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May 10, 2010

HEALTH CARE REFORM – 2014 Changes – Part I

As the details of the *Patient Protection and Affordable Care Act (PPACA)* emerge, we will update you, through the HR Benefits Authority, on selected provisions that affect employers and employer-sponsored group health plans.

Specific Topics. Because a significant number of changes go into effect in 2014, we will address the 2014 changes in two separate newsletters. In this issue, Part I, we take a closer look at:

- ***States Must Establish American Health Benefit Exchanges*** that facilitate the purchase of health insurance by individuals and small employers.

- ***Each United States Citizen is Required to Maintain Minimum Essential Coverage***, or pay a monetary penalty.

- ***Employers Will Need to Provide Minimum Essential Coverage***, or pay a monetary penalty.

- ***Employers that Provide Minimum Essential Coverage Will Need to Provide Free Choice Vouchers*** equal to the amount of their contribution so that employees with lower incomes may purchase health insurance through their local exchange.

In Part II, we will cover plan design and reporting requirements.

Establishment of American Health Benefit Exchanges

By January 1, 2014, each state will have to establish an American Health Benefit Exchange to facilitate the purchase of "qualified health plans" by individuals and small employers – generally employers with 100 or fewer employees. If a state does not establish an exchange, the Department of Health and Human Services (HHS) will establish the exchange in the state. The exchange will provide for initial enrollment periods, annual open enrollment periods and special enrollment periods.

- A *qualified health plan* is a health plan that (i) is certified by the exchange as providing an *"essential health benefits package"*, and (ii) is offered by a health insurer that agrees to charge the same premium for the plan through the exchange as the insurer charges outside the exchange. The PPACA requires HHS to establish criteria for certifying a qualified health plan.

- An *essential health benefits package* provides the required "essential health benefits" (listed below), limits cost-sharing for coverage, and provides four

levels of coverage (*e.g.*, bronze, silver, gold or platinum). *Essential health benefits* include:

- Ambulatory patient services
- Hospitalization
- Prescription drugs
- Mental health and substance use disorder benefits
- Preventive and wellness services and chronic disease management
- Emergency services
- Maternity and newborn care
- Laboratory services
- Rehabilitative and habilitative services and devices
- Pediatric services, including oral and vision care

Individual Mandate to Maintain Minimum Essential Coverage

The PPACA requires all U.S. citizens, nationals and resident legal aliens to maintain "*minimum essential health coverage*" for each month starting after December 31, 2014, or incur a penalty.

- *Minimum essential coverage* means coverage under:
  - An *"eligible employer-sponsored plan"* (including a grandfathered plan);
  - A governmental plan; or
  - A government-sponsored program such as Medicare Part A, Medicaid, Children's Health Insurance Program, TRICARE, the veteran's health care program, or the Peace Corps volunteers' health plan.
- An *eligible employer-sponsored plan* is a group health plan offered by an employer to its employees. However, an eligible employer-sponsored plan does not include a plan that provides only accident or disability insurance, workers' compensation, automobile medical payment insurance, limited scope dental or vision, specific disease or illness insurance, long term care, or similar limited benefits (*i.e.,* stand-alone HIPAA excluded benefits).

Penalty. A monthly penalty is assessed for each individual for whom minimum essential coverage is not maintained. The penalty is the lesser of the national average annual premium for bronze level health plan offered through an exchange, or the greater of the following:

- *Flat Dollar Amount:* for each family unit, $95 for 2014 ($325 for 2015 and $695 for 2016) for each adult age 18 or older in the taxpayers family who fails to maintain minimum essential coverage (the amount is reduced by 50% for individuals under age 18), or if less, 300% of the flat dollar amount for an adult; or

- *Percentage of Income:* 1% of income over the filing threshold for 2014 (2% for 2015, and 2.5% for 2016). For 2010, the filing threshold is $9,350 for a single or married person filing separately, and is $18,700 for married filing jointly.

The penalty is assessed through the Internal Revenue Code and is accounted for as an additional amount of Federal tax owed when the individual files his or her annual tax return. Certain individuals are exempt from the penalty including individuals:

- Who cannot afford coverage because their required contribution for employer

sponsored coverage or the lowest cost "bronze plan" in the local exchange exceeds 8% of household income for the year,

- Who qualify for a religious exemption,
- Who have income less than the threshold amount for filing an income tax return,
- Who receive a hardship exemption from HHS, and
- Who are incarcerated.

Employer Mandate to Provide Minimum Essential Coverage

A *"large employer"* that (i) does not offer minimum essential coverage to its *"full-time employees"*, (ii) offers *"unaffordable"* minimum essential coverage, or (iii) offers minimum essential coverage where the employer's share of the cost of coverage is less than 60%, is subject to an excise tax if any of its full-time employees, who qualify for a tax credit or cost-sharing reduction, purchase health insurance through a local exchange.

- A *large employer* is any employer with an average of at least 50 "full-time employees" in the previous calendar year. "Full-time employees" are employees, other than seasonal workers, who are employed on average at least 30 hours a week. For purposes of determining if an employer is a "large employer", each part-time employee is treated as a fraction of a full-time employee, determined by dividing his or her actual monthly hours by 120. For example, a part-time employee who works 60 hours per month would be treated as half of a full-time employee. All part-time employees' fractions are totaled in determining the number of full-time employees.
- *Unaffordable* means the contribution required to be paid by the employee for the employer-sponsored plan is more than 9.5% of the employee's household income.

No coverage. If the employer fails to offer minimum essential coverage for its full-time employees and at least one of these employees enrolls in coverage through an exchange and also receives a premium tax credit or cost-sharing reduction, the employer will have to pay a monthly excise tax equal to 1/12 of $2,000 (or $166.67) for each full-time employee. However, the first 30 employees are not included when calculating the penalty.

For example, in 2014, Employer A fails to offer minimum essential coverage and has 100 full-time employees, 10 of whom receive a tax credit for the year for enrolling in an exchange plan. For each employee over the 30-employee threshold, the employer owes $2,000, for a total penalty of $140,000 ($2,000 multiplied by 70 (100-30)).

Unaffordable. If the employer offers minimum essential coverage to its full-time employees and it is either unaffordable to a full-time employee or the employer shares in less than 60% of the cost of the coverage, the employer will have to pay an excise tax penalty if at least one full-time employee obtains coverage through an exchange and receives a premium tax credit or cost-sharing reduction.

The employer penalty is assessed monthly and is equal to 1/12 of $3,000 for each employee who receives coverage through an exchange and a premium tax credit or

cost-sharing reduction for that month. The monthly amount is capped at 1/12 of $2,000 times the number of full-time employees not counting the first 30 full-time employees.

For example, in 2014, Employer B offers health coverage and has 100 full-time employees, 20 of whom receive a tax credit for the year for enrolling in an exchange offered plan. For each employee receiving a tax credit, the employer owes $3,000, for a total penalty of $60,000. The maximum penalty for this employer is capped at the amount of the penalty that it would have been assessed for a failure to provide coverage, or $140,000 ($2,000 multiplied by 70 (100-30)). Since the calculated penalty of $60,000 is less than the maximum amount, Employer B pays the $60,000 calculated penalty. This penalty is assessed on a monthly basis.

Notification. The employer will be notified if one of its employees is determined to be eligible for premium assistance credit or a cost-sharing reduction and will receive notification of the appeals process established for employers notified of potential liability for payments.

Free Choice Vouchers

Employers offering minimum essential coverage through an eligible employer-sponsored plan and paying a portion of that coverage must provide *"qualified employees"* with a voucher whose value can be applied to the purchase of health coverage through the exchange.

The employee would present the free choice voucher to the exchange to apply to the monthly premium for the cost of the coverage. The employer will have to pay the amount credited directly to the Exchange. If the amount of the voucher exceeds the cost of the coverage under the Exchange, the Exchange will pay the excess directly to the employee.

- *Qualified employees* include:
    - Employees with household incomes less than 400% the federal poverty level,
    - Whose share of the cost of the coverage exceeds 8% but is less than 9.8% of their household incomes, and
    - Who are not enrolled in the employer's plan.

Amount of Vouchers. The amount of the voucher will need to be equal to the monthly portion of the cost of the employer-sponsored plan that the employer would have paid if the employee was covered in single coverage under the plan (if the employee elects family coverage, the amount must be equal to the amount the employer would pay for family coverage). The employer contribution amounts appear to be based on the COBRA rates for the plan year. For plans with multiple options, the employer contribution amount is based on the plan option in which the employer pays the largest portion of the cost.

Vouchers Generally Tax Free. The amount of the free choice voucher used by the employee to purchase coverage on the exchange is not treated as taxable income to the employee. However, any amount paid to the employee in excess of the cost of coverage will be considered taxable income. The amount of the voucher is also

deductible by the employer under Code Section 162.

Additional Information

We will continue to follow the legislation and developing interpretations closely to provide you with updates as well as our analysis of what it means to you. The next HR Benefits Authority with Part II of the 2014 Health Care Reform changes will be distributed shortly.

For additional information or for questions regarding these new changes, please contact Nicole Bogard (404.888.8830), Leslie Schneider (770.863.3617), Amy Heppner (404.888.8825), Mark Becker (770.863.3620), Kelly Scott (404.888.8838), or Angela Marino (404.888.8822).

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