

What Employers Need to Know About *The Patient Protection and Affordable Care Act (PPACA)*

1. It is now the law.
 - Dept. of Health & Human Services (HHS) guidance is still needed on open issues.
2. New state insurance “Exchanges” are to be set up to facilitate purchase of coverage and distribution of federal subsidies to qualified individuals. Exchanges are to be established for Small Business and Individual insurance programs.
3. PPACA requires that all citizens have health insurance.
 - Failure to have health insurance will result in a penalty which is the greater of:
 - \$95 in 2014, \$325 in 2015 and \$695 in 2016 (indexed by CPI), OR
 - A percent of income - 1% in 2014, 2% in 2015 and 2.5% in 2016 and thereafter
4. Individuals earning less than 150% of the Federal Poverty Limit (FPL) will be provided health insurance through Medicaid.
5. Individuals earning more than 150% of FPL but less than 400% of FPL will get a federal subsidy if they purchase coverage from the newly formed state health insurance Exchange.
6. Small Employer tax credit will be available to employers with no more than 25 full-time employees and average wages of less than \$50,000 who purchase health insurance for their employees.
 - Employer must cover at least 50% of the total premium cost.
 - Maximum tax credit for 2010 – 2013 is up to 35% of employer’s premium cost.
 - Full credit is only available to employers with 10 or fewer full-time employees and an average annual full-time-equivalent wage of less than \$25,000.
 - Credit is reduced as the number of employees and average wages increase.
 - Owners and their family members are not eligible for tax credits.
7. Employers with fewer than 50 full-time equivalent employees are not required to provide coverage.
8. Employers with 50 or more full-time equivalent employees will be required to provide “affordable” coverage to their employees.
 - Failure to provide coverage will result in a penalty.
 - If an employer doesn’t provide coverage and at least one employee purchases coverage from an Exchange with a subsidy, the employer is fined \$2,000 for each full-time worker (first 30 workers are exempt from penalty).
 - Penalty is an excise tax and is not tax deductible to employer.
 - If an employer provides coverage that is not “affordable,” the employer will pay a \$3,000 penalty for each employee who purchases coverage from an Exchange with a subsidy.
 - Employer-sponsored coverage is considered unaffordable if the employee’s share of the premium exceeds 9.5% of the employee’s household income.
 - *Update 8/12/2011: The IRS will develop a safe harbor in which coverage would be considered affordable so long as the premium contribution for SINGLE coverage did not exceed 9.5% of employees’ W-2 wages (not household income).*

- An employer who provides coverage must provide “free choice” vouchers to each qualified employee. Vouchers are used to purchase coverage from an Exchange.
 - The amount of the voucher is equal to the largest portion of what the employer would have paid to provide coverage under the employer-sponsored plan.
 - The voucher amount paid by the employer is tax deductible as compensation and is excluded from income for the employee.
 - A “qualified” employee is an employee who does not participate in the employer’s health plan *and* whose share of premium cost would exceed 8% but is less than 9.8% of the employee’s household income *and* whose household income is less than 400% of the FPL.
- 9. Insured group health plans may not discriminate in favor of highly compensated individuals with respect to eligibility to participate in, and benefits provided under a group health plan.
 - Grandfathered plans are excepted
 - A grandfathered plan is a group health plan that was in force on March 23, 2010. Regulations are very restrictive and provide little flexibility for plan sponsors to make changes or modifications to their plans and still retain grandfathered status.
 - Highly compensated individuals defined:
 - The 5 highest paid officers;
 - A 10% or more shareholder; and
 - An individual who is among the highest paid 25% of all employees
 - Excludable employees:
 - Employees who have not completed 3 years of service, part-time employees (less than 35 hrs/wk), seasonal employees, employees subject to a collective bargaining agreement, employees under age 25 and nonresident aliens.
 - Health plan must pass two tests:
 - Eligibility test
 - A plan satisfies this test if it satisfies any one of the following:
 - The plan benefits at least 70% or more of all employees
 - 70% of all employees are eligible to benefit under the plan, and at least 80% or more of those eligible in fact benefit, or
 - The plan benefits a nondiscriminatory class of employees
 - The eligibility tests apply based on who is actually benefiting under the plan, not on mere eligibility to participate. Therefore, to the extent that an employer requires an employee to pay a portion of premiums and a substantial portion of its population opts out, the plan may have an eligibility problem. Employees opting out to obtain coverage through a health insurance exchange or coverage from a spouses’ employer may present a substantial problem.
 - Benefits test
 - All benefits provided for participants who are highly compensated must be provided for all other participants.
 - This suggests that an employer may not subsidize premiums for highly compensated individuals while requiring that rank-and-file pay a portion of the premiums.

- Penalties
 - An employer that fails to satisfy the nondiscrimination rules is subject to an excise tax of \$100 per day during the noncompliance period with respect to each individual to whom the failure relates, not to exceed the lesser of 10% of the group health plan costs or \$500,000.
- 10. High-cost plan tax of 40% for plans with premium value above \$10,200/individual or \$27,500/family.
- 11. Prohibits new employee waiting periods of more than 90 days.
- 12. PPACA creates a new mandate for the IRS to act as enforcer of key employer provisions ensuring that employers offer health insurance and penalizing them for noncompliance.
 - IRS will create a new series of reporting mechanisms to track employer compliance
 - Employers providing minimum essential coverage are required to report information about employees covered, the portion of the premium paid by the employer and any additional information if minimum essential coverage is offered through an Exchange.
 - Employer must provide this same information to each employee.
 - Large employers are required to report information certifying whether the employer offers full-time employees the option to enroll through an eligible employer-sponsored plan.
 - Must include length of waiting periods, cost of premiums, total cost paid by employer, number of full-time employees and detail on each full-time employee covered by the plan.
 - Employers are required to report the cost of employer-provided coverage on each employee's Form W2 (not taxable income).
- 13. All health insurance plans must provide minimum essential benefits
 - No lifetime dollar limits.
 - Guaranteed issue & renewability.
 - No limitations on pre-existing conditions.
 - Preventive services with no cost-sharing.
 - Out-of-pocket spending limited to \$6,200/individual, \$12,300/family.
 - Coverage extended for dependent children to age 26.
 - Emergency services without prior authorization treated as "in-network".
 - Revised appeals process.
 - Wellness program incentives.
 - Limits premium underwriting. Permits variations of premium only by:
 - Individual or Family status
 - Geographic area
 - Age (no more than 3 to 1 variance)
 - Tobacco use (1.5 to 1)