

Affordable Care Act Regulatory Update

September 25 & 26, 2013



Affordable Care Act Regulatory Update

- Welcome! We will begin at 1 p.m. Eastern
- There will be no sound until we begin the webinar. You can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “questions” box located on your webinar control panel.



Affordable Care Act Regulatory Update

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- PayneWest Insurance
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- Roach Howard Smith & Barton
- The Rowley Agency
- Senn Dunn Insurance
- Smith Brothers Insurance
- Starkweather & Shepley Insurance Brokerage
- Van Gilder Insurance
- Woodruff-Sawyer & Co.
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Agenda

- Employer Shared Responsibility Rules Delayed
- ACA Insurance Market Reforms
 - Cost sharing limits
 - Waiting period maximum
 - Maximum deductible
 - Essential health benefits
- Other Issues
 - Individual health insurance, HRAs and Section 125 Cafeteria Plans
 - Health insurance non-discrimination rules
- Notice of Exchange



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Employer Shared Responsibility Rule Enforcement Delay



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Employer Shared Responsibility Rules

- IRS Delays Enforcement of Employer Shared Responsibility Rules and Large Employer Reporting Requirements
- Shared Responsibility (pay or play) Rules Delayed to 2015
 - Applicable large employers must offer health coverage to all full-time employees or face possibility of “shared responsibility payments”
 - Full time employees generally averaging 30 hours of service per week
 - Rules apply only to an “applicable large employer”
 - Employed an average of at least 50 full-time equivalent (FTE) employees in the prior calendar year



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Employer Shared Responsibility Rules

- 4980H(a) Penalty
 - Employer does not offer minimum essential coverage to all full time employees and dependent children
 - Penalty = \$166.67/mo (\$2000/yr) times total number of full-time employees (not counting first 30)
 - 95% “margin of error” rule - penalty will not apply as long as coverage is actually offered to at least 95% of all FT employees



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Employer Shared Responsibility Rules

- 4980H(b) Penalty
 - Employer offers coverage to all FT employees but coverage is unaffordable or not minimum value
 - Penalty \$250/mo (\$3000/yr) times # of employees who purchase subsidized individual coverage through a public exchange
 - IRS safe harbors allow employer to set contribution based on employee wage, rate of pay, or Federal Poverty Level to avoid penalty even if employee qualifies for subsidy



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Employer Shared Responsibility Rules

- Enforcement of Employer Shared Responsibility Rules Requirements Delayed to 2015
 - Large employer can continue most current eligibility rules through 2014 plan year
 - Open Issue – transition rule for non-calendar year plans
 - IRS had released a transition rule for non-calendar year plans applying rules beginning for 2014 plan year
 - Unclear if rule will be re-issued for 2015 or if all plans must be in compliance on 1/1/2015
 - We expect IRS to issue new transition rule to apply to 2015 non-calendar year plans
- Shared responsibility rule delay does not delay or change other areas of ACA



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Employer Shared Responsibility Rules

- Full Time Employees
 - Beginning in 2015 full time equals 30 hours of service per week
 - Employer can continue to define eligibility on a monthly basis or use optional IRS look back method
 - 130 hours per month equivalent to 30 hours per week
 - Employer option to use a “look back” measurement period of between 3-12 months to determine full-time status for benefits purposes



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Employer Shared Responsibility Rules

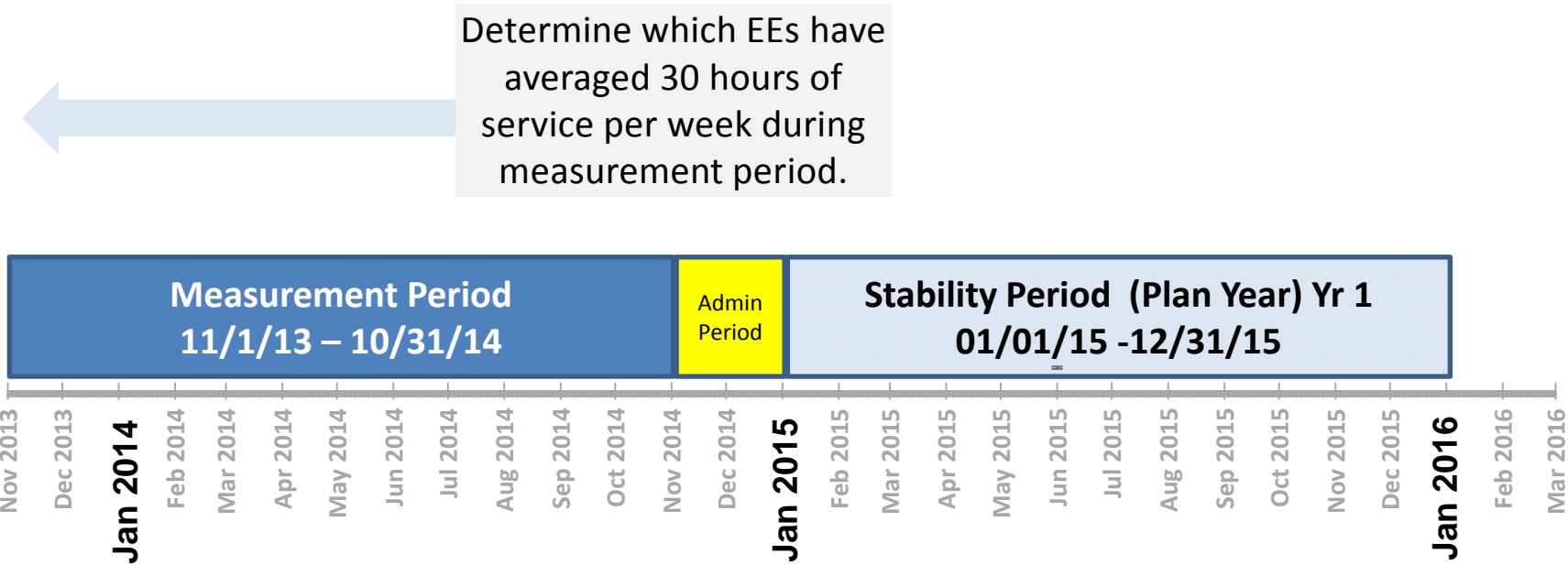
- Full Time Employees
 - Open Issue – Transition rule for determining full-time status for existing employees
 - IRS had released a transition rule allowing employers to use a 6 month measurement period during 2013 to determine full time status for existing employees for 2014 (even if employer is using 12 month measurement period going forward).
 - We do not expect this transition rule to be re-issued
 - Employers planning to use a 12 month measurement period in 2015 may need to consider hours of service over a 12 month measurement period in 2013-2014.



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Measurement Period for 2015 Eligibility



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Employer Shared Responsibility Rules

- Observations on Using the Measurement Period
 - We have found very few times that using anything less than a 12 mo. measurement period makes sense.
 - Employers with very few variable hour or seasonal employees may be better off staying with monthly eligibility determinations
 - Remember the 95% rule – if an employer misses a couple employees for a couple months they will not face the 4980(H)(a) penalty.
 - The initial measurement period method can only apply to variable hour and seasonal employees
 - All regular full time employees must have 90 day waiting period



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Employer Reporting Requirement

- IRS plan information reporting for all applicable large employers and coverage reporting for self-funded employers
 - First reporting requirement originally scheduled to go into effect beginning January 2015 (for 2014 data)
 - Requirement now delayed until 2016 (for 2015 data)
 - Plan reporting for applicable large employers - Report plan and employee specific information to the IRS and provide a statement to employees
 - Coverage reporting - Report employee specific coverage information to the IRS and provide statement to employees
 - Carriers responsible for fully insured plans, Employer/Plan Sponsor responsible for self-funded plans
 - IRS has issued proposed reporting rules and is taking comments
 - Final rules expected in 2014



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ACA Insurance Market Reforms



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Insurance Market Reforms

- ACA Plan Requirement Effective in 2014
 - These provisions are not delayed by the employer shared responsibility rule enforcement delay
 - Reforms that apply to all plans
 - Cost sharing limits
 - Waiting period maximum
 - Reforms that apply only to small employer fully insured plans
 - Maximum deductible
 - Essential Health Benefits



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Insurance Market Reforms

- Cost Sharing Limitations (Out of Pocket Maximums)
 - Applies to all plans, large and small, fully insured and self-funded
 - Effective first plan year in 2014
 - Total participating cost sharing cannot exceed HSA eligible HDHP limits
 - 2014 limits - \$6,350 for self-only coverage, \$12,700 for family
 - This maximum includes all participant cost sharing for eligible expenses in the plan
 - Co-insurance, Co-payments, Rx Co-payment, etc.
 - Transition rule for 2014 only
 - Plans with separate administrators for different elements of plan (e.g. major medical and Rx) can have separate OOP for 2014 plan year.
 - 2015 - all cost sharing must roll up into maximum allowed



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Insurance Market Reforms

- Waiting Period Limitation
 - Applies to all plans, large and small, fully insured and self-funded
 - Effective first plan year in 2014
 - Waiting period limited to no more than 90 days
 - Exception for variable hour and seasonal employees
 - Employers can use an initial measurement period of up to 12 months to determine eligibility for variable hour and seasonal employees



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Insurance Market Reforms

- Deductible Limitation for Small Group Plans
 - Applies only to small group fully insured plans
 - Both inside and outside the public exchange
 - ACA states maximum deductible for small group plans can be no more than \$2000
 - Later regulatory guidance allowed carriers to issue higher deductible small group plans to meet the ACA requirement to offer “Bronze” level coverage plans.
 - In states where carriers have released 2014 small group plan designs we have seen deductibles as high as \$5000!



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Insurance Market Reforms

- Essential Health Benefits
 - ACA requires small group fully insured plans to offers an “essential health benefits” set
 - Applies only to small group fully insured plans
 - Both inside and outside the public exchange
 - States were permitted to designate an existing small group plan as the “benchmark plan” to define the essential health benefits set in that state
 - Other plans must offer the same categories of coverage as the benchmark plan
 - Impact on large employers and self-funded plans
 - Not required to offer essential health benefits set
 - However, any essential health benefits offered cannot have a life time or annual maximum, and are subject to the cost sharing maximums.



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Other Issues



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Other Issues

- Individual Health Insurance and HRA Guidance Issued
 - Individual health insurance through Health Reimbursement Arrangements (HRA)
 - Employers may not use an HRA to fund the employees purchase of individual health insurance policies on a tax free basis.
 - HRAs must meet ACA requirement of no lifetime or annual maximum
 - HRAs integrated with a group medical plan that has no lifetime or annual maximum are allowed
 - “Integrated” means HRA is available only to employees who are also covered by a group health plan



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Other Issues

- Individual Health Insurance and Section 125 Cafeteria Plans
 - Background
 - 2007 IRS proposed cafeteria plans allowed employer to set up a pre-tax reimbursement arrangement for employees who purchase individual health insurance policies
 - Employee must provide substantiation of payment of individual health insurance premium before employer can make pre-tax payroll reimbursement.
 - IRS rules do not allow the use of Health FSA funds to purchase individual health insurance policies
 - ACA changes
 - Individual health insurance policies purchased through a public Exchange are not a qualified benefit under a 125 cafeteria plan
 - Pre-tax reimbursements not allowed for these policies



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Other Issues

- Fully Insured Non-Discrimination Rules
 - Still delayed until guidance is issued by the IRS
 - Unlikely to be enforced 1/1/2014
 - Rules will prohibit discrimination in favor of highly compensated individuals (HCIs)
 - Will be similar to existing 105(h) rules already applicable to self-funded health plans
 - Does not necessarily mean benefits will have to be identical for all classes of employees
 - However - benefits, eligibility, or contribution arrangements that clearly favor a subset of employees including HCIs will likely be discriminatory
 - Stay Tuned!



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Notice of Exchange



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ACA Notice of Exchange

- Background
 - Originally due March 1, 2013 – delayed by DOL
- New Guidance
 - Notice due by October 1, 2013 for existing employees
 - Notice must also be provided to all new employees within 15 days of hire date
 - Notice must be sent to ALL employees
 - FT, PT, temp, etc.
 - Must even provide to employees not eligible for employer health plan



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ACA Notice of Exchange

- Content Requirements
 - Information on the existence of an exchange and a description of the services provided by the exchange
 - Information that employees may be eligible for a premium tax credit through the exchange if the employer's plan does not meet minimum essential coverage
 - Inform employees that if they purchase a plan through the exchange they would lose any employer contribution
 - Contact information for exchange
 - Model notice and guidance released by DOL
 - Model notice contains many elements not required by the law



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Thank you!



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Thanks for joining us.

