

ACA Update

June 25, 2015



ACA Update

- 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 Partners:

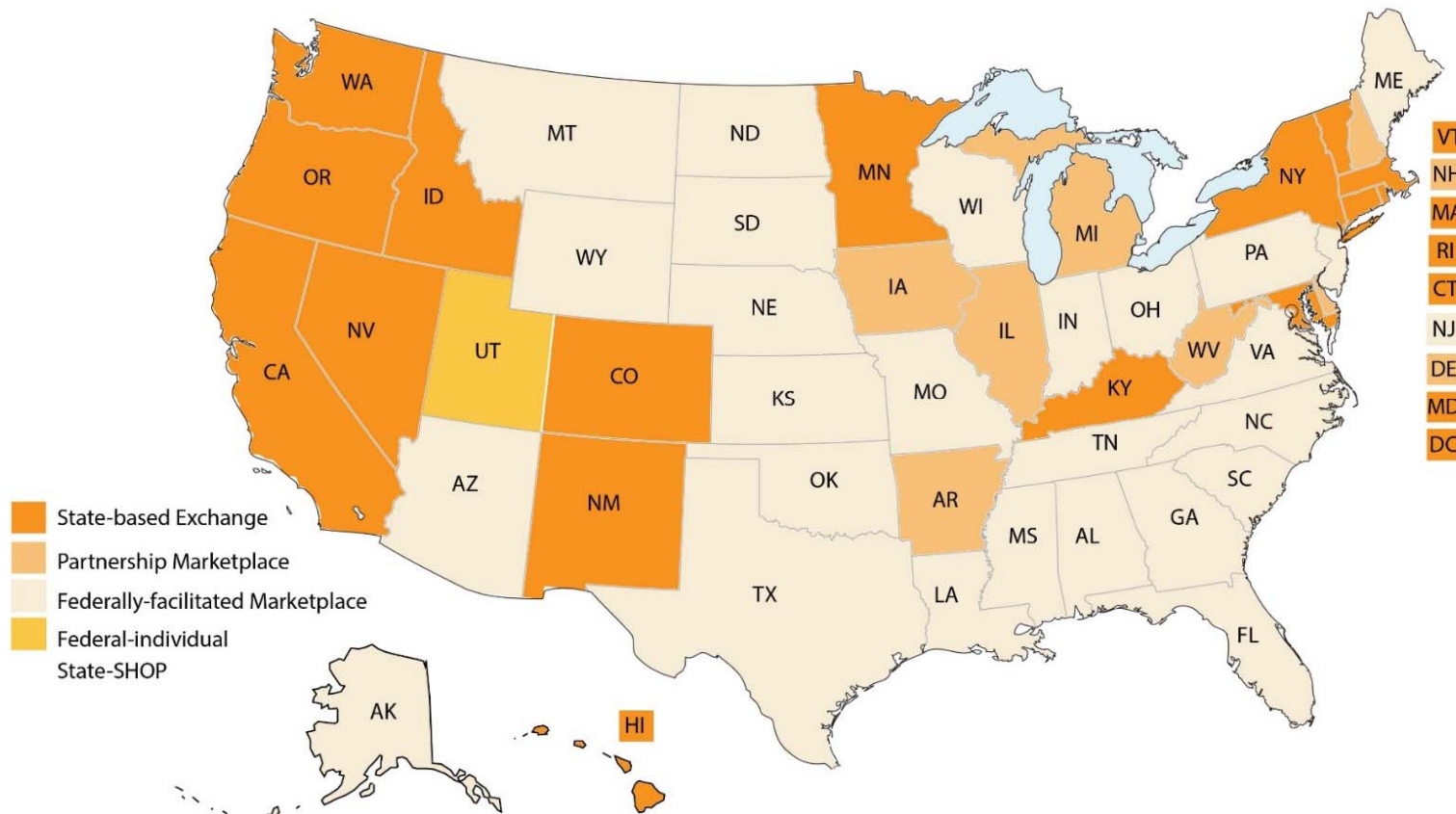
- Catto & Catto
- Celedinas Insurance Group
- Cottingham & Butler, Inc.
- Cragin & Pike, Inc.
- The Crichton Group
- The Daniel & Henry Co.
- Engle-Hambright & Davies, Inc.
- Frenkel Benefits
- Gillis, Ellis & Baker, Inc.
- Haylor, Freyer & Coon, Inc.
- The Horton Group
- INSURICA
- Kapnick Insurance Group
- Kinney Pike Insurance
- Lipscomb & Pitts Insurance
- LMC Insurance & Risk Management
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- R&R/The Knowledge Brokers
- RCM&D
- Roach Howard Smith & Barton
- The Rowley Agency
- Starkweather & Shepley Insurance Brokerage
- Woodruff-Sawyer & Co.
- Wortham Insurance & Risk Management



THE SUPREME COURT CASE - KING v BURWELL

Supreme Court Case

- King vs. Burwell – Are subsidies available when purchasing individual health insurance in states using Federal Marketplace?

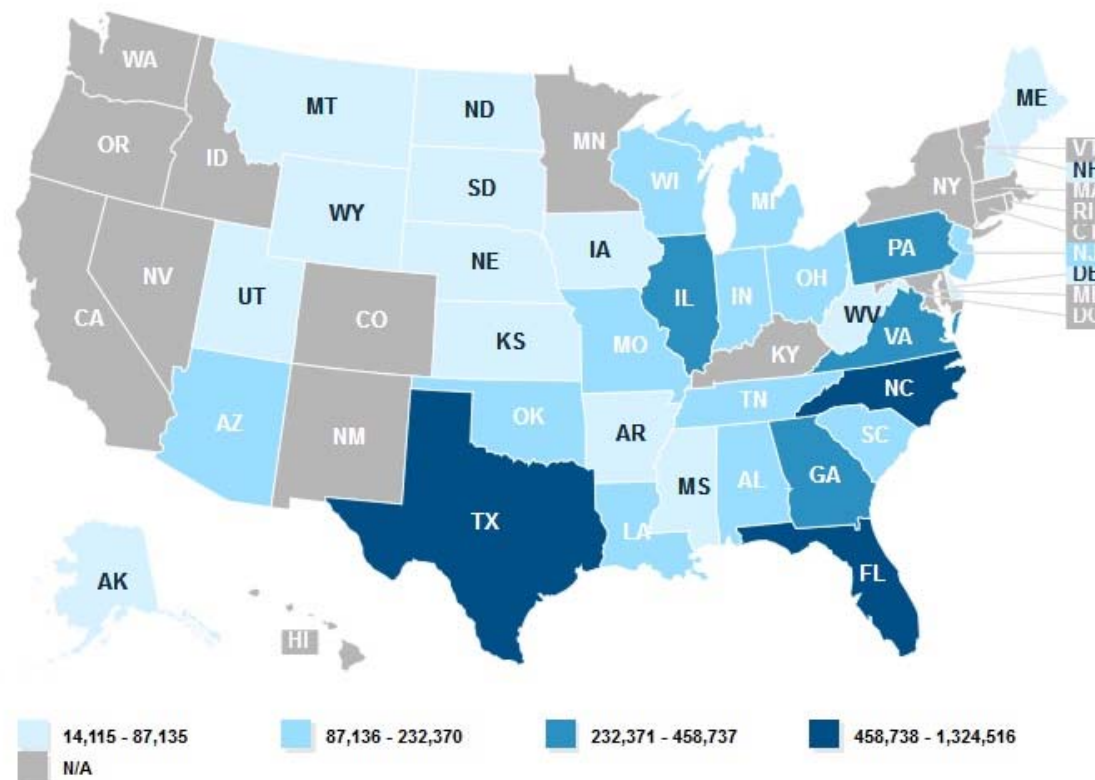


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Supreme Court Case

- Supreme Court - King vs. Burwell
 - 34 states using Federal Marketplaces
 - Approximately 6,400,000 individuals would lose subsidies



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Supreme Court Case

- Supreme Court - King vs. Burwell
 - In a 6-3 decision, the Supreme Court has ruled that subsidies will continue to be available to individuals who purchase health insurance plans in states that use the Federal Marketplace
 - A ruling for the challengers could have significantly impacted ACA employer requirements and caused uncertainty in some states' health insurance markets
 - Employer impact of the decision
 - No change in employer responsibility or reporting requirements for now
 - Applicable large employers (ALEs) should continue to move forward with their efforts to comply with the §4980H shared responsibility rules and ACA reporting requirements



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DEFINITION OF SMALL GROUP

Small Group Market

- ACA Definition of Small Employer Changing
 - Through 2015, states law defines small group for purposes of insurance rating and underwriting
 - Most states today define small group as 50 or less
 - Definition of how to calculate 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)
 - Required to use the §4980H definition for calculating FTEs
 - HHS has given states the right to delay this transition through plan years renewing as late as October 2016
 - Different states are handling this differently
 - **This DOES NOT change the definition of Applicable Large Employer (ALE) for purposes of the pay or play rules – that stays at 50 FTEs**



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Definition of Small Employer

Small Employer for Underwriting, Rating & SHOP			Applicable Large Employer for Shared Responsibility (Pay or Play) Rules		
	Size	Counting Method		Size	Counting Method
2015	50	State Law Based	2015	50 FTE	4980(H) Method
2016	50 or 100?? Depends on State	4980(H) Method or State Method	2016	50 FTE	4980(H) Method



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Small Group Market

- Risk of Changing Plan Year
 - Some carriers offering employers opportunity to change contract year to October so that plan retains old definition of small employer through plan year Oct. 1, 2016 – Sep. 30, 2017
 - This option is only available in states that choose to take advantage of delay allowed by HHS
 - WARNING - if an employer changes plan year, the right to take advantage of important §4980H transition rules is lost
 - Compliance with §4980H for employers with 50-99 FTEs was delayed until 2016
 - If plan year is changed, an employer with 50-99 FTEs is subject to §4980H this year (2015)
 - In 2015, ALEs are only required to provide coverage to 70% of full-time employees to avoid §4980H(a) liability and the waiver in calculating the penalty is 80
 - If plan year is changed, an employer must provide coverage to 95% of full-time employees to avoid §4980H(a) liability and the waiver is 30



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GUARANTEED AVAILABILITY/RENEWABILITY

Guaranteed Availability/Renewability

- Small Group Market
 - Guaranteed Availability
 - Insurer must accept all employers that meet carrier's participation/contribution requirements
 - During special one month group plan enrollment period from Nov. 15 – Dec. 15 each year, carriers must also accept small groups who do not meet participation or contribution requirements
 - Guaranteed Renewability
 - Insurer can refuse to renew if plan sponsor fails to comply with employer contribution or group participation rules
 - Insurer must renew small group plans sold through the Federally Facilitated SHOP program that renew during the Nov. 15 – Dec. 15 open enrollment period, even if those groups do not meet participation or contribution requirement



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Guaranteed Availability/Renewability

- Large Group Market
 - Guaranteed Availability
 - Insurer must accept all employers even if they do not meet the carrier's participation/ contribution requirements
 - While insurers must accept all employer's in the large group market, the rules permit a carrier to "re-rate" a group who fails to meet participation requirements after the initial enrollment
 - Depending on state law, insurer could come back to a group with low participation in the initial enrollment and raise rates to the point it may be unattractive for the employer to offer the plan
 - Guaranteed Renewability
 - Insurer can refuse to renew if plan sponsor fails to comply with employer contribution or group participation rules
 - If carrier refuses to renew due to low participation, a different insurer would be required accept the group. However, insurer may rate the group at unattractive levels



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CADILLAC TAX

Cadillac Tax

- Planning for the Cadillac Tax
 - Beginning 2018, 40% excise tax on health coverage cost that exceeds “threshold amounts”
 - Threshold amounts, prior to adjustments
 - \$10,200/yr. for self-only coverage
 - \$27,500/yr. for coverage other than self-only
 - The actual amount of the tax will vary based on adjustments to the threshold amounts.
 - A possible health cost adjustment percentage for 2018 based on medical cost trends
 - An annual cost-of-living adjustment
 - An age and gender demographic adjustment
 - Don't expect to see regulations until late 2015 or 2016



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Cadillac Tax

- Defining Applicable Coverage
 - Health coverage including Medical and Rx
 - Health Flexible Spending Accounts (FSAs)
 - Health Savings Accounts (HSAs)
 - Not sure if employee pre-tax contributions will be included yet
 - On-Site Medical Clinics
 - Health Reimbursement Accounts (HRAs) pending confirmation
 - Employee Assistance Plans (EAPs) with counseling benefits
 - Wellness Programs?



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Cadillac Tax

- Planning for the Cadillac Tax – Example
 - 250 employee group
 - Current 2015 Rates
 - Single = \$650
 - Family = \$1750

Participating Employees		2015 Monthly Rate	Annual Trend	Approx. 2018 Monthly Rate	2018 Annual Plan Cost Per Person	Excess Over S-\$10,200 F-\$27,500	Tax Per Covered Employee Per Year	Tax Per Covered Employee Per Month
Single	150	\$650.00	10.0%	\$865.15	\$10,381.80	\$181.80	\$72.72	\$6.06
Family	100	\$1,750.00	10.0%	\$2,329.25	\$27,951.00	\$451.00	\$180.40	\$15.03
							Total Annual Tax	\$28,948.00
							Total 2018 Annual Health Insurance Premiums	\$4,352,370.00



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EMPLOYER SHARED RESPONSIBILITY RULES

Employer Shared Responsibility Rules

- §4980H Review
 - §4980H(a) Assessable Payment (Penalty)
 - Employer fails to offer minimum essential coverage (MEC) to “substantially all” (70% in 2015, 95% after that) full-time employees & at least one employee purchases individual coverage through public Marketplace and receives a subsidy
 - \$166.67/mo. (indexed) times number of full-time employees not counting first 30 (not counting first 80 in 2015 only)
 - §4980H(b) Assessable Payment (Penalty)
 - Employer offers MEC to substantially all full-time employees but coverage is “unaffordable” or not “minimum value”
 - \$250/mo. (indexed) for each FT employee who purchases individual coverage through Marketplace & receives a subsidy



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Affordability

- ACA “Affordability”
 - There are two different types of “affordable”
 - For an individual’s subsidy eligibility, coverage is “affordable” if the employee’s required contribution for single coverage does not exceed 9.56% of the employee’s household modified adjusted gross income.
 - For employer safe harbors, coverage is affordable if the employee’s required contribution for single coverage is less than 9.5% (not 9.56%) of one of the three employer safe harbors:
 - Rate of pay
 - W-2 wage
 - Federal poverty level



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Affordability

- ACA “Affordability”
 - Affordable and Not Affordable at the same time!
 - An individual can qualify for a subsidy because the employee contribution is deemed unaffordable using household income, but if the employer can show that the coverage is affordable using one of the three safe harbor methods the employer will not be liable for a §4980H(b) payment.



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Affordability

- ACA “Affordability” Example
 - Assume employer’s lowest rate of pay for hourly employees is \$10/hr. Using the rate of pay safe harbor, the employer sets employee contribution for single coverage at \$123.00 (130 hours X \$10/hr. = \$1300, then $\$1300 \times .095 = \123.50)
 - A full-time employee earns \$1300/mo. but has a \$300/mo. alimony payment.
 - Alimony payments are an “above the line” deduction that reduces an individual’s AGI.
 - This individual's AGI = \$1000/mo. or \$12,000/yr.
 - Thus the contribution for single coverage (\$123.50/mo. or \$1482/yr.) equals **12.35%** of household income.
 - This employee would qualify for a subsidy but the employer would face no §4980H(b) liability due to meeting the rate of pay safe harbor.



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§4980H STRATEGIES

§4980H Strategies

- §4980H(b) Strategy Thoughts for Discussion
 - There are times when it is better to go ahead and pay some (b)
 - Employers are often making bad choices simply in an attempt to avoid the (b) payment. In some cases it is a much better decision to do nothing and face the possibility of small (b) payments
 - Things to keep in mind when assessing this risk:
 - A (b) payment of \$250/mo. is levied on an employer only for a full-time employee who purchases individual health insurance through the public Marketplace and qualifies for a subsidy.
 - In states that have expanded Medicaid, subsidies are only available for individuals with household incomes between 138% - 400% of FPL.
 - The employer risk is higher in states that have not expanded Medicaid because subsidies are available for employees with incomes down to 100% of FPL.



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§4980H Strategies

- §4980H(b) Strategy Thoughts for Discussion
 - Case Study 1
 - Large financial services firm, over 1000 full-time employees
 - Employer contribution for single coverage was over \$400/mo. Employed as many as 30-40 short-term interns who worked over 30 hours/wk. for 3-6 months at a time
 - Interns were not eligible for health plan
 - Placements were made at various times during the year so the interns could not be treated as seasonal
 - Most interns were college students or grad students
 - Firm did not want to use measurement period since most other employees were clearly full-time or part-time



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§4980H Strategies

- §4980H(b) Strategy Thoughts for Discussion
 - Case Study 2
 - Employer with approximately 500 full-time employees
 - Employer contribution toward single coverage was over \$400/mo.
 - Estimated the plan was unaffordable for approximately 25 low wage full-time workers
 - Very few of these workers currently contributed to the plan
 - Employer was considering two strategies:
 - Raising employer contribution for single coverage \$30/mo. on all employees
 - Setting a 2-tier employer contribution rate that was higher for lower wage workers
 - Employer was afraid that by doing this it would create significant new enrollments among this subgroup of employees



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DEFINED CONTRIBUTION AND INDIVIDUAL INSURANCE

Individual Insurance

- Employer Payment of Individual Health Insurance
 - Prior to the ACA
 - Section 125 allowed employees to pay for individual health insurance pre-tax through a cafeteria plan
 - Some employers also funded the purchase of individual health insurance tax-free through an HRA
 - Also called premium reimbursement plans, section 105 plans, and lot of other names – but to the IRS they are all the same
 - Employer offering of individual health insurance has always been problematic
 - Considered an employer-sponsored plan even though it is individual health insurance policies
 - Difficulty complying with various rules including COBRA, HIPAA Title I, ERISA, etc.



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Individual Insurance

- Employer Payment of Individual Health Insurance
 - New Rules
 - The DOL, IRS, & HHS have previously released guidance limiting the employer's ability to pay for individual health insurance premiums for employees, but prior guidance was somewhat unclear and left room for some alternative interpretations
 - New guidance effectively puts an end to that practice
 - Payment of individual health insurance premiums by an employer constitutes a group health plan and a group health plan made up of individual health insurance policies violates a number of ACA-related provisions
 - There is no way for the employer to provide a method to pay for the individual health insurance policies tax-free
 - Even employer payment of individual policies on an after-tax basis violates ACA group insurance requirements



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Individual Insurance

- Employer Risk – Vendors that Claim This Model is Allowed
 - One vendor provides a “guarantee” for any IRS fine or penalties
 - However, it’s limited to what the employer paid the vendor for their services over the previous 12 months and does not cover any tax liability
 - Excise tax for violating ACA market reform rules is up to \$100 per day per participant
 - If employer is caught by the IRS providing tax-free payments for individual health insurance...
 - Employer would be liable for late payroll taxes, fines and interest
 - IRS could also force the employer to give new W-2s to employees showing additional taxable income
 - In this case, employees would have to file amended tax returns and pay their own back taxes, penalties and interest to the IRS



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Thank you!

