Health Care Reform: Employer Responsibilities

Membership Conference Call on Compliance Issues, Part 2

April 1, 2010

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Recap on Legislation

- President signed Patient Protection and Affordable Care Act on March 23
- Reconciliation bill signed on March 30
- Interpretation of the legislation now requires examining three sources:
  - Senate-passed bill, H.R. 3590 (now P.L. 111-148)
  - Manager's amendment to the Senate bill
  - Reconciliation bill, H.R. 4872
- Very important: Check all three sources when considering how the bill works

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Example: Annual Limits

- Original Senate bill
  - No “unreasonable” annual limits
  - Not applicable to grandfathered plans
- Manager’s Amendment
  - No annual limits on essential benefits prior to 2014, except as permitted by the Secretary of HHS
  - Not applicable to grandfathered plans
- Reconciliation bill
  - Limits determined by the Secretary also apply to grandfathered plans prior to 2014

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Employer Responsibilities

- Key Concepts
  - Applies to "large" employers with 50 or more employees
  - "Grandfathering" rules do not apply to these provisions
  - Individuals can satisfy their coverage requirement by enrolling in an employer plan, a government sponsored plan or a plan in an insurance exchange
  - Unlike original House bill (approved last November), large employers are not required to meet minimum benefit requirements (applicable to individual and small groups) or make minimum contributions to premiums

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Employer Responsibilities

- Effective starting January 1, 2014
- Employer must count all full-time employees and part-time employees -- on a full-time equivalent basis -- in determining if they have 50 or more employees
  - Certain seasonal workers are not counted in determining if employer has 50 workers
  - Full-time = 30 or more hours per week, determined on a monthly basis
- Penalties assessed for “no coverage” or coverage that is not “affordable”

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No Coverage

- If employer fails to provide its *full-time* employees (and their dependents) the *opportunity to enroll* in "minimum essential coverage", <u>and</u>
- One or more *full-time* employees enrolls for coverage in an exchange and qualifies for a premium tax credit or cost-sharing reduction, <u>then</u>
- Employer penalty = $2,000 for each of its *full-time* employees in the workforce

Unaffordable Coverage

- If employer offers its *full-time* employees (and their dependents) the *opportunity to enroll* in minimum essential coverage, <u>and</u>
- One or more *full-time* employees enrolls for coverage in an exchange and qualifies for a premium tax credit or cost-sharing reduction because
  - the employee's share of the premium exceed 9.5 percent of income, or
  - the actuarial value of the coverage was less than 60 percent, <u>then</u>
- Employer penalty = $3,000 for each *full-time* employee who receives a tax credit or cost-sharing reduction

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Additional Details

- Actuarial value = the portion of allowable costs paid by the plan.
- Penalties assessed on a monthly basis.
- No penalties assessed on first 30 full-time employees.
- No penalties apply to part-time employees.
- No penalties for waiting periods (if any), not exceeding 90 days.
- Total "affordability" penalty is capped. May not exceed penalty for "no coverage".
- Employer does not determine if employee is eligible for premium tax credit based on household income, but is notified by the exchange if full-time employee qualifies.

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Other Responsibilities

- Employers must automatically enroll "new *full-time* employees" in employer-sponsored coverage
  - Must provide adequate notice and opportunity to opt out
  - Applies to employers with "more than 200 full-time employees"
  - No effective date specified, but must be "in accordance with regulations promulgated by the Secretary (of DoL)..." (so presumably not effective until regulations are issued)
- Notice to current employees and new hires about exchange and subsidies
  - Existence of exchange, services and how to obtain assistance
  - Availability of premium assistance if plan value below 60 percent
  - Loss of employer contribution and tax exclusion for contribution
  - Effective March 1, 2013

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Other Responsibilities

- Annual reporting to Secretary of Treasury
  - Whether employer offers minimum essential coverage to full-time employees
  - Any waiting period for coverage
  - Monthly premium for lowest cost option in each enrollment category under the plan
  - Employer's share of the total allowed cost of benefits provided under the plan
  - Number of full-time employees during each month
  - Name, address and TIN of each full-time employee and months they were covered by employer's plan
  - "Such other information as the Secretary may require..."

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“Free-Choice” Vouchers

- Effective January 1, 2014 and applies to employers that <u>offer coverage</u> and <u>pay a portion of the cost</u>
- Qualified employees must have income below 400 percent of federal poverty level, <u>and</u>
  - Employee contribution to premium is between 8 percent and 9.8 percent of income [Note: JCT assumes 9.5 percent of income]
  - Does not participate in employer plan
- Voucher amount = the cost “which would have been paid by the employer if the employee were covered under the plan with respect to which the employer pays the *largest portion* of the cost of the plan...” (Self-only or family coverage, depending on the employee’s election.)

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“Free-Choice” Vouchers

- Credited by the exchange for the cost of any coverage the employee elects. Employer pays exchange credit amount.
- “Excess amounts” are paid to the employee
- Voucher amounts are excluded from income for the employee and deductible by the employer.
- Employee who receives voucher does not also qualify for a premium tax credit in a health insurance exchange
- Many unresolved issues around amount employer must contribute and which “plan” to consider for determining if employee cost falls between 8 and 9.8 percent.

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Discussion and Questions

- Reminder:
  - Next call is April 8 at 1:30 p.m. ET
  - **Topic:** Tax code changes affecting employers and employees
  - Please send topics for further calls (e.g., temporary retiree reinsurance program, CLASS Act, state waiver authority...)
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