

**Q&A from Assurex Global Webinar
"ACA Regulatory Update"**

June 19 & 20, 2013

| Question | Answer |
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| Q: We are a small employer with 30 FT staff, but we have a partner that owns part of the company. Do we need to combine our company with the partners - making us a large employer for ACA shared responsibility rules? | A. To determine if a group of companies must be treated as a single entity for ACA shared responsibility rules and health insurance non-discrimination testing, the ownership structure must be analyzed according to the controlled group rules contained in Code §414. These rules are more complex than can be addressed here, but any group of employers with significant common ownership among the various entities should have this analysis done. |
| Q: We are self-funded and own 95% of another company. This other company offers benefits, but their plan is different from what we offer. Do I need to have considerations for this? | Specifically to the second and third questions, in all likelihood one entity that owns 95% of a separate company, or a single owner who owns two separate entities will be considered a single employer under the §414 rules. |
| Q. Our owner owns two corporations, each with less than 50 employees; combined they would have over 50. Do we still fall under 50 employees? | |
| Q: For §105(h) self funded health insurance non-discrimination testing, you say HCE's are top 25%. Is that 25% of the total number of ee's or is that anyone earning at least 25% of total company's compensation? | A. In general under §105(h), highly compensated individuals are the top 25% of all employees ranked by compensation. To put it another way, in a company with 1000 employees the top 250 employees in terms of pay are considered HCIs regardless of how much (or how little) any particular employee is paid. |
| Q. Can employees still purchase health insurance through the exchange even if they are not eligible for a subsidy eligibility. | A. Yes - anyone can purchase individual health insurance policies through a public exchange irrespective of subsidy eligibility. |
| Q: We have an August 1st renewal and participate in a cafeteria plan. If an employee enrolls in our plan August 1st, could he drop his coverage effective January 1st, if he decides to enroll in a plan through the exchange? | A: The IRS has issued transition guidance with respect to Section 125 plans which permits employers to allow employees to make a one-time mid-plan year election change due to their eligibility for individual coverage through a public exchange. The employer is not required to allow this, but if it chooses to it must amend the Section 125 plan document no later than 12/31/2014 to reflect the change. |
| Q: Grandfather plans can still have health plan "discrimination" correct? | A: The ACA fully insured health plan discrimination rules will not apply to fully insured grandfathered plans. However, all self-funded health plans are subject to the existing §105(h) non-discrimination rules regardless of grandfathered status. |
| Q: For "small group" status to determine if small group underwriting rules apply to an employer do you count part-timers in determining status? | A: For 2014 and 2015 the definition of small group will be based on state law. Beginning in 2016 small group status will be determined by using the same methodology as is used to determine if an employer is an "applicable large employer" for the ACA employer shared responsibility rules. This method requires employers to consider the number of "full time equivalents" attributable to part time employees. |
| Q: Does the ACA PCOR fees(i.e. research fee) apply to grandfathered plans? | A: Yes |

Q: In regards to discrimination testing, would full time and part time be considered different categories if you do not offer insurance to part time employees?

Q: Does the \$100 per day fine on fully insured plans apply to each employee discriminated against or each individual on the plan. (i.e. family members on plan).

Q: If, according to the cost sharing maximums, an EE incurs costs that exceed the \$6350, what happens?

Does the plan have to pay at 100% for additional

Q: We have health insurance that covers staff working over 30hr/week but part-timers between 30 and 40 hours have to pay 25% of the premium. We cover 100% of premium for full time employees(not dependents). Would that subject us to penalties?

Q: Would an employer be subject to penalties if ALL employees are offered the same choice of plans, i.e. a plan that meets all ACA requirements and a plan that does not meet ACA requirements. I'm not concerned about discrimination, but rather penalties.

A: Under 105(h) for self-funded plans, part time employees are treated differently and often can be excluded from testing. We think that a similar rule will apply under the ACA fully insured rules but will not know exactly how until the IRS releases guidance.

A: While the statute is not clear and no detailed guidance has yet been released, we believe the penalty will be imposed per employee, not per participant (i.e. covered spouses and children). IRS guidance will clarify this whenever it is issued.

A: Yes, all eligible expenses incurred after an individual has met their maximum out-of-pocket cost sharing must be reimbursed at 100%.

A: Anytime different categories of employees are offered different benefits, eligibility , or employer contributions, the health insurance non-discrimination rules may apply. If the plan is self-funded then the structure described should be run through existing §105(h) tests. If the plan is fully insured the employer will need to consider the ACA non-discrimination rules once the IRS releases guidance.

A: An employer will not be liable for any 4980(H) shared responsibility penalties as long as the employer offers one minimum value plan that is affordable to all full time employees (as defined by the ACA). An employer can offer other plans to employees that are not affordable or do not provide minimum value as long as at least one plan meeting those requirements is offered.

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