



HealthCare Reform Update



Healthcare Reform Provisions Effecting Employers

August 2012

On June 28th, 2012, the U.S. Supreme Court issued its decision on the constitutionality of the Patient Protection and Affordable Care Act (PPACA). The Supreme Court upheld the “individual mandate” and all provisions of the law that impact employers. While this ruling is one of the most significant and also controversial rulings ever made by a Supreme Court, impacting virtually every employer in America, the final fate of the bill may still be determined by the outcome of Congressional and Presidential elections this fall. Most importantly, employers should begin taking steps to understand the provisions of the law that will impact them and prepare a timeline for implementation so they can stay in compliance.

Major provisions that will impact employers

There are numerous provisions within the law that directly impact employers, however those provisions likely to have the greatest impact, particularly on cost will become effective in 2014 and thereafter. The following is a summary of these provisions and their respective timelines.

Employer mandate

While much of the focus of the constitutional challenge to the Supreme Court has been on the individual mandate, the most important mandate for employers to understand is the “pay or play” mandate. This mandate requires large employers, generally defined as those with 50 or more full time employees, which takes into account full-time equivalents, to provide adequate and financially subsidized group health coverage to all full time employees beginning 2014. Any employer failing to

satisfy this requirement, would be subject to \$2,000 per full time employee penalty per year. Accordingly, it is extremely important for employers to compare the cost to either “pay or play”, and ideally, model how this mandate will financially impact them.

Automatic enrollment

The law will require most employers with 200 employees or more to automatically enroll new employees who are eligible for group plan coverage. Essentially, rather than requiring employees to affirmatively elect health coverage, employers will be required to automatically enroll any eligible who fail to opt out of coverage. This type of enrollment process typically leads to increased plan participation, and ultimately higher costs for employers. Implementation of this requirement has been delayed to give Health and Human Services (HHS) time to issue guidance on the requirement. It is expected that this requirement will begin applying in 2014.

Non-discrimination requirements

The law prohibits most insured group health plans from discriminating in favor of highly paid employees. These requirements are similar to those outlined in Section 105(h) of the Internal Revenue Code, which already applies to self-funded employers. Any employer failing to satisfy these requirements would be subject to significant financial penalties. Implementation of the non-discrimination requirements have been delayed for HHS to develop final guidance, however it is anticipated that the requirements will be effective in 2014.

Immediate Client Compliance Provisions and Issues

In addition to the major issues that will impact employers in 2014, there are numerous other issues that require immediate attention.

They are as follows:

New Summary of Benefits and Coverage (SBC) Requirement

Beginning with the first open enrollment after September 23, 2012, employers must distribute SBCs for the group plans. The SBC is essentially uniform disclosure of the terms and provisions of the employer's plan and is intended to allow employees to more easily compare plan offerings. The requirements for an SBC are very specific and detailed. Insurance carriers and/or Third Party Administrators will likely provide assistance in preparation of SBCs. Willful non-compliance will result in \$1,000 per incident and also may trigger an excise tax of \$100 per day per individual for each day of noncompliance.

Reporting cost of coverage on 2012 W-2 Forms (Mandatory for Employers > 250 W2's)

Beginning with 2012 W-2 forms, which are to be distributed in 2013, employers will be required to report the total cost (employer and employee) of any group health coverage that was provided to an employee.

New limitations on Medical Flexible Spending Accounts

Effective January 1, 2013, pre-tax contributions made by an employee to a flexible spending account under an employer cafeteria plan will be limited to \$2,500.

Distribution of Medical Loss Ratio (MLR) Rebates

This provision applies only to fully insured plans, self funded plans are not impacted. Just prior to August 1st, employers may have received MLR rebates from their health insurance carriers. It will be the responsibility of the employer to determine whether all or part of the rebate should be

refunded to employees or otherwise used to benefit employees.

Additional Medicare taxes for high income employees

High income taxpayers (those with more than \$250,000 in wages if married and filing jointly, or more than \$200,000 if single) must pay additional Medicare tax, and employers will be responsible for deducting a part of the tax (an additional 0.9% on the employee's wages in excess of \$200,000) from the employee's pay beginning in 2013. Also effective in 2013, there will be a 3.8% additional Medicare tax which applies to the lesser of net investment income or the amount by which adjusted gross income (AGI) exceeds \$200,000 for individuals or \$250,000 for married couples filing jointly. This tax does not apply to distributions from qualified retirement plans, including IRAs, 410(a) money purchase plans, 403(b) plans, and 457(b) plans.

Medical expense deduction limitation

Beginning for taxable years on or after January 1, 2013, the threshold for claiming an itemized deduction for non reimbursed medical expenses for regular tax purposes increases from 7.5% to 10% of a taxpayer's adjusted gross income (AGI).

Individual mandate

Effective January 1, 2014, all US and legal residents are required to purchase and maintain "minimum essential coverage". The annual penalty for not having insurance would be equal to the greater of the following: for 2014 the penalty will be \$95 or 1% of income, in 2015 it will rise to \$325 or 2.0% of income, and in 2016 (and thereafter) it will rise to \$695 or 2.5% of income. Families will have a maximum flat penalty of \$2,085 but still will owe 2.5% of household income if that is greater. The penalty will apply to each family member who is without coverage. Also starting in 2014, a refundable tax credit will be available to help low income individuals with purchasing subsidized coverage in the Individual Health Insurance Exchanges.



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