Other hours for which the employee is paid or entitled to pay:
  - Vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence

Can determine in one of two ways:

- Monthly
- Use of look-back measurement periods
“Optional” method for determining who is a full-time employee.

- Establish measurement periods of between 3 months and 12 months
- Use to determine full-time status to:
  - identify employees who must be offered coverage
  - calculate penalties
Key Concepts

Measurement period—time period used to evaluate full-time status of employees:

- “Standard Measurement Period” for use with on-going employees
- “Initial Measurement Period” for use with new employees

Administrative period

- time following measurement period to calculate status, notify individuals of status, offer coverage and enroll in plan
- Time before initial measurement period between date new employee starts and measurement period begins
- cannot exceed 90 days in aggregate
“Stability Period”

- time following measurement period and administrative period during which individual has been offered coverage (regardless of actual hours worked during the stability period)

- Must be the longer of 6 months or the length of the standard measurement period

  - Example: 12-month standard measurement period requires a 12-month stability period
Example: On-Going Employees

Widget Company uses 12 month standard measurement period.

- November 1 – October 31

Administrative period from November 1 – December 31

- Determines who is eligible
- Allows them to participate in annual open enrollment Nov. 15 – December 1
- Coverage begins Jan. 1 of following year

Stability period: January 1 – December 31
### On-Going Variable Hour Employees

#### Year 1

<table>
<thead>
<tr>
<th>Standard Measurement Period</th>
<th>Admin. Period</th>
<th>Stability Period</th>
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</thead>
</table>

#### Year 2

<table>
<thead>
<tr>
<th>Standard Measurement Period</th>
<th>Admin. Period</th>
<th>Stability Period</th>
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</table>

#### Year 3

<table>
<thead>
<tr>
<th>Standard Measurement Period</th>
<th>Admin. Period</th>
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</tr>
</thead>
</table>
New Employees

Expected to be full-time?
- Must be offered coverage within 90 days (three months)

Scheduled to be part-time? No offer required.

Variable hour and can’t tell?
- Use an initial measurement period
  - Initial measurement period + administrative period cannot run longer than to the last day of the first calendar month beginning on or after the one-year anniversary of the employee’s start date (13 months and a fraction).
  - Then transition to standard measurement periods.

Can treat a seasonal employee as a variable hour employee.
### New Employee – Initial Determination; Variable Hour

#### Initial measurement period

<table>
<thead>
<tr>
<th>March 6, 2013</th>
<th>March 5, 2014</th>
<th>May 1, 2014</th>
<th>May 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial</td>
<td>Admin. Period</td>
<td>Stability</td>
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</table>

#### On-going employee year 1

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<tr>
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<tr>
<td>Standard</td>
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#### On-going employee year 2

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<tbody>
<tr>
<td>Measurement</td>
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Change in Employment Status

Defined: material change in employment that, had the employee started in the new position or status, would have been reasonably expected to average at least 30 hours of service per week.

If Change in status occurs during initial measurement period, must offer coverage as of the earlier of:

- 1st day of 4th month following the change in employment status; or
- If initial measurement period (plus administrative period) ends before 4th month and worker measured as full-time employee, then at start of stability period.

If change in status occurs for on-going employee, then it makes no difference during stability period already in progress.

- Would need to offer coverage during next open enrollment period
<table>
<thead>
<tr>
<th>March 6, 2014</th>
<th>Change in Status</th>
<th>March 5, 2015</th>
<th>May 1, 2015</th>
<th>April 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial measurement period</strong></td>
<td><strong>Admin. Period</strong></td>
<td><strong>Stability Period</strong></td>
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**Becomes full-time employee on July 10, 2014**

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</tr>
</thead>
<tbody>
<tr>
<td><strong>Waiting Period</strong></td>
<td><strong>Covered as full-time employee</strong></td>
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</tbody>
</table>

**Hired as new variable hour employee**

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</table>

**Becomes full-time employee Feb. 1, 2015**

<table>
<thead>
<tr>
<th>Feb. 1, 2015</th>
<th>May 1, 2015</th>
<th>June 1, 2015</th>
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Two alternative tests to determine if new employee:

- 26 week rule: no hours of service are credited for at least 26 consecutive weeks.

- Rule of Parity (for periods shorter than 26 consecutive weeks): Period with no credited hours is at least 4 weeks and is longer than employee’s period of employment immediately preceding period with no credited hours.

For continuing employees

- Resume measurement and stability periods that would have applied without a break in service.

- Measurement periods calculated ignoring break in service.
Other Special Circumstances

Special unpaid leave:
- FMLA, USERRA, jury duty

Employees of educational organizations:
- Employment breaks of at least four consecutive weeks

Measurement periods are calculated ignoring breaks in service.
Offering Affordable Coverage
Affordability Requirement

Two components to affordability requirement

- Cost does not exceed 9.5% of employee’s household income.
- Coverage offers “minimum value”
Employee’s required contribution for self-only coverage does not exceed 9.5% of the employee’s household income.

- Do not know and cannot ask employee’s household income.

**Good news:** three safe harbors for determining affordability

- Employer not subject to penalty if comply with a safe harbor—even if employee qualifies for subsidy because cost of coverage exceeds 9.5% of household income.
W-2 Safe Harbor

Cost does not exceed 9.5% of W-2 Box 1 income.

- For individuals employed part of the year, can pro-rate income for months coverage was offered.

Drawbacks:

- After the fact verification that coverage was affordable.
  - Box 1 excludes tax-free contributions to 401(k)/403(b) plans and cafeteria plans
Based on rate of pay:

- For hourly employees: monthly employee contribution for self-only coverage does not exceed 9.5% of hourly rate of pay x 130 hours
- For salaried employees: use monthly salary

Do not need to reduce income for tax-free contributions to employee benefit plans.

Restriction on use:

- may not use this method if employer has reduced employee’s hourly wage or salary (for example, by transfer of employee to another employer in controlled group).
Cost of self-only coverage does not exceed 9.5% of Federal poverty line for a single individual

- Employers can use most recently published poverty guidelines as of the first day of the plan year.
- Note: anyone with household income below 100% of FPL cannot receive subsidy and therefore cannot trigger a penalty.
To be affordable, plan must also cover no less than 60% of the total allowed costs.

Three proposed ways to meet this standard:

- Minimum value calculator being developed by HHS and IRS
- Design-based safe harbor checklists (under development)
- Actuarial certification
§4980H Penalties
Penalties triggered if employee obtains subsidized coverage through an exchange

Failing to offer coverage to nearly all full-time employees.

- Based on employer’s total number of full-time employees

Offering coverage that is unaffordable.

- Based on number of employees who obtain subsidized coverage.
Failing to Offer Coverage

Penalty amount is the product of:

- Number of full-time employees (reduced by allocable share of 30 employee-reduction)
- monthly penalty amount—initially set at 1/12 of $2,000.

30-employee reduction applies to entire controlled group

- Allocate ratably among employers.
If coverage costs too much or lacks minimum value, employee will be eligible for subsidized coverage through exchange.

Penalty is the product of:

- Number of employees receiving subsidized coverage
- Monthly penalty amount—currently 1/12 of $3000

Limit: penalty for failure to offer affordable coverage cannot be more than the penalty would be for failure to offer coverage.
Fiscal year plans: penalties will not apply until start of new plan year in 2014.

Identifying full-time employees for 2014: during 2013, may adopt a shorter determination period of at least 6 months with a full on-year stability period.

Determining status as large employer: during 2013, may use a consecutive six-month period (instead of full-year) to determine status as large employer.

Plans that currently do not offer dependent coverage: during plan years beginning in 2014, plan won’t be penalized so long as it take steps to implement dependent coverage.
Important Transitional Rules

For employers participating in multiemployer plans (through 2014): won’t be penalized if contribute to plan pursuant to CBA and plan offers affordable coverage to full-time employees.

Determining variable-hour status: until January 1, 2015, can take into account fact that employee may not work entire initial determination period (if supported by objective facts).

Cafeteria Plan mid-year election changes: fiscal –year cafeteria plans may be amended retroactively by 12/31/14 to permit mid-year election changes to revoke an election or to join the plan.
Notice Requirements
Notice of Exchanges

Must provide notice of exchange to:

• Current employees by March 1, 2013
• To new employees hired on or after March 1, 2013

Content of Notices

• Individual coverage will be available through an Exchange beginning 1/1/2014.
  › Services provided by Exchange and contact information
  › Possibility for premium tax credits or cost-sharing reductions
• Consequences if employee decides to purchase a qualified health plan through an exchange in lieu of employer-sponsored coverage—i.e. loss of employer tax-free contributions.

Still waiting for guidance . . . .
Reporting Requirements

Beginning in 2014, employer group health plans (including self-insured plans) will have to report health coverage information to the IRS:

• Names, addresses and taxpayer ID numbers of primary insured
• Names and taxpayer IDs of dependents covered
• Dates of coverage
• Name, address and EIN of employer maintaining the plan
• Portion of premium (if any) that employee must pay
• Any other information required by IRS

Must report to individuals the information reported to IRS
Still waiting for guidance . . . .
PCORI Fees
Fees to Fund Comparative Effectiveness Research

• Applies to both grandfathered and nongrandfathered group health plans

• Plan years ending on or after October 1, 2012 through plan years ending on or after October 1, 2019
  • $1 per enrollee first year
  • $2 per enrollee for subsequent years

• Fee based on average number of lives covered during the year

• Fees will be submitted using Form 720, “Quarterly Federal Excise Tax Return.”
  • Need to submit only once during year—by July 31.
  • File for the plan year that ended during preceding year.
Fees will not apply to the following plans:

- Plans for expatriates working in other countries are exempt
- Stop loss/indemnity reinsurance policies exempt
- Most Health FSAs exempt
- HRAs integrated with plan sponsor’s self-funded health plan exempt.
- EAPs, wellness programs, disease management programs that do not provide significant medical benefits
Reinsurance Fees
Reinsurance Fees

• Fees paid by TPAs if Self Funded; Insurer if Insured.
• Plan is ultimately liable, not the TPA
• Fee lasts for three “benefit years: 2014, 2015 and 2016 (calendar year, not based on plan year)
• By November 15, 2014, plan sponsors will submit plan enrollment information to HHS.
• HHS will notify employer of amount to be paid
• Employer has 30 days to pay fee to HHS
Reinsurance Fees

•For 2014 – fees estimated to be $5.25 per month (or $63 per year).
  •Amount is an estimate
  •States may impose an additional fee
  •Only applies to certain plans.
  •Usually does not apply to: stand alone dental, EAP, HSA, FSA, stand alone vision, prescription drug coverage and wellness programs
  •May apply to HRA
New Wellness Program Rewards/Penalties
Wellness Programs

Is reward conditioned on individual satisfying a standard relating to a health factor (non-contingent reward)?

No change.

Is reward conditioned on the individual satisfying a standard relating to a health factor (contingent reward)? Example: lower cholesterol to 200 or below

Final rules change the test
Revised Five Part Test

1. The reward may not exceed 30 percent (50 percent in the case of a program designed to reduce or prevent tobacco use) of the cost of coverage.

2. The program must be reasonably designed to promote health or prevent disease. The program must have a reasonable chance of improving the health of or preventing disease in participating individuals.

3. The program must give eligible individuals the opportunity to qualify for the reward at least once a year.
4. The reward must be made available to all similarly situated individuals, including a reasonable alternative standard.

5. The Plan or issuer must disclose in all plan materials describing the terms of the program the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard.

- Sample language available.
Coverage Mandates for 2014
Pre-existing condition exclusions prohibited for everyone
Annual limits prohibited on essential health benefits (phase-out period ends 2013)

• **What are essential health benefits?**
  - Ambulatory Services
  - Emergency Services
  - Hospitalization
  - Maternity/Newborn Care
  - Laboratory Services
  - Pediatric Services, including Oral/vision care
  - Mental Health/Substance or Abuse, including Behavioral Health
  - Prescription Drugs
  - Rehabilitative/Habilitative Services/Devices
  - Pediatric – including Chronic Disease
  - Preventive/Wellness and Chronic Disease Management

• **State-by-state determination?**
  - Any of three largest small group plans by enrollment
  - Any of three largest state employee health plans by enrollment
  - Any of three largest federal employee health plan options by enrollment
  - Largest insured commercial HMO operating in state by enrollment
Mandates for 2014

Coverage for clinical trials

• May not deny right to participate in clinical trial or discriminate against any qualified individual who participates in clinical trial

• May not deny, limit or impose additional conditions on coverage for routine patient costs for items and services furnished in connection with participation in the clinical trial

Cost sharing limitations apply to all plans beginning 2014

• Out-of-pocket maximums may not exceed HDHP limits (indexed)

• Currently: $6,250 self-only/$12,500 family
Nondiscrimination Rules for Insured Plans

- Will apply requirements similar to self-insured nondiscrimination rules to insured plans
- Notice 2011-1 (issues 12.31.2010) postponed application of the rule
- IRS still wrangling with this issue
- May go into effect in 2014
Eligibility Issues

Automatic Enrollment—delayed until 2015 or later

- Will apply to employers with more than 200 employees
  - Must automatically enroll new full-time employees in one of health plans it offers (subject to waiting period)
  - Employees may opt out
Questions?

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