ACA Regulatory Update

June 19 & 20, 2013

Assurex
GLOBAL

ACA Regulatory Update

- Welcome! We will begin at 1 p.m. Eastern
- There will be no sound until we begin the webinar. You can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your invitation email.
- You will be able to submit questions during the webinar by using the "questions" box located on your webinar control panel.

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Employer Shared Responsibility Rules

- Two different types of employer penalties
  - 4980H(a) Penalty
    - Employer does not offer minimum essential coverage to all full time employees (30 hrs/wk)
    - $2,000/yr times number of all full time EEs not counting first 30
  - 4980H(b) Penalty
    - Employer offers coverage to all FT employees however:
      - Coverage is unaffordable for some FT employees –or-
      - Some FT employees are not eligible for minimum value coverage
    - $3,000/yr times number of employees who qualify for and purchase subsidized individual coverage through a public exchange

Employer Shared Responsibility Rules

- Background
  - Beginning in 2014, applicable large employers must offer “affordable” minimum essential health coverage to all full-time employees or face possibility of “shared responsibility payments” (penalties)
- 4980H(b) Penalty
  - If an employer offers minimum value coverage to all FT employees but coverage is <u>unaffordable</u>, or an employee is not eligible for minimum value coverage, employer penalty of $250/mo ($3,000/yr) for each employee who purchases subsidized individual coverage through a public exchange.
- Affordable coverage
  - Employer coverage is affordable if employee’s contribution is no more than 9.5% of household income for single (self-only) coverage
    - Employee’s family member qualification for subsidy is also based on the cost of employee only coverage

Plan Value Requirements

- Minimum Essential Coverage (MEC) vs. Minimum Value (MV)
  - Minimum Essential Coverage (MEC)
    - “Any” employer sponsored health plan
    - IRS has not yet released guidance on definition of MEC (more on this later)
  - Minimum Value (MV)
    - Employer plan must have an actuarial value of at least 60%
      - Based on population based actuarial assumptions, not plan design or covered benefits under a particular plan
    - IRS/HHS minimum value Calculator
      - http://cciio.cms.gov/resources/regulations
    - Employer determination of plan’s Minimum Value
      - Use MV calculator
      - Hire an actuary for plans that do not “fit” in MV calculator
      - Use MV benchmark plans as guide

Employer Shared Responsibility Rules

- NEW DEVELOPMENT – Affordability determination related to non-discriminatory wellness incentives…
  - **In 2014 for all wellness programs…** "affordability" determined by assuming each employee *satisfies* wellness program requirements including requirements related to tobacco use.
  - **Starting in 2015 for wellness programs other than smoking cessation…** affordability determined by assuming that each employee *fails* wellness program requirements.
  - **Starting in 2015 for wellness programs including smoking cessation…** affordability determined based on the contribution required from *non-tobacco users* (or users that complete alternative standard)

Employer Shared Responsibility Rules

- Effective date of Shared Responsibility Rules – Transition Rule
  - Employer shared responsibility rules and penalties apply for first plan year beginning on or after 1/1/2014
  - Specific conditions must be met for non-calendar year plans
    - Non-calendar year plan must have been in effect on 12/27/2012
    - Plan must meet one of the following criteria:
      1. Employer offered coverage to at least 1/3rd of all employees (both FT and PT) at last open enrollment prior to Dec. 27, 2012
      2. Employer had at least 25% of all employees (both FT and PT) enrolled as of the end of the most recent enrollment period or any date between 10/31/2012 and 12/27/2012

Cost Sharing and Deductible Limits

- $2,000 maximum deductible
  - Applicable for first plan year in 2014
  - ***Only applies*** to small group, fully insured plans
    - Small group is either <50 employees or <100 depending on state market rules
  - Regulations now allow carriers to issue higher deductibles in the small group market to be able to offer a bronze level plan
    - 2014 Plans have been introduced in the small group market in some states with deductibles as high as $5,000

Cost Sharing and Deductible Limits

- Total Out-of Pocket (OOP) cannot exceed HSA HDHP limits
  - Applies to ***all plans*** including fully insured (large and small group) and self-funded plans
    - Grandfathered plans are not required to comply
  - 2014 limits - $6,350 for self-only coverage and $12,700 for family
  - Applies to in-network coverage only
  - Includes "deductibles, coinsurance, copayments, or similar charges…"
  - 2014 plan year safe harbor
    - One-year safe for plans that use multiple service providers to administer benefits (such as one TPA for medical coverage and a separate pharmacy benefit manager)
    - Each separately administered benefit must meet OOP limits
    - Beginning with 2015 plan year, separately administered benefits must be coordinated under a single OOP max.

Fully Insured Non-Discrimination Rules

- ACA imposes non-discrimination rules on fully insured plans
  - Plans may not discriminate in favor of highly compensated individuals
  - When will it be effective?
    - IRS has delayed enforcement until plan years starting “sometime after” guidance is issued
    - It was anticipated the rules would be effective for plan years beginning on or after 1/1/2014??
  - Requirements will be “similar” to current §105(h), which already apply to self-funded plans - but there may be differences

Fully Insured Non-Discrimination Rules

- Health plan non-discrimination basics
  - Whenever different benefits, contributions, or eligibility is offered to different categories of employees, plan may need to be tested
  - Rules apply across all organizations included in a controlled group of companies based on Code §414 rules
  - Under existing 105(h) rules:
    - Benefits may not need to be identical between categories but must meet certain tests to be considered non-discriminatory
    - Highly compensated individuals are top 25% in organization
    - Certain employees excluded from testing (*i.e.,* some part-time, union employees, etc.)

Fully Insured Non-Discrimination Rules

- Penalties for discriminatory plans
  - Self-funded – excess benefits provided to highly compensated individuals must be treated as taxable income
  - Fully-insured - $100 per day per individual discriminated ***<u>against</u>***
- Outstanding questions for fully insured plans
  - Will the fully insured tests work the same way as §105(h)??
  - Will fully insured rules apply to small groups?
  - Can discrimination problems be solved by treating excess benefits provided to highly compensated employees as taxable income?
  - When will the rules be effective?????

“Bare Bones” Plans

- Offering “Bare Bone” or “Mini” health plans
  - Background - Some vendors and advisors proposing offering “mini,” “bare bone,” or “preventive only” plans arguing the plans protect employer from ACA penalties
  - Impact on ACA penalties
    - These plans will not meet ACA minimum value standard
      - Employees eligible for only these plans could qualify for subsidized individual coverage though a public exchange triggering possible employer penalties under 4980(H)(b)
    - Unclear if these plans will be considered “minimum essential coverage”
      - IRS has not yet released minimum essential coverage guidance
      - Plan *may* protect employer from 4980(H)(a) penalty – unclear at this time

“Bare Bones” Plans

- Offering “Bare Bone” or “Mini” health plans
  - Health plan non-discrimination issues
    - Regardless of impact on ACA employer penalties offering mini plans to some categories of employees and richer plans to others may trigger employer liability under the non-discrimination rules

ACA Notice of Exchange

- Background
  - Designed to inform individuals about exchanges and subsidy eligibility
  - Originally due March 1, 2013 – delayed by DOL
- Who must comply?
  - All employers subject to Fair Labor Standards Act (FLSA)
- DOL guidance released
  - Notice due by October 1, 2013
  - Must be sent to ALL employees (FT, PT, etc.)
  - Model notice and guidance at: www.dol.gov/ebsa/healthreform
- New model COBRA election notice also released
  - Encourages COBRA QBs to explore exchange options

PCORI Fees

- Background
  - Intended to provide funding for the Patient-Centered Outcomes Research Institute
  - Funding to continue for seven years
  - Applies to insured and self-funded medical plans
  - Does ***not*** apply to:
    - Excepted benefits
    - EAPs or wellness programs
    - Stop-loss coverage
    - Expatriate coverage
- Amount of the fee
  - $1/covered life in 1st year
  - $2/covered life in 2nd year and thereafter

PCORI Fees

- Who pays the fee?
  - Insurance company for insured plans
  - Plan sponsor for self-funded plans
- When is the fee payable?
  - Fee applies to the first plan year ***ending*** after September 30, 2012
  - Fee ceases to apply to plan years ending after September 30, 2018
  - Fee is paid once per year by July 31st of the calendar year ***immediately following*** the last day of the plan year.
- Form 720 – Quarterly Federal Excise Tax Return
  - "Specified health insurance policies" line is for insurance companies
  - "Applicable self-insured health plans" line is for employers

Cafeteria Plan Election Changes

- Current status
  - Under special transition rule, fiscal year cafeteria plans may allow employee to: (i) revoke/change election once, and (ii) begin salary reductions after open enrollment , in both cases without a change in status event.
- At issue is the ability to make new mid-year cafeteria plan elections in response to gain or loss of coverage and/or subsidy through an exchange.
  - *e.g.,* Will an election change be permitted if employee situation changes (*e.g.,* significant decrease in household income)?
  - Might cafeteria plan regulations change????

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Thank you!

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