



The Affordable Care Act

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Six Years and Counting...

Introduction

- Patient Protection and Affordable Care Act (ACA) – updates on group health plan compliance requirements and penalty timelines.
- Changes in status, proof of offers of coverage, automatic enrollment, nondiscrimination requirements.
- ACA reporting requirements (Forms 1094 and 1095).

ACA – 6 Years and Counting. . . .

- 2010 – 2018 Implementation of ACA.
- Many delays along the way – more coming?
- Employer Mandate Penalties 2015/2016.
- Special 2015 Rules for Penalties.
- Automatic Enrollment and Nondiscrimination Requirements for Insured Plans – coming soon?
- New reporting requirements – annual compliance.

Health Coverage as “Perk” vs. “Requirement”

- Prior to ACA, employer-provided health care coverage typically was not mandated. (exceptions, e.g., collective bargaining), so was more of an employment “perk.”
- In many situations, employer-provided coverage is now seen as an “entitlement.”
- Employees often have no idea or concern how much the employer pays for coverage.
- Trend continues toward consumer-driven health care: high-deductible plans, spousal surcharges, dependent audits, wellness programs.

Employee Perception of Benefits

- Benefits may be perceived as either “future benefits” (e.g., retirement), “just-in-case benefits” (e.g., disability insurance), or “immediate benefits” (e.g., health coverage).
- Modifications to any benefits can cause employee relations issues, but changes to “immediate benefits” like health coverage may pose a greater risk of issues.

Employer Mandate – “Play or Pay” Penalty

- Delayed enforcement of “play or pay” penalty (\$2,000 per full time employee) – originally effective in 2014, but enforcement was delayed by IRS until 2015 plan years.
- For large employers (100 + employees), 70% coverage rule for 2015 plan year, 95% thereafter.
- For certain mid-sized employers (50-99 employees), compliance is delayed until 2016 plan year.
- No exceptions for affordability penalty (\$3,000 per affected employee).

Change in Status Issues

- “Change in status” generally refers to full-time employee transferring to part-time position.
- General rule under ACA is employee's full-time or part-time status (determined based on hours during the preceding measurement period) is locked in to that status for the full stability period, regardless of the employee's actual hours during the stability period.
- However, there are two exceptions, at initiation of employer and at initiation of employee.

Change in Status Issues

- What if employer wants to discontinue coverage before next open enrollment? Employer may do so, but only if:
 - the employee actually averages less than 30 hours per week for each of the three calendar months after the change to part-time status; and
 - the employer has continuously offered minimum-value coverage to the employee starting no later than the first day of the calendar month after the employee's first three calendar months of employment through the calendar month in which the change occurs.
 - Coverage may then be discontinued as of first day of the fourth full calendar month following the calendar month of transfer.

Change in Status Issues

- What if employee wants to discontinue coverage before next open enrollment? Employer may allow, but only if:
 - Cafeteria plan document has been previously amended to allow such midyear election changes; and
 - Employee and any related individuals whose coverage is being dropped must intend to enroll in another plan that provides minimum essential coverage (may rely on written representation of employee) by first day of second month after month in which coverage ceases.
 - Note that simply averaging fewer hours without a corresponding change in employment status (e.g., full-time to part-time) normally will not trigger this option.

Proof of Offers of Coverage

- No formal legal requirement under ACA that employers retain proof of offers of coverage.
- However, strongly recommended as “best practice” in event of audit and to comply with reporting requirements for Form 1095-C.
- Challenge is for employees who do not respond: how much follow-up is necessary? Certified letter, personal meeting?
- Additional risk arises from employees who later claim never to have received offer after incurring major medical expenses.
- Automatic enrollment expected to eliminate this problem, but only for larger employers (200 +).

Automatic Enrollment in Health Plans

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- Automatic Enrollment - employers with more than 200 full-time employees will be required to automatically enroll new full-time employees in the health plan and provide an opt-out notice describing the employee's right to opt out and the process.
- Does not apply to dependents.
- Not currently in effect but regulations expected soon.

Automatic Enrollment in Health Plans

- Process is expected to be similar to automatic enrollment / elections for 401(k) plans but unsure of how process and “opt-out” will work.
- What about employers which offer more than one health plan option? Least cost vs. most comprehensive coverage? High-deductible health plan (HDHP) option?
- What about dental and vision benefits, especially if they are not “excepted benefits”?

Nondiscrimination Rules for Fully-Insured Plans ^{sage}

- Nondiscrimination requirements for fully insured plans may impose substantial new costs for discrimination in favor of highly compensated employees (HCEs).
- Nondiscrimination requirements currently apply to self-insured plans but unsure how similar rules for fully insured plans will be.
- Eligibility test and benefits test expected.
- Delayed enforcement until regulations are issued by IRS.

ACA Reporting Overview

ACA added 2 new reporting requirements to the Internal Revenue Code:

- Section 6055- Individual Mandate Reporting (1094-B & 1095-B)
- Section 6056- Employer Mandate Reporting (1094-C & 1095-C)

Draft IRS forms issued in February 2015

..... Changed in September 2015

Employers & Insurers are required to start collecting NEW information related to health insurance coverage.

Section 6055

Needed to enforce individual mandate

Carrier responsibility for insured plans

Employer responsibility for self-funded plans

Required Information

Name, address, EIN of reporting entity

Name, address, EIN of sponsoring employer

Name, address, SSN for each covered employee

Indicator of whether plan is qualified through Small Business Health Options (SHOP) program

Name, SSN for each covered dependent*

Other information required by Secretary of Treasury

Months each individual was covered

** Employer must take reasonable steps to obtain SSN for dependents*

- *Employers must take reasonable steps to obtain SSN for dependents*
- *Employers can use most recent address on file*

Section 6056

Needed to enforce employer mandate and marketplace subsidies

Employer responsibility for insured and self-funded plans if more than 50 full-time employees

Required Information

- Name, address, EIN of reporting entity along with name and phone number for contact person
- Calendar year being reported
- Certification that employer offered full-time employees (and dependents) opportunity to enroll in minimum essential coverage
- Months coverage was available
- Single contribution rate for lowest cost plan providing minimum value, by month
- Number of full-time employees for each month
- Name, address, SSN for each full-time employee and the months they were covered
- Other information required by Secretary of Treasury

Report will also use indicator codes to indicate minimum value, waiting periods, whether spouses are offered coverage, level of coverage offered, etc.

Reporting Overview Recap

Who	Requirement		Obligation	When	2016
Fully-Insured Small Group	6055	1094-B Transmittal 1095-B Form	Insurance Carrier	2/28 Paper	2/29 Paper (Leap Year)
Self-Funded Small Group	6055	1094-B Transmittal 1095-B Form	Employer or TPA		3/31 Electronic
Fully-Insured Applicable Large Employer	6055 & 6056	1094-B Transmittal 1095-B Form 1094-C Transmittal 1095-C Form	Insurance Carrier Employer or TPA	3/31 Electronic	EE Statements Due By 2/1
Self-Funded Applicable Large Employer	6055 & 6056	1094-B Transmittal 1095-B Form 1094-C Transmittal 1095-C Form	Employer or TPA Employer or TPA	EE Statements Due By 1/31	(1/31 = SUN)

1094-C Transmittal

- Each ALE member must file:
 - One authoritative transmittal per ALE member
 - Governmental units can designate a Designated Gov Entity to file
 - Others can designate third parties
- Paper forms due February 28th
 - But, 2/29/16 because of a leap year
 - Mail to address provided in instructions
 - Based on state where business is domiciled
- Electronic forms due by March 31
 - Required if ALE files 250+ returns under Section 6055 for the year
 - Aggregate 1094-C & 1095-C for 250 return threshold
 - Do not take into account other information returns (W-2s)

1095-C Employee Statement

- Only on Form 1095-C per recipient from each ALE member
 - Divisions filing separate 1094-Cs must coordinate information to ensure each employee receives one 1095-C
 - IRS can only process one 1095-C per EIN per year
- Statements to individuals by January 31st
 - But, 2/1/16 because 1/31/16 is a Sunday
 - Must be on paper unless recipient consents to electronic
 - Consent must be specific to 1095-C (W-2 consent won't work)
 - Mailed to last-known permanent address
 - May truncate SSN on employee copy, but not on the IRS filing

QUESTIONS?

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