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HEALTHCARE REFORM UPDATE 2015-14



WHAT EMPLOYERS NEED TO KNOW RIGHT NOW ABOUT HEALTH CARE REFORM

Mid-Size Employers: Transition Relief and Community Rating

The employer shared responsibility (i.e., "play or pay") requirements went into effect in 2015 for large employers only (those with 100 or more full-time or full-time-equivalent employees). Even though they generally will not be liable for penalties until 2016, mid-size employers (employers with 50 to 99 full-time or full-time-equivalent employees) will need to report on the coverage they offered for 2015, so long as they meet the maintenance requirements for transition relief. To avoid penalties--beginning in 2015 for large employers, and in 2016 for eligible mid-size employers--employers must offer health benefits to employees who work an average of 30 or more hours per week, or 130 hours per month.

Our access to PPACA Advisor resources can help you clear up PPACA questions and better craft your company's benefit strategy for the future.



If a large employer has a non-calendar-year plan and can meet certain transitional rules, it can delay offering health benefits until the start date of its 2015 plan year. Similarly, a mid-size employer with non-calendar-year plans that meets the same rules can delay offering benefits until the start of its 2016 plan year. An unrelated set of transitional rules related to community rating under PPACA has created questions regarding the total effect when a plan year changes its effective dates.

Mid-size employer transition relief (maintenance requirements)

For a mid-size employer to qualify for transitional relief (i.e., delay offering health benefits until January 2016), it must meet a set of maintenance requirements. The maintenance requirements are that the employer be able to certify (on IRS reporting form 1094-C) that during the period beginning on February 9, 2014, and ending on the last day of the plan year that begins in 2015, the employer:

- Has not reduced the size of its workforce or the overall hours of service of its employees so that it could qualify for this delay, and
- Has not eliminated or materially reduced any coverage it had in effect on February 9, 2014. A material reduction means that:
 - The employer's contribution is either less than 95 percent of the dollar amount of its contribution for single-only coverage on February 9, 2014, or is a smaller percentage than the employer was paying on February 9, 2014;
 - A change was made to the benefits in place on February 9, 2014, that caused the plan to fall below minimum value; or
 - The class of employees or dependents eligible for coverage on February 9, 2014, has been reduced.

Employers with 50 to 99 employees that are newly offering coverage to some employees, or that only offer coverage to a few employees, are eligible for the delayed effective date as long as they don't make changes that would violate the maintenance requirements. Employers with 50 to 99 employees that have not previously offered any coverage have until January 1, 2016, to offer coverage without risking penalties.

An employer with 50 to 99 employees and a calendar year plan that does not meet the maintenance requirements will be subject to the play or pay requirements, and penalties, as of January 1, 2015.

Non-calendar year transition relief

Large employers with non-calendar-year plans do not need to comply until the start of their 2015 plan year if they meet the plan year transition rules. Under the plan year transition rules, the play or pay requirements do not apply until the start of the 2015 plan year if:

- The employer had a non-calendar-year plan in place on December 27, 2012;
- The employer has not moved the plan year to a later date since December 27, 2012, (e.g., didn't move from a July 1 to a December 1 plan year);
- Any of these four criteria are met:
 - Actually covered one-fourth of **all** employees (full-time and part-time) on any day between February 10, 2013, and February 9, 2014;
 - Actually covered one-third of **full-time** employees (30+ hours/week) on any day between February 10, 2013, and February 9, 2014;
 - Offered coverage to one-third of **all** employees during the last open enrollment; or
 - Offered coverage to half of **full-time** employees during the last open enrollment; and

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- Affordable, minimum value coverage is offered to applicable employees as of the start of the 2015 plan year.

An employer with 50 to 99 employees and a non-calendar-year plan that does not meet the non-calendar-year transition relief will be subject to the play or pay requirements, and penalties, at the start of its 2015 plan year even if it meets the maintenance requirements described earlier. If it cannot meet both the maintenance requirements and the non-calendar-year transition relief, play or pay applied beginning January 1, 2015.

Community Rating

PPACA originally provided that, for plan years beginning on or after January 1, 2014, personal factors used by an insurer to determine premium rates for insured individuals and group health plans is more limited in scope. Further guidance from the Department of Health and Human Services (HHS) provided instruction on age curves, geographical rating, and state reporting. As a result, carriers began terminating coverage that was not compliant with some of these market reforms. In response, the Centers for Medicare & Medicaid Services (CMS), a division of HHS, issued a letter outlining a transitional policy for non-grandfathered coverage in the small group and individual markets. The policy was then extended for two years to include policy years beginning on or before October 1, 2016. Carriers generally view remaining in transition relief as positive.

Where transition relief policies clash

As 2016 draws near, some employers are working with carriers that are pushing to change the dates of their non-calendar-year plans. One thing is clear: if a carrier/employer moved the date of an applicable mid-size employer's (an employer that meets the requirements of transitional relief) non-calendar-year plan later in the year (e.g., from June 1, 2015, to October 1, 2015) that group would no longer meet the eligibility of "non-calendar-year transition relief" and would be subject to play or pay requirements beginning the first day of *the 2015 plan year*.

The more complex question is what happens if a mid-size employer, currently meeting all requirements of transitional relief, moves its plan year to earlier in the year (e.g., from December 1, 2015, to October 1, 2015) in order to avoid community-rating requirements for another year? The answer is unclear, although it is likely acceptable, provided caution is taken to maintain every requirement for both maintenance and non-calendar-year transition relief.

There are two schools of thought in the compliance community. One interpretation is that the mid-size-employer transition relief requirements for non-calendar-year plans expressly prohibit moving a plan year to a later date, but are silent on moving it forward, effectively permitting the change.

Others interpret the move to an earlier date as a potential material elimination or reduction in coverage. This more conservative approach relies on the language that an employer cannot "eliminate or materially reduce the health coverage, if any, it offered as of February 9, 2014," for the coverage maintenance period. The coverage maintenance period is: (1) for an employer with a calendar year plan, the period beginning on February 9, 2014, and ending on December 31, 2015, and (2) for an employer with a non-calendar-year plan, the period beginning on February 9, 2014, and ending on the last day of the plan year that begins in 2015. Furthermore, if the act of changing the date did not in and of itself trigger a material reduction, any tweaks to the plan design could inadvertently do so (i.e., deductible restarting prior to the normal 12 month period). By failing to meet these requirements a mid-size employer would have been subject to play or pay beginning on January 1, 2015.

The IRS provides the following guidance on elimination or material reduction in health coverage:

in no event will an employer be treated as eliminating or materially reducing health coverage if

- (i) it continues to offer each employee who is eligible for coverage during the coverage maintenance period an employer contribution toward the cost of employee-only coverage that either (A) is at least 95 percent of the dollar amount of the contribution toward such coverage that the employer was offering on February 9, 2014, or (B) is the same (or a higher) percentage of the cost of coverage that the employer was offering to contribute toward coverage on February 9, 2014;
- (ii) in the event there is a change in benefits under the employee-only coverage offered, that coverage provides minimum value after the change; and
- (iii) the employer does not alter the terms of its group health plans to narrow or reduce the class or classes of employees (or the employees' dependents) to whom coverage under those plans was offered on February 9, 2014.

If a mid-size employer chooses to move its plan to an earlier date in the year, it should be cautious to ensure all transition relief requirements (under both maintenance requirements and non-calendar year plans) are met in order to avoid potential penalties. Employers with further questions should engage outside counsel to review their specific set of facts and circumstances.

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