May 26, 2016

Plan Affordability Under the ACA

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ACA & Benefits Compliance Update

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, 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.
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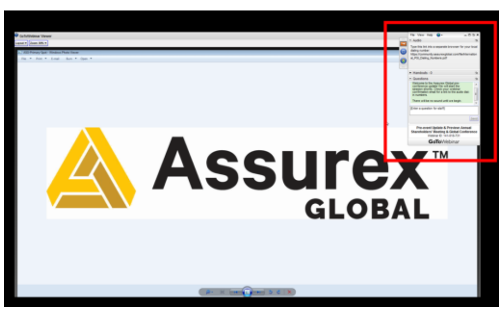

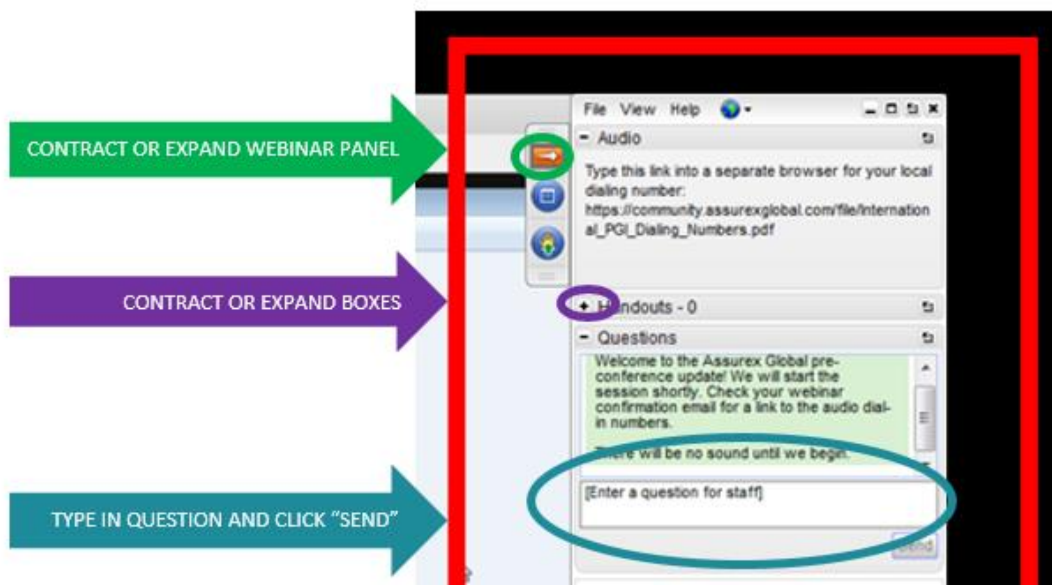

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- Wortham Insurance & Risk Management

Agenda

- Affordability for purposes of the individual mandate
- Affordability for purposes of tax subsidies through a public Exchange
- Affordability for purposes of avoiding employer mandate penalties

Comparison of Affordability Requirements

	Individual Mandate	Subsidy Eligibility	Employer Mandate
EMPLOYEE	Coverage is "unaffordable" if the employee's cost for single coverage exceeds 8% (indexed annually) of household income	Coverage is "unaffordable" if the employee's cost for single coverage exceeds 9.5% (indexed annually) of household income	Coverage is "unaffordable" if the employee's cost for single coverage exceeds 9.5% (indexed annually) of Form W-2, rate of pay or federal poverty level (FPL)
FAMILY	Coverage is "unaffordable" if the employee's cost for family coverage exceeds 8% (indexed annually) of household income	Coverage is "unaffordable" if the employee's cost for single coverage exceeds 9.5% (indexed annually) of household income	No affordability requirement…employer is not required to make coverage to dependents affordable

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Affordability Percentages

- Affordability Percentages Indexed Annually

Year	Percentage for Individual Mandate	Percentage for Subsidy Eligibility & Employer Mandate
2014	8%	9.5%
2015	8.05%	9.56%
2016	8.13%	9.66%
2017	8.16%	9.69%

NOTE - Affordability based off any of the 3 employer safe harbors was originally permanently fixed at 9.5%, but due to guidance provided late in 2015, will now be indexed annually as well

Affordability – Individual Mandate

Affordability – Individual Mandate

- Generally all individuals are required to have minimum essential coverage (MEC) or pay a penalty
  - Paid via personal tax returns
  - MEC includes most employer-sponsored coverage, individual coverage, and government-sponsored coverage
  - Penalty exceptions for things such as:
    - Not lawfully present in the U.S.
    - Short gap in coverage (less than 3 months)
    - Hardship exemption as determined by HHS
    - Coverage is “unaffordable” – lowest cost bronze-level plan available through the public Exchange exceeds 8% (indexed annually) of the individual’s household income, or employer coverage exceeds 8% of household income for single or family coverage
  - For more information on the individual mandate, visit IRS FAQs found here

Affordability – Individual Mandate

- Affordability based on Exchange coverage
  - Coverage is unaffordable if the lowest priced Bronze-level health plan available through a public Exchange, including any tax subsidy, exceeds 8% (indexed annually) of household income

- Affordability when coverage is employer-sponsored
  - Employee - Coverage is unaffordable if the lowest cost single plan available to the employee is more than 8% (indexed annually) of household income
  - Dependents - Coverage is unaffordable for employee's dependents if the lowest cost family plan available to the family is more than 8% (indexed annually) of household income
  - If more than one person's job offers self-only coverage, the combined monthly premiums for the lowest-cost self-only plans offered to each person whose job offers coverage is more than 8% (indexed annually) of household income

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Affordability – Subsidy Eligibility

Affordability – Subsidy Eligibility

- In general, those purchasing coverage through a public Exchange may qualify for a tax subsidy if:
  - The individual is not eligible for minimum value, affordable coverage through an employer;
    - An employer's plan is considered "affordable" for any employee and the employee's eligible dependents if the employee contribution required for participation in employee-only (single) coverage does not exceed 9.5% (indexed annually) of the employee's household income
  - The individual is not enrolled in any other minimum essential coverage; and
  - The individual's household income is between 100-400% of the FPL

- Individuals eligible for Medicaid are not eligible for a tax subsidy
  - In states that expanded Medicaid eligibility, this means that less individuals may qualify for a tax subsidy if choosing to enroll through a public Exchange

- For more information on tax subsidies, visit IRS FAQs found here

Affordability – Subsidy Eligibility

- Example 1 – Employer offers only a minimum essential coverage (MEC) plan
  - Employee enrolls in employer's plan → Ineligible for a tax subsidy
  - Employee waives the employer's plan → May be eligible for a tax subsidy if not enrolled/eligible for any other disqualifying coverage and household income is 100-400% of federal poverty level
- Example 2 – Employer offers a minimum value plan that requires an employee contribution of $150/month for single coverage
  - Coverage is affordable in 2016 for any employee with annual household income of $18,634 or more (($150 X 12) ÷ .0966)
  - Regardless of whether the employee (and dependents) enroll or not, those employees eligible for the plan that have household income of $18,634 or more will not qualify for a tax subsidy (nor will their eligible dependents)
    - This is true even if dependents are required to contribute 100% for coverage
  - Even if the plan is not affordable (e.g. household income less than $18,634), those that enroll in the plan (versus waiving coverage) will not be eligible for a tax subsidy

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Affordability – Employer Mandate

Affordability – Employer Mandate

- Applicable large employers (ALEs) must offer minimum value, affordable coverage to full-time employees and their dependent children to avoid potential penalties
  - §4980H(a) Penalty
    - Applies if employer does not offer minimum essential coverage (MEC) to 95% (70% in 2015) of full-time employees & at least one full-time employee purchases subsidized coverage through a public Marketplace/Exchange
    - Calculated for 2016 as $180.00/mo. ($2160/yr) times number of *<u>full-time employees</u>* not counting first 30
      - NOTE – there was a waiver for the first 80 in 2015 only
  - §4980H(b) Penalty
    - Applies if employer offers coverage to substantially all full-time employees and their dependent children, but coverage is not offered to some full-time employees or coverage is "unaffordable" or not "minimum value"
    - Calculated for 2016 as $270/mo. ($3240/yr) for each full-time employee who purchases subsidized coverage through a public Marketplace/Exchange

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Affordability – Employer Mandate

- Assuming the employer offers coverage to 95% (70% in 2015) or more of full-time employees and their dependent children, thereby avoiding the “bigger” penalty under §4980H(a), to also avoid a penalty under §4980H(b), the coverage offered must be “affordable” (and must provide minimum value)

- In general, coverage is affordable if the employee contribution required for employee-only (single) coverage does not exceed 9.5% (indexed annually) of the employee’s household income

- However, because an employer is unlikely to know household income, the IRS provided 3 safe harbors that employers may use instead:
  - Federal poverty level (FPL)
  - Rate of pay
  - Form W-2

Affordability – Employer Mandate

Example

- Employer’s lowest hourly rate of pay is $10 per hour.
  - Using the rate of pay safe harbor, the employer decides to set employee contribution for single coverage at $123.50
    - 130 hours X $10/hr = $1300, then $1300 X .095 = $123.50

- One full-time employees earns $1300 per month but has a $300/mo. alimony payment
  - Alimony payments are an “above the line” deduction reducing AGI
    - This individual's monthly AGI = $1000 & the contribution for single coverage ($123.50) equals 12.35% of household income.

- This employee would likely qualify for a subsidy when purchasing individual insurance through an Exchange, but the employer would face no 4980H(b) liability due to meeting the rate of pay safe harbor

Affordability – Employer Safe Harbors

- Federal Poverty Level (FPL)
  - Coverage is affordable if the employee's cost for employee-only coverage does not exceed 9.5% (indexed annually) of FPL for a single individual
    - FPL refers to any of the poverty guidelines (typically updated each January by the Secretary of Health and Human Services) in effect within six months before the first day of the plan year
    - Approx. $95.63 or less per month for 2016 (9.66% X $11,880 / 12)
  - If the FPL safe harbor applies, the employer's offer is affordable for all employees
  - If the FPL safe harbor does not apply, there are two other potential safe harbor options…

Affordability – Employer Safe Harbors

- Rate of Pay
  - **<u>Hourly Employees</u>**
    - Coverage is affordable if the employee's cost for employee-only coverage does not exceed 9.5% (indexed annually) of the employee's hourly rate of pay multiplied by 130
      - Hourly rate of pay is determined at the beginning of the coverage period unless the rate is reduced for the month (then the lower rate for that month is used)
  - **<u>Salaried Employees</u>**
    - Coverage is affordable if the employee's cost for employee-only coverage does not exceed 9.5% (indexed annually) of the employee's monthly salary
      - Monthly salary is determined at the beginning of the coverage period and this safe harbor is not available if the monthly salary is reduced during the year

  - Generally not appropriate for employees that are "tipped" or for employees that work solely based on commissions

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Affordability – Employer Safe Harbors

Rate of Pay Examples

- **Example 1**
  - Employer has full-time hourly employees paid $9/hour and up. So long as employee contributions for employee-only coverage in the lowest cost minimum value plan do not exceed $113/month (130 X $9 X 9.66%), the coverage will be considered affordable.

- **Example 2**
  - Employer has full-time salaried employees paid $1920/month. So long as employee contributions for employee-only coverage in the lowest cost minimum value plan do not exceed $185/month ($1920 X 9.66% in 2016), the coverage will be considered affordable.

Affordability – Employer Safe Harbors

- Form W-2
  - Coverage is affordable if the employee's annual cost for employee-only coverage does not exceed 9.5% (indexed annually) of the employee's Form W-2 wages reported in Box 1
    - Affordability is determined after the end of the calendar year, once Form W-2s are available
    - To use this safe harbor, the employee's required contribution must remain a consistent amount or percentage of all Form W-2 wages during the year
    - Box 1 includes taxable wages, bonuses, tips, and other compensation, but does not include non-taxable employee benefits such as pre-tax contributions to a 401(k) plan or pre-tax cafeteria plan salary reductions
    - For employees not offered coverage all year, the safe harbor is applied by adjusting Form W-2 wages to reflect when coverage was actually offered

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Affordability – Employer Safe Harbors

Form W-2 Examples

- **Example 1**
  - Employee is full-time January through December and is offered minimum value coverage that costs the employee $150 per month for single coverage ($1800/year). This coverage will be affordable for any employees that have Box 1 W-2 wages of $18,633 or more ($1800 / 9.66% in 2016).

- **Example 2**
  - Employer expects that all full-time employees will have at least $25,000 or more reported in Box 1 during the year. So long as the employee contributions for the lowest cost minimum value plan do not exceed approx. $200/month ($25,000 X 9.66% in 2016 / 12), the coverage will be considered affordable.

Affordability – Employer Safe Harbors

- Choosing Which Safe Harbor(s) to Use
  - **FPL –**
    - Advantage: By far the simplest calculation and also ensures that the coverage is affordable for all full-time employees
    - Disadvantage: Typically requires the highest employer contributions
  - **Rate of Pay –**
    - Advantage: Calculation is the same regardless of number of hours each month (130 X rate of pay or monthly salary), so the employer knows each month whether coverage is affordable, and it also protects the employer if hours are reduced (e.g. full-time through stability period based on previous measurement period)
    - Disadvantage: Often results in higher employer contributions than Form W-2 safe harbor, especially if most employees are averaging 40 or more hours of service per week. And is not available for tipped employees, commission-based employees or salaried employees who have a reduction in pay
  - **Form W-2 –**
    - Advantage: Often requires the lowest employer contribution, especially if most employees are averaging 40 or more hours of service per week (rather than 30-39), but keep in mind wages are reduced by any pre-tax contributions
    - Disadvantage: May be less predictable in that it is based only on an estimate of what will be reported in Box 1 of Form W-2 and then will be reconciled at the end of the year when the W-2 reporting is actually done

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Affordability – Employer Safe Harbors

- Choosing Which Safe Harbor(s) to Use
  - Employers are not required to use any safe harbor, but it is generally in their best interest to do so if any apply
    - If choosing not to use a safe harbor, the employer simply makes an assumption about household income, and takes the chance that if any employee who waives coverage instead enrolls through a public Exchange and qualifies for a tax subsidy because the coverage is unaffordable, a penalty under § 4980H(b) may apply
  - Different safe harbors may be chosen for different categories of employees. An employer may choose to apply any of the safe harbors for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category
    - Regulations provide that reasonable categories for this purpose generally include specified job categories, nature of compensation (hourly or salary), geographic location, and similar bona fide business criteria

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Affordability – Employer Safe Harbors

- Choosing Which Safe Harbor(s) to Use
  - The right answer is different for each employer depending on staffing, wages and risk tolerance
  - Safe harbor may be used prior to the beginning of the plan year to assist in setting employer contributions
    - Important to keep in mind that sometimes making coverage affordable for all employees is not necessarily the best option for the employer financially
    - Allowing coverage to be unaffordable for a handful and potentially paying the $270/month penalty (in 2016) is better than making coverage affordable for everyone and ultimately paying more for all who choose to enroll
  - On the other hand, if not choosing a safe harbor until at the end of the year, it would be beneficial to run the numbers and use the safe harbor that will result in the contribution rate being considered affordable for the largest number of full-time employees

Affordability – Employer Contributions

- Setting Employer Contributions
  - Nothing under §4980H rules requires a uniform contribution rate across all categories of employees; rather, affordability is considered on an employee-by-employee basis
  - Employers may contribute differently to different categories of employees or even on a per-employee basis (e.g. a percentage of salary) subject to nondiscrimination rules, which generally prohibit providing benefits in a way that favors the highly compensated individuals

Affordability – Employer Contributions

Example

- Employer has full-time employees making as little as $9/hour (lowest Box 1 wages expected to be $18,000) and monthly premium for the lowest cost minimum value option is $400/month in 2016
  - FPL safe harbor – employee contribution of $95.63/month or less is affordable
    - Employer contribution would be $304.37/month
  - Rate of pay safe harbor - employee contribution of $113/month or less is affordable
    - ($9 X 130 X 9.66%) - Employer contribution would be $287/month
  - Form W-2 safe harbor - employee contribution of $144/month or less is affordable
    - ($18,000 X 9.66% ÷ 12) - Employer contribution would be $256/month

➢ If the employer is contributing more than $270/month for coverage, the employer is paying more than the employer would pay as a penalty under Section 4980H(b) for those that waive and instead enroll through a public Exchange and qualify for a tax subsidy

➢ Even when a safe harbor does not apply, coverage is not necessarily unaffordable. Household income, which in many cases will also include income from other dependents, may be higher

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Affordability – Employer Contributions

Example

- Employer has full-time employees making as little as $9/hour and monthly premium for the lowest cost minimum value option is $400/month in 2016
  - FPL safe harbor – employee contribution of $95.63/month or less is affordable
    - Employer contribution would be $304.37/month
  - Rate of pay safe harbor – employee contribution of $113/month or less is affordable
    - ($9 X 130 X 9.66%) – Employer contribution would be $287/month

- ➢ Employer could choose to set the employee contributions at $138/month, making it affordable to those that make $11/hr or more ($11 X 130 X 9.66%)
- ➢ There would be some penalty risk ($270/month) for those full-time employees making less than $11/hr, but only if they waive the coverage and instead enroll through a public Exchange and qualify for a tax subsidy
- ➢ Employer would pay $25/month less ($138-$113) for those who enroll
- ➢ Employer would only pay $8/month more in penalty than the employer contribution at $262 ($400-$138)

Affordability – Employee Contributions

- Opt-Out Credits (Cash-in-Lieu)
  - IRS intends to provide additional guidance in regard to affordability under Section 4980H rules. IRS has indicated that:
    - Unconditional opt-outs (those available to anyone that declines coverage) are likely to increase the employee contribution for purposes of affordability
    - Conditional opt-outs (e.g. available only to those that show proof of other group coverage) may not need to be counted
  - Until further guidance is provided, opt-outs do not need to be considered for purposes of affordability, UNLESS a new unconditional opt-out program is put into place after Dec 16, 2015 (when the notice was released)

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Affordability – Employee Contributions

Opt-Out Credits (Cash-in-Lieu) Examples

- **Example 1**
  - Eligible employees have the option to enroll in the employer's group medical plan by contributing $150/month or waive the coverage and receive $75/month in taxable cash
    - For affordability purposes, $225 ($150 + $75) would be used as the monthly employee contribution
- **Example 2**
  - Eligible employees have the option to enroll in the employer's group medical plan by contributing $150/month or waive the coverage and receive $75/month in taxable cash upon proof of other group health coverage
    - For affordability purposes, $150 would be used as the monthly employee contribution

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Affordability – Employee Contributions

- Flex Credits
  - Health flex contributions may be counted toward the employee's required contribution (effectively reducing the amount)
    - "Health flex contributions" are those that are (i) non-cashable, (ii) may be used to purchase MEC, and (iii) are limited to payment of medical care as defined under §213(d))
      - Contributions may be used toward things such as medical, dental or vision coverage, health FSA or HSA
  - Any flex credits that may be taken as taxable cash or used toward non-medical care such as life insurance, dependent care FSA, or 401k cannot be considered for purposes affordability (will not reduce the employee contribution)
  - Transition relief for plan years beginning prior to Jan 1, 2017
    - All flex contributions reduce the amount of the employee's required contribution for purposes of Section 4980H(b) unless the arrangement is adopted or the amount is substantially increased after Dec 16, 2015

Affordability – Employee Contributions

Flex Credits Examples

- **Example 1**
  - Eligible employees may participate in the employer's group medical plan by contributing $300/month. Employer also offers $2400/year that may be used toward the group medical premium or a health FSA ("health flex contributions"); the contributions are non-cashable
    - For affordability purposes, $100 ($300-200) would be used as the monthly employee contribution

- **Example 2**
  - Same as above except that the $1200 of the $2400 is cashable
    - For affordability purposes, $200 ($300-100) would be used as the monthly employee contribution

Affordability – Employee Contributions

- Health Reimbursement Arrangements (HRAs)
  - HRA contributions sometimes affect minimum value and other times affect affordability depending on how the HRA funds can be used:
    - Amounts newly made available (contributed for the current plan year) only for cost-sharing will count for minimum value (MV) purposes (increasing the actuarial value of the plan)
      - Cost-sharing generally includes deductibles, coinsurance and copayments, but does not include premiums
    - Amounts newly made available (contributed for the current plan year) only for premiums (or premiums and cost-sharing) will count for affordability
      - These HRA contributions will affect (reduce) the amount reported on Line 15 of Form 1095-C

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Affordability – Employee Contributions

- Wellness Program Incentives
  - For purposes of determining affordability, it is necessary to assume the employee fails to complete the wellness program criteria **UNLESS** it is tobacco-related
    - Therefore, other than wellness incentives for tobacco use, coverage is affordable only if the higher contribution (prior to consideration of any wellness program incentive) is affordable for the employee

Affordability – Employee Contributions

Wellness Program Incentives Examples

- **Example 1**
  - Required monthly employee contribution is $250
  - Potential wellness incentive (not tobacco-related) reduces cost to $210/month
  - The coverage is “affordable” so long as $250 (not $210) does not exceed 9.66% (in 2016) of the employee’s household income

- **Example 2**
  - Required monthly employee contribution is $250
  - Potential wellness incentive (tobacco-related) reduces cost to $150/month
  - The coverage is “affordable” so long as $150 (not $250) does not exceed 9.66% (in 2016) of the employee’s household income

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Thank you.