Affordable Care Act Update

Technical Updates

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2015 –Five Year Anniversary

- Women can no longer be charged higher premiums than men for the same plan.
- People with pre-existing conditions can no longer be denied coverage.
- Young people can stay on their parents plan generally until the age of 26.
- 16 million Americans now have health coverage.
- Cost of healthcare has risen at the slowest rate in 50 years.
  - Source: Whitehouse.gov

- HHS Secretary Sylvia Burwell stated hospitals saved $7.4 billion in uncompensated care costs as a result of patient enrollment through the Exchange and Medicaid compared to uninsured hospital care of $50 billion in 2013.

The mandate

Refers to legislation from March 2010 covering two statutes:

- H.R. 3590 the Patient Protection and Affordable Care Act, Pub. L. No. **111-148** (PPACA) (3/23/10)
- H.R. 4872, the Health Care and Education Reconciliation Act of 2010, Pub.L.No. **111-152** (HCERA) (3/30/10)

June 2012 upheld in a 5-4 decision. The primary focus was in two areas:

- Individual mandate – *completely upheld*
- Expansion of Medicaid program – *upheld but given some parameters*

Impacted many laws in the Internal Revenue Code, ERISA – Employee's Retirement Income Security Act, Social Security Act, the Fair Labor Standards Act, and Public Health Service Act

Major areas upheld and modified

Medicaid provisions – *modified*

- If a state declined to expand its Medicaid program federal funding would be forfeited and force them to participate. The court upheld expanding Medicaid but prohibited the federal government from taking existing Medicaid funds from states who elect to not expand Medicaid.

Individual mandate – *upheld*

- Congress has the right to impose a penalty tax for individuals who fail to obtain health insurance for themselves and their dependents.

INDIVIDUAL MANDATE PENALTY
Applicable for the 2014 Filing Year

Individual mandate penalty:

- Equal to the greater of:
  - Flat dollar amount: $95 for 2014
  - 1% of income for 2014
  - Will increase annually : $325 and 2% of income in 2015; $695 and 2.5% of income in 2016.
- The penalty "shared responsibility payment" cannot be more than the "*national average premium for qualified health plans which have a bronze level of coverage through the Exchange under a family plan*"

Options for individual insurance:

- Employer sponsored health coverage
- Federal exchange
- Individual policies

2014 FORM 1040, LINE 61

Line 61:

“Health Care: Individual Responsibility

Beginning in 2014, individuals must have health care coverage, qualify for a health coverage exemption, or make a shared responsibility payment with their tax return.

If you had qualifying health care coverage (called minimum essential cover-age) for every month of 2014 for yourself, your spouse (if filing jointly), and anyone you could or did claim as a dependent, check the box on this line and leave the entry space blank.

Otherwise, do not check the box on this line and see the instructions for Form 8965.”

MEC: MINIMUM ESSENTIAL COVERAGE

Minimum essential coverage. Most health care coverage is minimum essential coverage. The terms must meet basic requirements of the ACA.

Minimum essential coverage includes:

Health care coverage provided by the employer,

Health insurance coverage purchased through the Health Insurance Marketplace,

Many types of government-sponsored health coverage including Medicare, most Medicaid coverage, and most health care coverage provided to veterans and active duty service members, and certain types of coverage you purchased directly from an insurance company. Further details are provided on the instructions for Form 8965.

PREMIUM TAX CREDIT

- Individuals and families whose household income for the 2014 year is between 100 percent and 400 percent of the federal poverty line for their family size may be eligible.
- Requirements: Purchase coverage through the Marketplace, cannot afford employer-sponsored insurance, not receiving Medicaid, Medicare or other government-sponsored program, do not file a MFS tax return unless certain exceptions are met and cannot be claimed as a dependent on someone else's tax return.
- For 2014, household income would be between 100 percent and 400 percent of the federal poverty level as follows:
  - $11,670 (100%) up to $46,680 (400%) for one individual.
  - $15,730 (100%) up to $62,920 (400%) for a family of two.
  - $23,850 (100%) up to $95,400 (400%) for a family of four.

PREMIUM TAX CREDIT

- Premium tax credit (PTC).
  - Tax credit for taxpayers who are enrolled in a qualified health plan through the Exchange.
  - These individuals were not eligible for MEC insurance outside of the Exchange such as Employer Sponsored health insurance.
  - Must file form 8962 to take the PTC on Form 1040.
  - Reduces tax owed, calculates a refund, or increases the refund amount.
  - Beginning in 2014, qualifying families based on income may be eligible.
  - Can also be an advanced amount of payment (APTC):

- Advance payment of the premium tax credit (APTC).
  - APTC is a payment made by the Exchange for coverage during the year to the insurance provider.
  - Covers the individual taxpayer and individuals in the tax family.
    - If the APTC is more than the PTC, an amount due is calculated on Form 8962.
    - If the PTC is more than the APTC, the tax payment is reduced or a refund is given.

- Form 1095-A is issued by the Marketplace showing the payments made during the year.

PREMIUM TAX CREDIT

Line 46

“Excess Advance Premium Tax Credit Repayment

The premium tax credit helps pay premiums for health insurance purchased from the Health Insurance Marketplace. If advance payments of this credit were made for coverage for you, your spouse, or your dependent, complete Form 8962. If the advance payments were more than the premium tax credit you can claim, enter the amount, if any, from Form 8962, line 29.

If you enrolled someone who is not claimed as a dependent on your return or for more information, see the instructions for Form 8962.”

Facts about the Premium Tax Credit

Publication 5120 –Your Credit, Your Choice – Get it Now or Get it Later English | Spanish

Publication 5121 –Need help paying for health insurance premiums? English | Spanish

Publication 5152 –Report changes to the Marketplace as they happen English | Spanish

APTC Example

From Healthcare.gov:

Example shows a APTC amount for a two-person household with a family income of $40,000.

Based on the Silver plan level of coverage on the Federal-Exchange:

Monthly premium cost on the Exchange: $381 (Form 1095-A, Part III A.)
Taxpayer's cost-share of the plan: $269 (Form 1095-A, Part III B.)
Monthly APTC: $112 (Form 1095-A, Part III C.)

Note the Exchange shows this plan's deductible as $6,200 with an out of pocket maximum of $13,200 and $25 co-pay.

Form 8962

Form 8962 is used to figure the amount of Premium Tax Credit and reconciling it to the Advance Payment of the Premium Tax Credit.

Reconciling the APCT: determines tax owed or refunded credited.

- The additional tax for taxpayers with household income less than 400% of the Federal poverty level is capped:
  - Single at less than 200%: $300 – all others at 400%: $2,500

Line 9: provides an alternative calculation if the taxpayer shared the policy with another taxpayer or got married during the year. If so, complete Section 4: Shared Policy Allocation and Part 5: Alternative Calculation for the Year of Marriage.

Household Income for the PTC

PTC household income is:

1. Modified AGI of the taxpayer and spouse (filing a joint return), plus
2. The sum of the modified AGI for all other individuals in the "tax family" who are required to file a tax return.

Page 4 of the Form 8962 instructions has an AGI worksheet.

FORM 1095-A HEALTH INSURANCE MARKETPLACE STATEMENT

- Form 1095-A is issued by the Health Insurance Marketplace for all individuals who are enrolled in health insurance through the Exchange.

  The form will be used to provide information to both the IRS and taxpayer to claim the premium tax credit or receive premium tax assistance through the Exchange and complete Form 8962.

- The Exchange may be the Federal, state or regional marketplace.

- Families may enroll, but may be filing separate tax returns; copies can be made in such cases.

EMPLOYER MANDATE

Now delayed until 1/1/16 for employers with 50-100 FTEs (Regulations issued February 10, 2013 by the Treasury Department).

January 1, 2015 is the effective date for employers with more than 100 FTEs.

The percentage of FTEs was reduced from 95 percent to 70 percent for 2015.

As applicable, the employer mandate requires:

- Large employers must provide health insurance to its full-time employees (FTE) or pay an excise tax to the government. The tax is non-deductible
- Large employer is an average of at least 50 full-time equivalents under the ACA

EMPLOYER MANDATE

Full-time equivalent calculation:

- FTE include all employees who work more than 30 hours a week
- Part-time employee hours have to be converted to full-time equivalents:
  - Total part time worked hours in a month/120
- Seasonal employees who work less than 120 days a year can be excluded

Example:

A company employs 40 FTE and 60 part-time employees. Total working hours of the 60 employees in a month:

3,600/120 = 30

The company has 70 full-time equivalents.

EMPLOYER MANDATE

If this "large employer" does not offer minimum essential coverage to 70% (95% in 2016) of full-time (more than 30 hours a week) employees (including dependents), the employer will be subject to a $2,000 per FT penalty tax as follows:

- $2,000 x (40 less the 1st 30) 10 = $20,000 (*For 2015 the amount is 80)*
- The penalty applies if one employee obtains coverage through a federal exchange

The coverage, if offered must be affordable and provide "minimum essential benefits" or the employer will pay a tax of the lesser of:

- $3,000 per subsidized employee
- $2,000 for each full-time equivalent

Penalties are determined on a monthly at a rate of $166.67 ($2,000/12). Each month employers must identify its full-time employees based on weekly average hours of service during the month.

HOW THE IRS DETERMINES WHO GETS THE INDIVIDUAL AND EMPLOYER PENALTIES

FORM 1094-B, FORM 1094-C, FORM 1095-B, AND FORM 1095-C

Brain mnemonic:

Think of Form W3, Form W2 and remember the Individual Mandate Penalty and the Employer Mandate Penalty just discussed…..

FORM 1094-B and FORM 1095-B "B Series"

- Used by the IRS to determine which individual tax payer has MEC (minimal essential coverage) to determine whether or not the individual is subject to the individual mandate penalty under Code 6055 and reconcile to the Premium Tax Credit eligibility.
- Form 1094-B is the Transmittal (think W3) filed with the IRS.
- Form 1095-B is the Health Coverage statement which identifies the person enrolled in the health plan (policy holder), the employer-sponsor and the insurance carrier. There is one Form 1095-B for each policy holder (employee covered). A copy is sent to both the IRS and the policy holder (think W2).
- The following are required to complete the form:
  - Health insurance issuers or carriers for individual and group plans, SHOP coverage, multiple employer plans.
    - Carriers are not committing to this yet.
  - Employers must complete this form for self-insured plans if they are not applicable large employers (the full-time equivalent count is under 50).

FORM 1094-C and FORM 1095-C “C Series”

- Used by the IRS to determine which applicable large employers offer health coverage (with 50 or more full-time equivalents) and will determine whether the employer mandate penalty applies.
  - Demonstrates that insurance was offered to employees and affordable.
- Form 1094-C is the Transmittal (think W3). Filed to the IRS.
- Form 1095-C is the Employer-Provided Health Insurance Offer and Coverage which identifies the person enrolled in the health plan (policy holder), the employee-offer of coverage and the months insurance was offered. There is one Form 1095-C for each policy holder (employee covered) who is full-time. A copy is sent to both the IRS and the policy holder (think W2).
- The following are required to complete the form:
  - Employers must complete this form for both fully-insured and self-insured plans if they are applicable large employers (the full-time equivalent count over 50).

DEADLINES

- In addition to filing all forms with the IRS, a copy of Form 1095-B and Form 1095-C is provided to the responsible individual (policy holder) by January 31st of the year following the year in which the Form 1095-B and Form 1095-C relates.
- All forms must be filed with the IRS on or before February 28 (March 31st if filed electronically and required if there are more than 250 forms) of the year following the calendar year of coverage.
- There is a penalty relief in 2015 for employers with less than 100 FTEs, but not a filing relief. Even though the mandate does not apply for 2015 for non-ALEs, the B and C series forms must be filed as applicable. Therefore, for 2015 employers with more than 50 ALEs must file the forms as applicable.
- The 2014 year filing is optional. The IRS will rely on good faith reporting in regards to the individual mandate penalty unless the taxpayer is audited.
- Line by line instruction of these forms requires another training beyond the scope of today's event.

MOST EMPLOYEES CAN EXPECT (if all goes well)..

- Form 1095-C from the employer showing offer of coverage, months covered and list of dependents (proof that coverage was offered and affordable).
- Form 1095-B from the insurance carrier (i.e. Cigna) listing the name of the carrier, months covered and list of dependents (proof of coverage).

HOW WILL CLIENTS COMPLETE THE B AND C SERIES FORMS?

- It is necessary for clients to plan for gathering this data now.
- Clients will be looking to tax advisors to help complete these forms!
- Data gathering is needed from payroll systems as well as the insurance carriers.
- Filing options discussion.

Additional changes with the February 10, 2014 regulations

The regulations continue to allow the look-back option for measuring variable and seasonal employees:

- Employers may utilize a six-month equivalent instead of a year
- Provides for a monthly method of determining whether full-time status applies

Provides safe harbors to determine if the coverage is affordable

Allows employers to use actual wages paid or the federal poverty level to determine if coverage is affordable under the affordability requirement of the employer mandate

Allows employers with fiscal plans to begin compliance with the employer mandate at the start of the plan year in 2015 rather than on January 1, 2015

Requirement that employers offer coverage to the dependents of FTE employees will not apply in 2015 to employers that are planning for such coverage to begin in 2016.

Tax implications

An additional Medicare tax added to wages above certain amounts since January 1, 2013

Additional 0.9 percent added to the existing 1.45 percent for a total of 2.35 percent Medicare tax

Taxpayer wage limits imposed for earnings exceeding the following limits:

- $250,000 married filing jointly
- $125,000 married filing separately
- $200,000 all other taxpayers

Initially imposed at the payroll level, then any additional taxes are applied when the taxpayer files a federal Form 1040

Employer is not required to match these payments

0.9 percent is withheld on employee whose salary is above $200,000

Tax implications

Sally and Joe are married. Joe has a salary of $350,000. Sally has salary of $150,000. They file joint return

- Joe's employer must withhold the additional 0.9 percent of his salary above $200,000 or 0.9 percent x $150,000
- Sally's employer will not be required to withhold additional amounts
- The combined wages of $500,000 will be used to calculate the tax return due amount of $500,000 - $250,000 x 0.9 percent less the amount Joe already paid at the payroll level
- Credits will apply at the tax return level if overpayments were made at the payroll level

Tax implications

A second Medicare tax on unearned income for high income wage earners imposed since 2013.

The tax is 3.8% on the lesser of net investment income (NII) or the excess of modified adjusted gross income above the following threshold amounts:

- $250,000 if married filing jointly
- $125,000 if married filing separately
- $200,000 for all taxpayers other than married

Tax implications

Code Sec. 1411(c)(1) defines NII as the sum of:

- (i) *Category (i) income:* Gross income from interest, dividends, annuities, royalties, and rents, other than such income which is derived in the ordinary course of a trade or business not described in Code Sec. 1411(c)(2)
- (ii) *Category (ii) income:* Other gross income, derived from a trade or business, Described in Code Sec. 1411(c)(2)
- (iii) *Category (iii) income:* Net gain attributable, to the disposition of property, other than property held in a trade or business not described in Code Sec. 1411(c)(2)

Estates and trusts also will be subject to different rules

Tax implications

The threshold for itemized deductions for medical expenses on Schedule A of Form 1040 will increase from 7.5% of adjusted gross income to 10% for individuals under the age of 65

Small business employers can adopt “simple cafeteria plans”

- An employer with less than 100 employees in the last two years may adopt these plans, which will alleviate the discrimination testing requirement as long as an employer contribution is made
- The contribution is at least 2% of compensation or the lesser of 200% matching contribution or 6% of the employee’s compensation

Tax implications

The threshold for itemized deductions for medical expenses on Schedule A of Form 1040 will increase from 7.5% of adjusted gross income to 10% for individuals under the age of 65

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- An employer with less than 100 employees in the last two years may adopt these plans, which will alleviate the discrimination testing requirement as long as an employer contribution is made
- The contribution is at least 2% of compensation or the lesser of 200% matching contribution or 6% of the employee’s compensation

Tax implications

Effective for 2013, the cap on flexible spending accounts is $2,500 (Limit for 2015 is $2,550)

- Plans must have been amended by 12/31/14, in order to ensure plan documents are in compliance with this provision
- This change does not impact DCAP arrangements, which will remain at $5,000

Nonprescription medicines are no longer eligible for reimbursement under a health flexible spending account, health savings accounts, or health reimbursement accounts effective in 2011

- Nonqualified withdrawals from a health savings account will now result in a penalty of 20% from 10%

Already in effect

Small Business Tax Credit

- Eligible small employers (defined as having no more than 25 FTE and annual wages that do not exceed $50,000) may be eligible for the small business health care tax credit
- Effective 1/1/10, small employers that offered health insurance coverage became entitled to a tax credit up to 35% of the contributions the employer paid toward the premium cost
- Tax- exempt employers are eligible but receive a smaller credit than taxable entities. Controlled group rules apply
- Full-time equivalents are included in the calculation excluding business owners, partners and family members, and most seasonal workers. The requirements and percentages are different for years prior to 2014 and after
- For 2010-2013, the credit is 35% of employer-paid premiums (25% for tax exempt organizations). In 2014, the maximum increases to 50% of employer-paid premiums (35% for tax-exempt organizations)

The Patient-Centered Outcomes Research Institute (PCORI) fee

- Initially due by 7/31/13 for plans ending after 9/30/12
- For fully-insured plans, the fee is paid by the insurance carrier
- For self-funded plans, the fee is paid by plan sponsors to the IRS along with a required IRS filing on Form 720
- Health reimbursement accounts (H.R.A.s) and medical spending accounts are considered self-funded arrangements and are required to be paid by the plan sponsor if the plan is part of the fully-insured plan
- If a company sponsors a flexible spending account (F.S.A.) without any health insurance, the fee may be required for the F.S.A. as well

PCORI fee

Plan year ended 12/31/14:

- Form 720 due 7/31/2015

Plan year ended 4/30/14:

- Form 720 due 7/31/15

Form 720 is filed along with the tax to the IRS

The fee is annual even though the actual Form 720 is listed as a quarterly excise tax filing

Plan years ending between 10/1/12 – 10/1/2019

$1 per participant the first year, increasing to $2

Form 720 – various count methods specified in the filing instructions and guidance.

The Department of Labor (DOL) and U.S. Department of Health and Human Services may impose further penalties for noncompliance.

Health Reimbursement Arrangements

- Health Care Reform prohibits group health plans from imposing lifetime annual limits on the dollar value of health benefits.
- These regulations do not apply to Flexible Spending Accounts (F.S.A.s) and Health Savings Accounts (H.S.A.s) which generally are not considered group health plans.
- However, the no limit regulation does apply to Health Reimbursement Accounts (H.R.A.s).

As a result, A Stand Alone H.R.A. cannot satisfy the life time maximum limitation requirements of Health Care Reform and will not comply with the requirements. Exceptions to this apply to H.R.A.s for retirees and integrated H.R.A.s that are part of a health insurance product that does satisfy the lifetime annual limits.

Affordable Care Act requirements under ERISA's Summary Plan Description (SPD) rules

In addition to specific disclosures and notice requirements previously mentioned, the Employee Retirement Income Security Act (ERISA) SPD rules require additional changes under health reform to be included

SPDs are required of all nongovernmental welfare benefit plans

Must be provided by the plan sponsor, even if a third-party administrator or other party such as an ERISA attorney prepares the document

Affordable Care Act requirements under ERISA's SPD rules

- The health plan eligibility and enrollment requirements
- Claims procedures
- Plan benefits and limits
- Cost sharing provisions
- Reasons for loss or denial of benefits
- Contribution and funding requirements
- Necessary for self-funded as well as fully-insured plans

Affordable Care Act requirements under ERISA's SPD rules

- Insurance contracts under fully-insured plans generally do not provide all of the requirements under ERISA for the SPDs and are generally not complete for this purpose
- Recent increases of DOL and IRS audits include many of the provisions for health reform
- Penalties can be $1,000 per violation, per year
- Additional penalties per participant may be calculated and assessed

Helpful Resources

- Healthcare.gov
- www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-Home
- www.dol.gov/ebsa/healthreform
- kff.org/health-reform
- www.medicaid.gov/affordablecareact/affordable-care-act.html
- AICPA.org for members

QUESTIONS?

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