

2014 Regulatory Wrap-Up and Looking Forward to 2015

December 18, 2014



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Review of 2014 Developments



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2014 Regulatory Developments

	Significant Regulatory or Compliance Developments
FEB	Employer shared responsibility final regulations released
	Final rules released on ACA 90 day waiting period
MAR	IRS issues final ACA employer reporting rules
APR	Elimination of small group deductible limit
MAY	Special one time open enrollment offered to COBRA QBs & COBRA model notices released
JUL	Final rules on orientation period released
SEP	\$125 rules released to recognize new permitted election changes
	IRS releases ACA employer reporting draft instructions and forms
NOV	Health Plan ID (HPID) requirement delayed indefinitely
	Guidance issued prohibiting employers from paying for employee's individual health insurance & prohibiting employers from providing incentives to high risk employees to waive group coverage
	CMS extends deadline to report data for the transitional reinsurance contribution



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End of 2014 Mop-up



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2014 End of Year Mop-up

- §125 Plan Changes
 - Recent changes to §125 plans require retroactive plan amendments
 - \$500 rollover provision to be made no later than 12/31/2014
 - New optional election changes - amendment no later than end of plan year when change was made (12/31 for calendar year plans)
 - Participants permitted to revoke Section 125 elections due to a reduction in hours even if there is no loss in eligibility
 - The participant chooses to enroll for an individual health plan during the public Marketplace annual open enrollment period or the participant qualifies for a special enrollment period
- Reporting Membership to CMS for Reinsurance Contribution
 - Self-funded plans (that provide minimum value) were required to report average membership to CMS no later than 12/05/2014
 - First payment due by 01/15/2015



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Ongoing 2015 ACA Related Requirements



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2015 ACA To Do List

- W-2 Reporting

- Large employers (fully-insured and self-funded) must report health plan costs on employee's W-2
- Exemption for small employers still in force
 - Employers who filed less than 250 W-2s in the previous year (2013 in this case) are still not required to report health costs on W-2

- PCORI Fee

- All self-funded plans must pay PCORI fee no later than July 31, 2015
 - Use IRS excise tax Form 720 (720X to make corrections)
 - Applies to HRAs integrated with a fully-insured health plan
- 2015 fee = \$2.08 per participant for plan years ending after 09/30/14
 - Example:
 - Plan year 1/1/14 - 12/31/14 will pay \$2.08
 - Plan year 8/1/13 - 07/31/14 will pay \$2.00



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2015 ACA To Do List

- 2015 Reinsurance Contribution
 - Paying the 2014 contribution
 - Employers were required to schedule payments when membership was reported – 2 options
 - Could schedule entire payment prior to 1/1/2015
 - Could schedule 2 payments: \$52.50 by 1/15/2015, and \$10.50 by 11/15/2015
 - 2015 Reporting
 - Employers who sponsor self-funded plans that provide minimum value must report membership to CMS by 11/15/2015
 - 2015 reinsurance contribution = \$44 per covered life (\$27 in 2016)
- <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/The-Transitional-Reinsurance-Program/Reinsurance-Contributions.html>



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The Beginning of the ACA Employer Shared Responsibility Rules



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Employer Shared Responsibility Rules

- Basics

- Employers with 50 or more full-time equivalents (FTEs) required to offer coverage to full-time employees and their dependent children beginning in 2015 to avoid potential penalties
 - 4980H(a) Penalty
 - If employer does not offer minimum essential coverage to at least 95% (70% in 2015 only) of full-time employees & at least one FT employee purchases subsidized individual coverage through a public marketplace
 - \$166.67/mo. times number of full-time employees not counting first 30 (not counting first 80 in 2015 only)
 - 4980H(b) Penalty
 - Applies if employer offers coverage to full-time employees but coverage is “unaffordable” or not “minimum value”
 - \$250/mo. for each employee who purchases individual coverage through a Marketplace and is certified to receive subsidies



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Employer Shared Responsibility Rules

- Employee vs. Independent Contractors
 - It is more important than ever that employers properly classify employees
 - If actual employees are improperly classified as independent contractors (1099) it can expose employers to unexpected liability for 4980H(a) penalties



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Employer Shared Responsibility Rules

- Transition Relief

- Most employers with 50-99 FTEs don't have to comply until 2016 if they meet specific criteria
- Employers with 100 or more FTEs
 - Non-calendar year plans will not be assessed penalties for the months in 2015 prior to the 2015 plan year if they meet specific criteria
 - 4980H(a) Penalty (so long as plan year has not been changed since Feb 9, 2014)
 - No penalty so long as coverage is offered to 70% of full-time employees in 2015 (rather than 95% in 2016)
 - Waiver for the first 80 full-time employees in 2015 when calculating 4980H(a) penalty (rather than 30 in 2016)
 - No penalty for failure to offer coverage for all of January 2015 if coverage is offered no later than the 1st day of the 1st payroll period



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Employer Shared Responsibility Rules

- How Will the IRS Administer the Shared Responsibility Rules and Apply Penalties?
 - IRS will collect individual employee subsidy data on personal tax returns
 - IRS will collect employer plan information and coverage data from employer reporting beginning in 2016 (for 2015 data)
 - After tax reporting deadlines the IRS will have preliminary data on which employers have employees who have received ACA subsidies
 - This will “flag” employers that may have liability for a shared responsibility payment
 - Sometime late in 2016 or early 2017 the IRS will begin to contact employers to determine actual liability for 2015 related shared responsibility payments



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Employer Shared Responsibility Rules

- How Will the IRS Administer the Shared Responsibility Rules and Apply Penalties?
 - Shared responsibility reconciliation - Just because an employee received a subsidy does not mean the employer is actually liable for a shared responsibility payment
 - Employee may have incorrectly reported employer plan information when applying for individual health insurance
 - Employers may be able to take advantage of IRS employer safe harbor rules and not be liable for a shared responsibility payment even for a full time employee who qualifies for a subsidy



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Prepare for ACA Employer Reporting



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Who Must Report?

- Section 6055 - Coverage Data
 - Requires all employers offering a self-funded plan (large and small) to report participant coverage information
 - Insurance companies report this information to the IRS for fully insured plans
- Section 6056 - Employer Plan And Eligibility Information
 - Requires all “applicable large employers” (50 or more FTEs) to report plan and eligibility information
 - Employers with 50-99 FTEs satisfying the transition relief criteria to delay compliance until 2016 must still report for 2015



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Timing Requirements

- Reporting First Required in 2016 for 2015 Calendar Year Data
 - Reporting is based on data from the previous calendar year regardless of the employer's plan year
 - Employers may voluntarily report in 2015 (for the 2014 calendar year)
 - Annual timeframes for reporting are same as for W-2s
 - Annual employer returns must be filed with the IRS by Feb 28 (Mar 31, if filed electronically)
 - Corresponding employee statements must be provided annually to employees by Jan 31
 - The first employee statements must be provided by Feb 1, 2016 (Jan 31, 2016 is a Sunday)



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Form Details

- Information will be provided to the IRS and a statement is provided to each full-time and covered employee
- Form 1094
 - Used to report employer summary information to the IRS
 - Think of it as a cover sheet for the individual employee forms
- Form 1095
 - Used to report employee-specific information
 - In general, one is required for:
 - Each full-time employee; and
 - Each covered employee under a self-funded plan
- Draft Forms and Instructions on the IRS Website at:
<http://apps.irs.gov/app/picklist/list/draftTaxForms.html>



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Information Required

- All Applicable Large Employers (Self funded or Fully-insured) – Plan and Eligibility Information
 - Status as a single employer or member of a controlled group/affiliated service group
 - Transition Rules Information
 - Total employees for each month
 - Number of full-time employees as defined by ACA for each month
 - For each full-time employee:
 - Name, SSN, Address
 - Which months coverage was offered
 - Employee contribution amount for lowest cost single coverage option offered



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Information Required

- All Employers with a Self-funded Plan – Coverage Information
 - For all covered individuals (employee and dependents):
 - Name
 - SSN (or DOB if SSN is not available)
 - Rules require employer to attempt to obtain SSN numbers for spouses and dependents
 - If Individual had coverage for each calendar month (Y or N)
 - Individual is considered to have coverage for the month if covered any day during the month



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Other Compliance Issues Which Impact Employers in 2015



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Other 2015 Issues

- ACA Definition of Small Employer Changing
 - Through 2015, states are allowed to define small and large group for purposes of insurance rating
 - Most states today define small group as 50 or less
 - Definition of calculating the 50 varies from state to state
 - Beginning in 2016, small group for purposes of insurance rating will be 100 or less full-time equivalents (FTEs) for all states
 - All states will be required to use the 4980H definition for calculating FTEs
 - Practical impact on employers
 - Employers with 50-99 FTE will see dramatic changes to the way the plan is rated beginning with 2016 group coverage contracts
 - Will be subject to small group community rating rules
 - Will be required to offer all essential health benefits



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Definition of Small Employer

- 4980(H) Employee Counting Method
 - Underwriting/Rating/SHOP (2016) & Pay or Play Rules (now)
 - Determine number of full-time equivalents (FTE) each month:

$$\begin{aligned} & \text{Total number of full time employees (30+ hrs/wk)} \\ & + \frac{\text{Total hours of service by part-time employee}}{120} \\ & = \text{Number FTEs for month} \end{aligned}$$
 - Average the monthly FTEs for 12 months of the prior calendar year
- Example:

	JAN	FEB	MAR	APR	MAY	JUN-DEC
Number FT employees averaging 30 hrs/wk	32	32	35	34	35	etc...
Total hours of service by all other employees (PT)	1200	1800	1800	2400	2400	etc...
Part-time FTEs (hours ÷ 120)	10	15	15	20	20	etc...
Monthly Total	42	47	50	54	55	etc...



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Other 2015 Issues

- Group Guarantee Issue and Renewal Rules
 - Guaranteed availability
 - Small Group Market (inside or outside the SHOP Marketplace)
 - Must accept all groups who meet the carrier's participation and contribution requirements
 - November 15th – December 15th each year, carriers must also accept small groups who do not meet such requirements
 - Large group market
 - Must accept all groups even if they do not meet the carrier's participation and contribution requirements
 - Rules permit carrier to “re-rate” groups who do not meet requirements after initial enrollment (subject to state law)
 - Guaranteed renewability
 - Can refuse to renew a group policy after the initial term if group fails to comply with participation or contribution rules (subject to state law)



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Other 2015 Issues

- Health Plan ID Number - **DELAYED BY CMS**
 - Self-funded employers must get an HPID
 - HIPAA requires Covered Entities (CE) to follow specific standards for certain electronic transactions
 - Most self-funded health plans must obtain a Health Plan ID Number (HPID) from CMS
 - Nov. 5th, 2014 for large health plans (\$5 million in claims)
 - Nov. 5th, 2015 for small health plans
 - 2015 Certification
 - Self-funded health plans will then need to provide a certification to CMS that the plan is correctly processing certain electronic transactions by 12/31/2015



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Outstanding Compliance Issues That May Have Significant Developments in 2015



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EEOC/Wellness

- Recent EEOC Wellness Related Lawsuits
 - Basic background
 - ACA contains restrictions on use of medical information but contains exceptions for certain activities of bona fide benefit plans
 - The EEOC has not provided any guidance on the application of the safe harbor for “bona fide benefit plans” to wellness arrangements
 - The recent ADA cases are very different
 - The Honeywell case involves a wellness plan that is designed to comply with current HIPAA and ACA wellness rules
 - Two other cases in Wisconsin involve wellness plans that require an individual to take certain steps (such as complete an assessment) to even be eligible for the health plan
 - Employers who have designed wellness plans that meet current HIPAA and ACA requirements should take a wait and see approach
 - Employer may wait to implement a more aggressive program until cases are resolved or the EEOC clarifies its position going forward



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Fully Insured Non-Discrimination Rules

- Fully Insured Non-discrimination Rules
 - IRS has delayed enforcement until plan years beginning “sometime after” guidance is issued
 - Rules will be “similar” to current §105(h) rules which already apply to self-funded plans
 - Health plans may not discriminate in favor of highly compensated
 - Under §105(h) benefits don’t always have to be identical among sub-groups of employees - Safe harbor tests allow for “some discrimination”
 - Outstanding Questions
 - Will the fully insured rules work the same way as §105(h)??
 - When will the rules be effective?

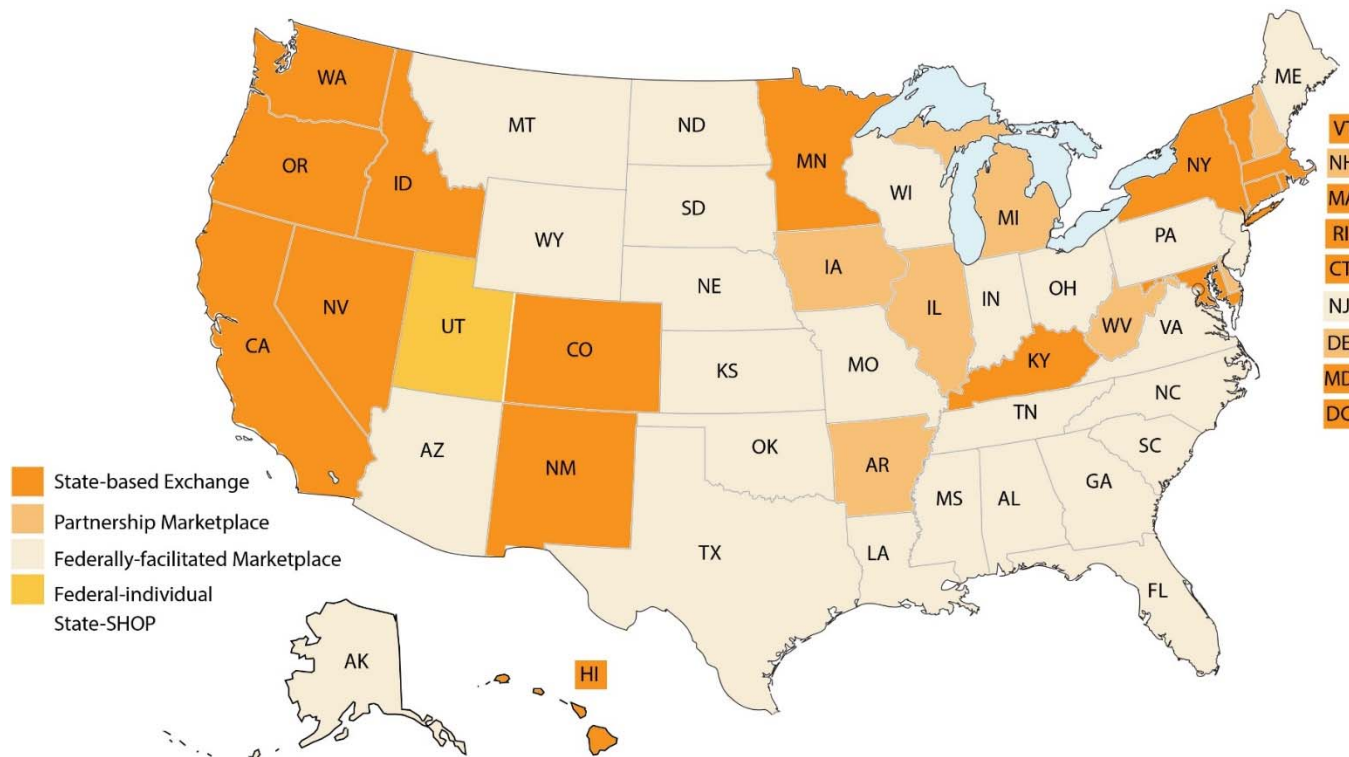


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Supreme Court Case

- Supreme Court has Agreed to Hear King vs. Burwell
 - Can ACA subsidies be provided in states that did not set up a state exchange/marketplace?



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Supreme Court Case

- Supreme Court has Agreed to Hear King vs. Burwell
 - Expect decision in late June or early July (near end of current term)
 - Impact on employer shared responsibility rules are unclear
 - Shared responsibility employer penalties are contingent on an employee receiving a subsidy
 - Employers who only have employees in states using federal marketplace vs. employees in various states
 - What will individual states do?
 - Will IRS take a different approach to shared responsibility regulations
 - Nothing will change retroactively for 2015 plan year shared responsibility risk because some people are already getting the subsidy



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