Health Care Reform: Employer Responsibilities

Membership Conference Call on Compliance Issues, Part 2
April 1, 2010
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
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
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
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”
No Coverage

- If employer fails to provide its *full-time* employees (and their dependents) the *opportunity to enroll* in “minimum essential coverage”, and
- One or more *full-time* employees enrolls for coverage in an exchange and qualifies for a premium tax credit or cost-sharing reduction, then
- 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, and
- 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, then
- Employer penalty = $3,000 for each *full-time* employee who receives a tax credit or cost-sharing reduction
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.
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
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...”
“Free-Choice” Vouchers

- Effective January 1, 2014 and applies to employers that offer coverage and pay a portion of the cost
- Qualified employees must have income below 400 percent of federal poverty level, and
  - 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.)
“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.
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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