Employee Benefits Compliance Case Studies

November 20, 2014

Assurex GLOBAL

Employee Benefits Compliance Case Studies

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation 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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Assurex Global Shareholders:

- Ahmann-Martin
- Catto & Catto
- Celedinas Insurance Group
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- The Crichton Group
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- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- R&R/The Knowledge Brokers
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- The Rowley Agency
- Starkweather & Shepley Insurance Brokerage
- Woodruff-Sawyer & Co.
- Wortham Insurance & Risk Management

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Agenda

- Quick Update on Breaking Compliance News
- ACA Related Employer Questions
- Other Compliance Issue Questions

BREAKING NEWS

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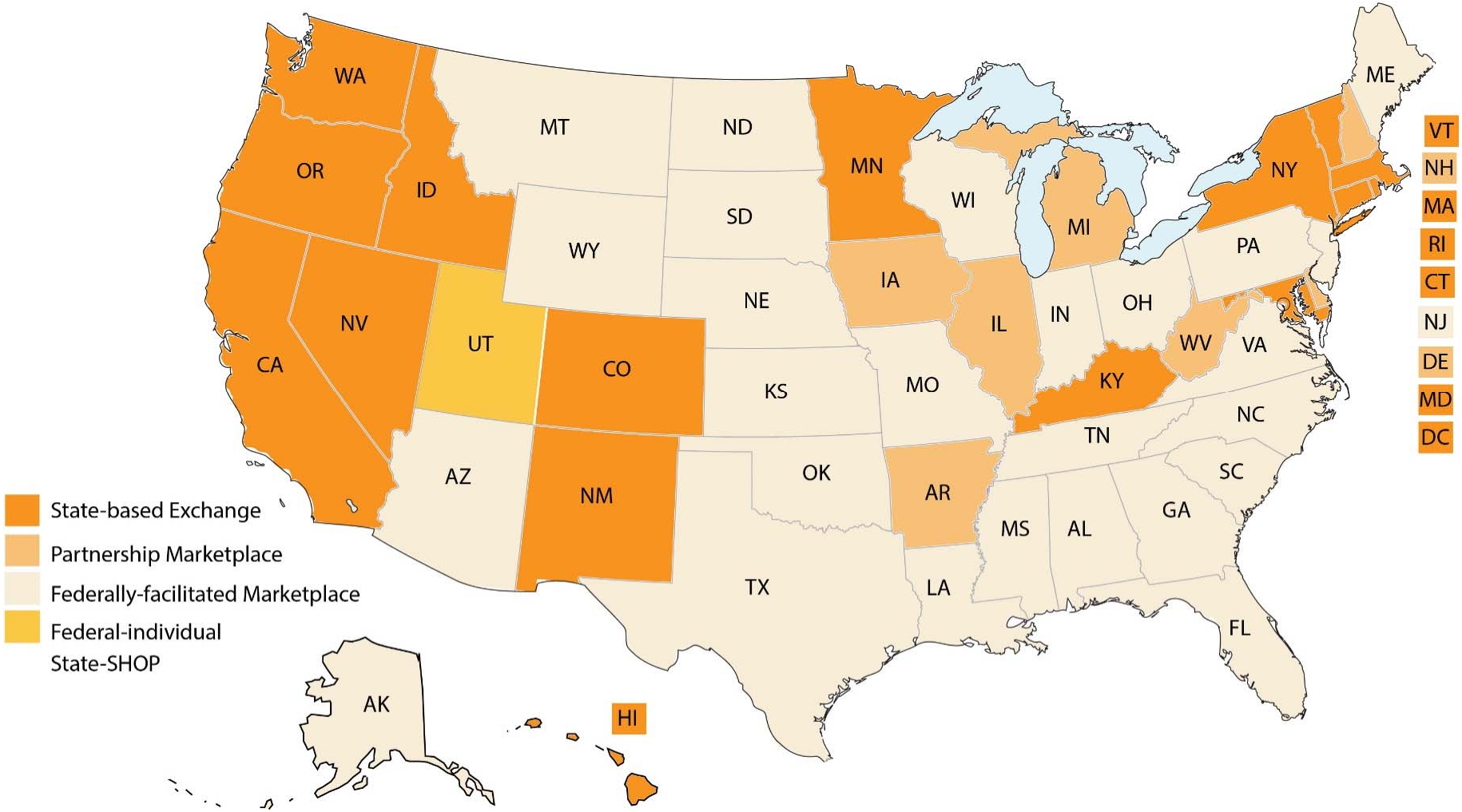
Copies of this presentation are available through your benefits advisor.

Breaking News

- Supreme Court has Agreed to Hear Case Related to ACA Subsidies
  - Background
    - There is a dispute over whether the ACA subsidies available to help people afford individual health insurance should be available in states that use the federal technology Healthcare.gov for their Marketplace
    - Currently
      - 14 State Run (includes Washington D.C.)
      - 10 State/Federal Partnerships or Hybrids
      - 27 Federal



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Breaking News

- Supreme Court has agreed to hear case related to ACA subsidies
  - Case will likely be heard spring of 2015 with a decision in June or early July 2015
  - Impact of decision
    - Estimated that prior to the current Marketplace open enrollment period, approximately 4.7 million people currently receive subsidies in states using Healthcare.gov
    - Employer penalties are predicated on at least one full-time employee receiving a subsidy, so it is possible that if an employer only has employees in states using Healthcare.gov there would be no risk of penalties
      - This is speculation at this point – we would need guidance from IRS if this happens
    - Unclear what happens in states using partnership or hybrid model

Breaking News

- Recent FAQs and guidance from regulators
  - Employers may not provide cash for employees to purchase individual health insurance, even if the cash is provided on a taxable basis
  - Employer may not pay high risk employees to waive group health insurance plan and purchase individual health insurance instead
    - Will be treated as a discriminatory practice
  - Health plans that do not provide significant hospitalization benefits will not be considered minimum value (MV) even if they have a 60% actuarial value
    - Employers who had already entered into a binding written agreement prior to Nov. 4, 2014 may treat plans as MV for one year only
    - Must provide a special communication to employees offered this plan informing them that they are still eligible for subsidies

Breaking News

- EEOC lawsuits against certain wellness models
  - EEOC is arguing some common wellness models violate the ADA
  - Employers need to be watching this development carefully to see how these lawsuits end up
- Extension of deadline for self-funded employers to report membership totals to CMS for paying the Reinsurance Fee
  - Original deadline was Nov. 17, 2014 – has been extended to Dec. 5
  - First payment deadline is still Jan. 15, 2015 – this has not been changed
  - Reporting membership and scheduling payments must be done using Pay.gov

ACA RELATED QUESTIONS

Q&A #1

Topic – Employer Size

Q – What does it mean to the ACA rules to be a small group?

Background:

- The ACA 4980H shared responsibility (pay or play) rules apply only to "Applicable Large Employers" (ALEs). An ALE is an employer with at least 50 full-time equivalents (FTEs) in the preceding calendar year
- Modified community rating & other underwriting rules apply to small group plans inside and outside the Marketplace/Exchange
  - ACA defines a small employer as "an employer who employed an average of…not more than 100 employees…during the preceding calendar year". However, states were allowed to define small employer as less than 50 employees for 2014 and 2015
- Both rules count all employees in entities considered part of a controlled group based on Code § 414

Q&A #1

Topic – Employer Size

Q – What does it mean to the ACA rules to be a small group?

Answer: ALE status will always be based on 50 FTEs, but beginning in 2016 an employer (with between 50 – 100 FTE) could be a small employer for rating and underwriting purposes and also be an ALE who is subject to the pay or play rules at the same time

- The other thing that will change in 2016 is that state laws currently define how to count 50 in a variety of ways. But beginning in 2016 the counting method will be the same as used to determine ALE status
- And don't forget the § 414 aggregation rules
  - Example - beginning in 2016, 3 employers with 40 FTEs each, which are part of a controlled group, should not be treated as a small employer for underwriting and rating purposes!

Q&A #2

Topic – Definition of Affordable

Q – I thought affordable coverage meant coverage that cost no more than 9.5% of the employee's income. Why am I now hearing 9.56% instead?

Background:

- The definition of affordable employer sponsored coverage in the ACA is important for two reasons:
  1. It is one factor to determine if an individual who is eligible for an employer sponsored plan can still qualify for ACA subsidies when purchasing individual health insurance through a public Marketplace
  2. It also determines when an employer may be liable for 4980H(b) shared responsibility payments (penalties)

Q&A #2

Topic – Definition of Affordable

Q – I thought affordable coverage meant coverage that cost no more than 9.5% of the employee's income. Why am I now hearing 9.56% instead?

Answer: There are two different definitions of "affordable"!

- An individual who is eligible for a minimum value employer sponsored plan may still qualify for ACA subsidies if their cost to participate in single coverage costs more than 9.56% of their household income
  - This number was originally 9.5%, but it is indexed to increases in health care costs
- Employers can use one of three "affordability" safe harbors provided by the IRS to avoid the 4980H(b) penalty even if a full-time employee qualifies for a subsidy
  - These employer safe harbors are still based on 9.5% of wages, rate of pay, or FPL, and have not yet been indexed

Q&A #3

Topic –Affordable and Employee Communication

Q – Since I don't know my employees' household income, how can I tell them if the coverage I offer them is affordable or not?

Background:

- Affordable for purposes of an individual's eligibility for a subsidy is based on the employee's modified adjusted gross household income
- Employer will never know the employee's household income

Q&A #3

Topic –Affordable and Employee Communication

Q – Since I don't know my employees' household income, how can I tell them if the coverage I offer them is affordable or not?

Answer: Since affordability is based on the cost of single coverage, you can help your employees understand the effect of your plan on their eligibility by working backwards from your plan cost

- For example, take a case where the employer charges $150 for employees to participate in single coverage on the lowest cost minimum value plan
  - Employee contribution for single coverage = $150 per month
  - $150 x 12 = $1800 employee contribution per year
  - $1800 ÷ .0956 = $18,828.45
- Any employee with a household income over $18,828.45 per year will not be eligible for ACA subsidies

Q&A #4

Topic – ACA Full-Time Employees

Q – Is it better to define full-time on a month by month basis or to use the look-back measurement period approach?

Background:

- The ACA requires applicable large employers (ALEs) to offer health coverage to 95% (70% in 2015) of their full-time employees or face the possibility of a 4980H shared responsibility payment (penalty), but there are two ways to define full-time:
  1. Employers can continue to define full-time on a month by month basis using either 30 hours of service per week or 130 hours of service per month as the criteria
  2. Employer can also use the optional IRS safe-harbor look-back measurement period approach to defining full-time

Q&A #4

Topic – ACA Full-Time Employees

Q – Is it better to define full-time on a month by month basis or to use the look-back measurement period approach?

Answer: Wow - That is a big question! Every employer is different, but here are some things to consider:

- We tend to try to see if keeping full-time based on month by month works first – then consider the look-back measurement period approach only if there are distinct advantages
  - If a workforce is made up mostly of employees with relatively fixed hours, the measurement period approach may be more work than is it worth
- In certain situations the measurement period can be very valuable
  - Lots of employees whose hours vary over the course of the year
  - Many seasonal workers
  - Lots of variable hourly employees with high turnover

Q&A #5

Topic – ACA Full-Time Employees

Q – Do small employers have to define full-time as 30 hours per week?

Answer: No!

Q&A #6

Topic - Employer Reporting

Q – I understand employers will have to report both who is eligible for coverage and who actually takes coverage separately…is that correct?

Background:

- Beginning in 2016 (for 2015 health plan and coverage data) all applicable large employers (ALEs), and any small employer offering a self-funded health plan, will need to begin reporting detailed plan and coverage information to the IRS
- Reporting requirements differ for employers offering fully-insured vs. self-funded plans

Q&A #6

Topic - Employer Reporting

Question: I understand employers will have to report both who is eligible for coverage and who actually takes coverage separately…is that correct?

Answer: Not quite!

- An ALE who offers only fully-insured plans must report certain plan information & details on which full-time employees are offered coverage
- An ALE who offers a self-funded plan must report the same information as fully-insured employers PLUS detailed information by month on all individuals (including spouses and dependents) who are actually covered

OTHER COMPLIANCE RELATED QUESTIONS

Q&A #7

Topic – Medicare and HSAs

Q – Is there any way for an individual who is 65 to continue to make contributions to an HSA account?

Background:

- HSA rules prohibit an individual (or a company on their behalf) to make contributions to an HSA account if the individual is entitled to Medicare
- Entitlement to Medicare Part A is automatic for anyone receiving Social Security Retirement benefits

Q&A #7

Topic – Medicare and HSAs

Q – Is there any way for an individual who is 65 to continue to make contributions to an HSA account?

Answer: In this case it is not age that matters – it is entitlement to Medicare

- Since Medicare Part A is automatic when an individual starts receiving Social Security, no HSA contributions are allowed as soon as they start accepting Social Security retirement benefits
- Individuals can delay receiving Social Security benefits beyond age 65
  - For example, full retirement age for someone born after 1943 is 66. If this individual delays taking Social Security benefits until age 66 they could continue to make HSA contributions until that time

Q&A #8

Topic – Same Sex Marriage and Health Insurance

Q – Do recent court cases mean that I have to offer health insurance to the same-sex spouses of my employees?

Background:

- The Supreme Court has ruled that the federal Defense of Marriage Act (DOMA) was unconstitutional
- Various state courts have also ruled that many state laws prohibiting same-sex marriages are unconstitutional

Q&A #8

Topic – Same Sex Marriage and Health Insurance

Q – Do recent court cases mean that I have to offer health insurance to the same-sex spouses of my employees?

Answer: Generally no. Rulings that these laws are unconstitutional do not automatically require employers to extend coverage to same-sex spouses of employees. However there are a number of factors to consider:

- Employers have significant flexibility in defining health plan eligibility, and are not required to offer coverage to spouses of any kind
- Plan eligibility language must be carefully considered
- Employers subject to ERISA do not generally need to comply with state insurance laws related to their benefit plans, but this is tricky when the plan is fully-insured

Q&A #9

Topic – Plan Changes

Q – Can my employee drop his plan and move to a spouse's plan in the middle of the plan year? (And obviously we get the reverse question - Can my employee join my plan in the middle of the plan year?)

Background:

- There are three separate issues that must be considered to answer this question
  - Section 125 election rules
  - HIPAA special enrollment requirements
  - Specific plan eligibility rules

Q&A #9

Topic – Plan Changes

Q – Can my employee drop his plan and move to a spouse's plan in the middle of the plan year? (And obviously we get the reverse question - Can my employee join my plan in the middle of the plan year?)

Answer: It depends on why they are making the change!

- Section 125 rules state that an employee's pre-tax salary reduction election is irrevocable for the plan year unless the employee is experiencing one of a number of specific events
  - Absent an allowable event, the employee can always drop the coverage but the employer cannot change the pre-tax payroll reduction!
- When the question is if the employee can come on the plan mid-year, it is only required if the individual is experiencing a HIPAA special enrollment
  - Theoretically a plan could be more liberal in allowing mid-year enrollments, but this is uncommon

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Thank you!

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