Q&A from Assurex Global Webinar "ACA Regulatory Update"	August 28, 2014
Question	**Answer**
Q: ARE THE REINSURANCE FEES MONTHLY OR YEARLY AMOUNTS GIVEN?	A: Penalties under 4980H apply on a monthly basis: • 4980H(a) - approx $166.67/month multiplied by all full-time employees (waiver for the first 30) • 4980H(b) - approx $250/month per each full-time employee that enrolls through a public Exchange and qualifies for a subsidy
Q: Assume that if its large employer that offers more than one carrier must obtain HPID from each carrier?	A: Employers must only acquire a HPID for self-funded plans. Carriers are responsible for fully-insured plans.
Q: Back to the Employer Reporting section. We have a group health plan that is written under the parent corporation that covers more than 50 FTE's but no one location has 50 or more FTE's. Each location has its own entity and TIN. Are we considered a large employer just based upon the common parent company ownership?	A: Maybe - For purposes of determining "applicable large employer" status, all entities within a controlled group or affiliated service group based on the IRS rules in Code §414 must aggregate full-time equivalents (FTEs). If across all entities, the total of FTEs is 50 or more, all entities are considered "applicable large employers" subject to the employer shared responsibility rules, even if individually they have less than 50 FTEs.
Q: Can you please confirm that re-insurance fee is based on average souls covered from Jan-Sept regardless of organizations fiscal benefit plan year	A: Confirmed. The calculation is always the first 3 quarters of the year, regardless of the plan year (if the plan chooses to use the 5500 method, the most recent filing should be used rather than Jan - Sept data).
Q: Re-insurance fee; is the first payment 50% or higher if electing to make 2 payments?	A: 1st payment is higher. For example, the payment amounts for the first year ($63 per covered life) are: (i) first payment = $52.50, and (ii) second payment = $10.50
Q: Can you remind us what the employee statement shows?	A: The intent of the employee statement is to provide information as to which months the individual was offered coverage and whether the coverage provided minimum value and is considered affordable, thereby determining whether or not the individual may or may not be eligible for subsidies through a public Exchange and providing a method for the individual to prove coverage for purposes of the individual mandate.
Q: Do all employers need an ERISA plan no matter if they have 1 to 1,000 employees?	A: Correct... there is no "minimum size threshold" for being subject to ERISA.
Q: why are carriers wanting total number of employees on payroll to determine the size of the group, how they underwrite etc.?	A: For 2014-2015 states have flexibility in how to define number of employees for small group underwriting purposes. However, beginning in 2016 the number of employees will be based on the same FTE methodology used in 4980H to determine if an employer is an "applicable large employer" for the ACA employer shared responsibility rules.

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Q: does an FSA plan require an HPID	A: Only plans that process HIPAA standard transactions are required to use a HPID. Many health FSAs only do transactions between the FSA and the participant. This kind of transaction is not a HIPAA standard transaction. However, it is possible that a health FSA may be administered in a manner that involves a HIPAA standard transaction, such as a direct reimbursement to a provider. The employer/plan sponsor should check with the vendor that administers the health FSA to determine if plan administration includes any HIPAA standard transactions.
Q: Our payroll is called in 4 days before the pay date. Our payroll is semi monthly and can be 80 88 or 96 hours depending on how long the month is. Is it ok to make my calculation based on the paid hours, or do I need to add and drop lagging hours that get paid the following pay cycle date. Q: we track and pay hours on a bi-weekly basis. how are we supposed to compute "monthly"?	A: Whether determining full-time status on a monthly basis or by using the look-back measurement method, it is possible to align the measurement periods with payroll cycles. • When using the look-back measurement method, the employer can choose to use payroll dates rather than calendar months, so long as the stability period is based on calendar months. • When using the monthly measurement method, to help employers coordinate with payroll periods, the final regulations allow an employer to determine an employee's full-time employee status for a calendar month based on the hours of service over successive one-week periods. Under this optional method, referred to as the weekly rule, full-time employee status for certain calendar months is based on hours of service over 4-week periods and for certain other calendar months on hours of service over 5-week periods. In general, the period measured for the month must contain either the week that includes the first day of the month or the week that includes the last day of the month, but not both. For calendar months calculated using 4-week periods, an employee with at least 120 hours of service is a full-time employee, and for calendar months calculated using 5-week periods, an employee with at least 150 hours of service is a full-time employee.
Q: For organizations that have high turnover in the first 90 days; are we able to wait 12 months for health benefit coverage?	A: Generally, no. Short-term positions and high turnover positions that require full-time hours are typically required to be treated just like any other full-time positions. Only "variable hour" and "seasonal" positions may be subject to an initial measurement period of up to 12 months before being offered coverage. • Variable hour = employer cannot reasonably know based on information available at hire whether or not the individual will average 130 hours of service or more per month • Seasonal = customary annual employment of 6 months or less

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Q: For the TRF Calculation, you do not show the Snapshot Factor Method as a permissible method (as opposed to the Snapshot Count Method, which you show). Do you agree that the Snapshot Factor Method is permissible?	A: Yes, the snapshot method is further broken down into the snapshot count method and snapshot factor method (2 different ways of accounting for dependents). • The "snapshot count method" requires the plan to count the actual number of lives covered on the designated date • The "snapshot factor method" allows the plan to count the number of participants with self-only coverage, plus the number of participates with coverage other than self-only coverage multiplied by 2.35
Q: I thought that a new ee coverage had to be effective by 90th day.	A: In general that's the case because of the waiting period rules, which require an offer of coverage within 90 calendar days of an employee being otherwise eligible under the plan's rules. The waiting period rules and employer shared responsibility rules are separate rules with different timelines. The employer shared responsibility rules require an offer of coverage no later than 1st of the 4th calendar month from hire for a full-time employee to avoid potential penalties.
Q: HPID question: We have a number of clients moving over to a Level Funded concept. Acts like a FI plan with a set $ monthly premium, but is considered self-funded. Do these clients need to obtain the HPID?	A: For "partially" self-funded plans, it will be necessary to work with the carrier to determine whether or not the carrier considers the plan to be fully-insured and is obtaining a HPID number on the plan's behalf. If the carrier considers the plan to be self-funded, it will be necessary for the employer/plan sponsor to obtain the HPID number.
Q: I thought the IRS calculation was pay rate x 130 hours per week average x 9.5% to calculate affordability?	A: There are 3 different safe harbors that employers may use to determine affordability - W-2 wages, rate of pay, or federal poverty level. If using rate of pay, the employee contribution cannot exceed 9.5% of the lowest applicable rate of pay for the month multiplied by 130.
Q: I have a new employee that is on Medicare and works about 29-30 hours a week, occasionally more. I offered her health care coverage, but she said no she was on Medicare. Am I responsible for reporting that? Q: Also is she exempt from our having to provide health insurance to her?	A: In regards to the employer shared responsibility rules, so long as the employer makes an offer of coverage to any full-time employees, no penalties will apply. It doesn't matter whether the employee accepts or rejects the offer of coverage. In regards to employer reporting starting in 2016 (for the 2015 calendar year), employers will be required to report number of employees (full-time and part-time) for each month in 2015 and whether or not such employees were offered coverage, as well as information about required contribution amounts.
Q: I just went to pay.gov and did not see any reporting forms. Did you say it is not available yet?	A: The forms are not yet available... but are expected soon

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Q: I received an e-mail this morning that it is 9.5% not the 9.56% that we thought.	A: The affordability percentage for 2015 to determine an individual's eligibility for subsidies is 9.56%. It appears that for purposes of the employer safe harbors (W-2 wages, rate of pay and federal poverty level), the coverage remains affordable if the employee contribution for single coverage doesn't exceed 9.5%. The IRS may still amend the employer safe harbor rules to align with the subsidy eligibility %.
Q: We hire for per-diem work "for the day" each day there can be another assignment, the same assignment, or no assignment for the next day. We are a temporary staffing service. We consider these variables unless we know they will be working for xx hours a week for a certain assignment. Does this sound correct?	A: Possibly, yes. The final rules provided some factors to consider when making the determination between variable hour and full-time, which include: • whether the employee is replacing an employee who was or was not a full-time employee, • the extent to which employees in the same or comparable positions are or are not full-time employees, and • whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week. Additional guidance was also provided specifically for temporary staffing firms on determining who may be treated as a variable hour employee. Factors to consider include whether other employees in the same position of employment with the temporary staffing firm: • retain the right to reject temporary placements that the temporary staffing firm offers the employee, • typically have periods during which no offer of temporary placement is made, • typically are offered temporary placements for differing periods of time, and • typically are offered temporary placements that do not extend beyond 13 weeks.

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Q: If an employee is hired and classified as PT how often or when should their actual hours worked be calculated to see if they are eligible for benefits? If they are found to have worked enough hours during the assessment period should they be re classified as FT, should they be offered benefits for next stability period?	A: The answer depends on whether the employer is choosing to determine full-time status on a monthly basis or by using the look-back measurement method (either is acceptable). • Under the monthly measurement method, any month in which an employee achieves 130 or more hours of service the employee is considered to be full-time. It would be necessary to measure all employees each month to determine whether or full-time status is achieved (this method is difficult to administer for employers with staffing that fluctuates). • Under the look-back measurement method, generally all employees will measured each standard measurement period (3-12 months as determined by employer) and any employee that averages 130 hours of service per month or more must be offered coverage the following stability period.
Q: If I have a fully insured plan and use an HRA to reduce the deductible, do we pay the $63 twice? Once through the carrier and then another for the HRA?	A: No, PCORI fees apply to the HRA, but reinsurance fees do not. Only the carrier will pay the reinsurance fee if it is a fully-insured medical plan integrated with a HRA.
Q: If my regular full time employees become eligible on the first of the month after hire, can I apply the 3 month wait calculation you just discussed for just the group of employees I classify as temporary full time?	A: Possibly, yes. As far as the employer shared responsibility rules (Section 4980H), that is possible. The thing to be concerned with is possible violation of the nondiscrimination rules. Nondiscrimination rules under Section 105(h) prohibit self-funded group health plans from discriminating in favor of the highly compensated. The ACA put “similar” rules into place for fully-insured plans, but enforcement is delayed until further guidance is received. Therefore, if the group health plan is self-funded, it would be important to consider the nondiscrimination rules and whether or not such structure would pose an issue. If the plan is fully-insured, the structure is okay for now, but may pose an issue once guidance is received (likely not effective until 2016 or later).

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Q: If we have seasonal employees that are working full time during that particular seasonal, do we have to offer them coverage?	A: The answer depends on whether the employer is choosing to determine full-time status on a monthly basis or by using the look-back measurement method (either is acceptable). • Under the monthly measurement method, any month in which an employee (including seasonal employees) achieves 130 or more hours of service, the employee must be treated as full-time and offered coverage to avoid potential penalties • Under the look-back measurement method, employees in positions meeting the definition of seasonal may be subjected to an initial measurement period of 12 months prior to offering coverage. In most cases, the seasonal employees will fail to achieve the required number of hours or will no longer be employed by the time the stability period comes around. Employers with a large number of seasonal employees could definitely benefit from using the look-back measurement method.
Q: in counting FTE's for purposes of determining if the group has to comply in 2015 or 2016 you can use any 6 consecutive months. do you calc monthly and average over the 6 month period?	A: Correct
Q: Is it acceptable to change the methodology for calculating avg. covered lives for the PCORI and Reinsurance fee from year to year?	A: It is possible to use any of the 3 methods and to change methods annually.
Q: Is the 2nd installment due a year after the filing?	A: Yes, the reinsurance fee may be paid in 1 or 2 installments. For the 2014 calendar year, if the plan chooses to pay in 1 installment, the fees are due no later than Jan 15, 2015. If the plan chooses to pay in 2 installments, the first installment is due Jan 15, 2015 and the second installment is due Nov 15, 2015.
Q: On Call employees working more than 30 hours a week for certain months of the year are to be offered coverage?	A: Generally, any employees averaging 130 or more hours of service per month are considered full-time and must be offered coverage to avoid potential penalties. When determining whether to credit hours of service for on-call time, the IRS indicated it would be unreasonable not to credit an hour of service for any on-call hour for which: • payment is made or due by the employer, • the employee is required to remain on-call on the employer's premises, or • the employee's activities while remaining on-call are subject to substantial restrictions that prevent the employee from using the time effectively for the employee's own purposes.

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Q: on the safe harbor- for large employers- the employer can use the 2014 W2 to determine contribution for 2015. Tthey only need to visit this amount every year?	A: Not quite…the employer would use the tax year 2015 W-2 (provided to employees early in 2016) to determine affordability for 2014. Therefore, the employer needs to estimate the required contribution and the IRS will determine affordability retrospectively.
Q: Please confirm the reinsurance fees are reported and paid starting in year 2015 for 2014 calendar year.	A: The reinsurance fee for 2014 must be reported by Nov. 15, 2014 and the first installment paid no later than Jan. 15, 2015.
Q: RE 105(h) -- Can a plan have a shorter elig waiting period for exempt employees and longer elig waiting period for hourly/non-exempt	A: If the shorter waiting period favors the highly compensated individuals, there could be a nondiscrimination issue. While it is possible to have different rules for different classifications of employees (i.e. hourly vs. salary), it still may be necessary to do the 105(h) testing to ensure that there won't be an issue.
Q: Reinsurance fee... fully insd plan... carrier will pay reinsurance fee... does the employer still need to report enrolment data at pay.gov? Q: will fully insured plans need to pay this fee through the www.pay.gov website or will the carrier pay it on our behalf?	A: The carrier/insurer will pay the fees on behalf of a fully-insured plan AND will report the enrollment counts via www.pay.gov. The employer is not required to do anything.

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Q: Schools have short-term employees for substitute teachers, aides, etc. Is there a process to track their time to see when / if coverage should be offered?	A: The employer has the option of 2 different methods: • Under the monthly measurement method, any month in which an employee (including short-term substitute teachers or aides) achieves 130 or more hours of service, the employee must be treated as full-time and offered coverage to avoid potential penalties • Under the look-back measurement method, generally all employees will be measured each standard measurement period (3-12 months as determined by employer) and any employee that averages 130 hours of service per month or more must be offered coverage the following stability period. When using this method for an educational organization (typically subject to an employment break period over the summer), to prevent otherwise full-time employees from being considered part-time and not eligible for benefits, employers must determine the employee's average hours of service during the measurement period by: • Excluding any employment break period of 4 weeks or more occurring during the measurement period and applying that average for the remaining measurement period (i.e. average hours of service over 9 months and exclude the 3 month summer break); or • Imputing hours of service for the employment break period of 4 weeks or more at a rate equal to the average weekly hours of service for weeks that are not part of an employment break period Under these rules, a teacher averaging 30 or more hours of service per week for the 9/10-month school year would be eligible for benefits for the corresponding stability period
Q: Self insured exempt from reinsurance fees, does it apply to self insured but third party administered? Or is that considered self administered?	A: To be clear, only self-funded plans that are also self-administered are exempt in 2015 and 2016 (note they are still required to pay for 2014). A plan that is self-funded and using a TPA would generally still be required to pay the reinsurance fees all three years.
Q: Does the increase in affordability % adjust at the beginning of 2015 or your plan renewal date in 2015? Q: It would make sense that the 9.56% is used by the Government to determine for the calendar tax year, for tax credits to the individual, not the employer plan year.	A: The IRS guidance indicates the increase from 9.5 to 9.56% is effective for plan years beginning in 2015 rather than for the calendar year - "*For plan years beginning in 2015, the required contribution percentage for purposes of § 36B(c)(2)(C)(i)(II) and § 1.36B-2T(c)(3)(v)(C) is 9.56%* "

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Q: So fully-insured medical plans with a S. 105 HRA program will have to BOTH get an HPID and get certification, correct? Q: will an employer with an HRA/partial self funded deductible need to file a separate HPID than the fully insured high deductible plan?	A: It is possible that a HPID number will need to be obtained for the HRA depending on what other plans are in place (self-funded or fully-insured) and whether or not the HRA is processing "standard transactions". A standard transaction is an electronic transaction of PHI between 2 covered entities or business associates on behalf of covered entities. In addition, all self-funded group health plans will need to work with TPAs/service providers in order to ensure certification is completed by December 31, 2015.
Q: We are self-funded, you mentioned earlier self-funded companies are exempt for 2015 and 2016. Does that mean we don't have to do any reporting until the following year?	A: Self-funded group health plans that are also self-administered (not using a TPA or vendor) are exempt from the reinsurance fees in 2015 and 2016. Such plans are not exempt from any other requirements. Self-funded plans will have to comply with applicable employer reporting requirements for the first time in early 2016 for the 2015 calendar year.
Q: we hire a lot of people for summer only. the hiring begins in February/March and layoffs begin august/September. how do we handle these employees? do they have to be given only specific jobs?	A: It seems likely that such positions would meet the definition of "seasonal" - customary annual employment of 6 months or less, which generally means that the position typically starts and ends at the same time each year. Assuming the employer is an "applicable large employer" subject to Section 4980H, whether or not the employer will have to offer coverage depends on whether the employer is choosing to determine full-time status on a monthly basis or by using the look-back measurement method (either is acceptable). • Under the monthly measurement method, any month in which an employee (including seasonal employees) achieves 130 or more hours of service, the employee must be treated as full-time and offered coverage to avoid potential penalties • Under the look-back measurement method, employees in positions meeting the definition of seasonal may be subjected to an initial measurement period of 12 months prior to offering coverage. In most cases, the seasonal employees will fail to achieve the required number of hours or will no longer be employed by the time the stability period comes around. Employers with a large number of seasonal employees could definitely benefit from using the look-back measurement method.
Q: We hire interns for the summer, typically 3 months full time but they are not intended to be long-term employees. Are you saying we need to offer them medical coverage?	A: For any temporary or intern positions that last beyond 3 months (remember penalties begin to apply under the employer shared responsibility rules 1st of the 4th calendar month), it is necessary to treat them just like any other full-time employees.

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Q: What about staffing agency employees that we use for "seasonal" work?	A: The common law employer is responsible for an offer of coverage under the employer shared responsibility rules (Section 4980H). It is important to be careful as to this designation because there is often misclassification. It is possible the contract between the employer and the staffing agency will designate who is considered the common law employer. If not, it will be necessary to discuss and potentially get some advice from an employment law attorney based on the circumstances.
Q: What's the definition of "annual receipts"	A: The definition of "annual receipts" has not been clearly defined, but based on informal guidance may be summarized as follows: • premiums in the prior year for an insured plan, • claims paid in the prior year for a self-funded plan, • the total of those two figures if the plan is a combination of both insured elements and self-funded elements, and • stop-loss premiums expenses are generally not included unless the plan was funded (such as a VEBA) and such expenses were paid from plan assets.
Q: Confirming that this MLR is only for fully insured plans, correct?	A: Yes, that's correct. MLR rebates are not applicable for self-funded plans.
Q: what about the auto enroll- are we having to do that for the 2015 plan year?	A: The auto-enrollment requirement under the ACA has been delayed until further guidance is provided by the DOL. It is not in effect at this time.
Q: Do fully funded plans need to have the HIPPA Certification?	A: Yes, but the carrier will take of it.
Q: How does the waiting period affect temporary employees?	A: The waiting period rules require employees that meet the eligibility criteria under the plan to be made an offer of coverage within no more than 90 calendar days. Therefore, if temporary employees are considered eligible, they must be offered coverage accordingly. On the other hand, if the eligibility rules state that temporary employees are not eligible, then the waiting period rules do not apply.
Q: You may get to this when you speak about waiting period but I just wanted to make sure...do you have any information about SB1034 which was signed by Gov. Brown in CA regarding the removal of the waiting period?	A: Originally, CA state law limited waiting periods to 60 days rather than 90 days as allowed under ACA federal law. This has been repealed effective Jan 1, 2015 and therefore CA employers may follow waiting period rules under federal law (90 calendar days + 1-month orientation period if applicable).

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Q: We do have internship programs that run for a 3 month set period then end. For those interns, we are not offering insurance. However, what if we hire one after the internship ends? On what date should the insurance be effective? They do work 40 hour weeks during the internship. Our policy is that regular employees are eligible the first day of the month following hire date.	A: If the interns or temporary employees are employed 3 months or less, they don't pose any risk of penalty under the employer shared responsibility rules (Section 4980H) because coverage does not need to be offered until 1st of the 4th calendar month. However, if the individual remains past 3 months or is then hired into a permanent position, the clock does not start over...it would be necessary to make an offer of coverage as of the 4th calendar month from the original date of hire to avoid potential penalties. Keep in mind, there is a bit of cushion, at least in regards to penalties under 4980H(a) - the bigger penalty that is assessed against all full-time employees. If the number of such employees is less than 5% in any given month, it may be just fine to continue handling as you have in the past.
Q: Can companies still deny benefits to dependents if they have the option of taking insurance through another employer?	A: It is possible to deny benefits or impose a surcharge for dependent coverage if the dependent has other coverage available. However, keep in mind that the employer shared responsibility rules (Section 4980H) require applicable large employers to offer coverage to full-time employees and their dependent children (4980H does not require an employer to offer coverage to spouses) in order to avoid potential penalties.