NAVIGATING HEALTHCARE REFORM

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ACA In The News: Employer Mandate Delayed Again

The Affordable Care Act (ACA) imposes a penalty on large employers that do not offer minimum essential coverage to full-time employees and their dependents. Large employers that offer this coverage may still be liable for a penalty if the coverage is unaffordable or does not provide minimum value. The ACA's employer mandate provision is often referred to as the "employer shared responsibility" or "pay or play" rules.

On Feb. 10, 2014, the U.S. Treasury Department released final regulations implementing the employer shared responsibility provisions of the ACA. The regulations are effective upon publication in the Federal Register.

Delay for Medium-sized Businesses

According to the Departments, approximately 96% of employers are small businesses that have fewer than 50 workers and are exempt from the employer responsibility provisions. The employer shared responsibility provisions apply only to applicable large employers that have 50 or more full-time employees.

The final rules will delay implementation for medium-sized employers that are covered by the employer mandate. Applicable large employers that have fewer than 100 full-time employees will have an additional year, until 2016, to comply with the pay or play rules.

Thus, the employer shared responsibility provisions will generally apply to:

- **Employers with 50-99 full-time employees starting in 2016**. Employers with fewer than 100 employees will have to certify to the government that they have not laid-off employees to get under the threshold and qualify for the delay until 2016. They also must certify they will not drop health plans they already offer.

- **Employers with 100 or more full-time employees starting in 2015**, however under the proposed rules, applicable large employers would need to offer coverage to at least 95% of their full-time employees to avoid the most significant penalties. The final rule provides transition relief that will phase in this requirement over two years, beginning in 2015.

  To avoid a payment for failing to offer health coverage in **2015** ($2,000/ee less the first 30 employees), applicable large employers will need to offer coverage to **70%** of their full-time employees. Note that in 2015 employers will still be penalized $3,000 for any employee going to the Exchange who works at least 30 hours and is not offered coverage or is not offered coverage that is affordable or meets the minimum actuarial value.

  In **2016 and beyond**, applicable large employers will need to offer coverage to **95%** of their full-time employees to avoid these penalties.

This rule is intended to provide relief to employers that, for example, may offer coverage to employees working 35 or more hours per week, but not yet to those employees who work 30 to 34 hours per week.

What Does this Mean For Employees?

For many individuals, this delay will not impact their access to coverage. You have the option to elect coverage through:

- Your employer's group plan
- The Marketplace (Exchange)
- An Individual plan

While the employer penalties have been delayed, the Individual Mandate has not. Beginning in 2014, ACA requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. This rule is often referred to as the "individual mandate." (Individuals may be eligible for an exemption from the penalty in certain circumstances.)

On January 30, 2013, the Departments of Health and Human Services (HHS) and the Treasury issued two proposed rules relating to the individual mandate. At the same time, the Treasury issued related questions and answers. The proposed rules outline exemptions from the individual mandate, explain how the penalty will be computed and establish standards and procedures for designating certain coverage as constituting "minimum essential coverage."

What is Penalty?

The penalty for not obtaining acceptable health insurance coverage will be phased in over a three-year period, and is the *greater of two amounts*—the "flat dollar amount" and "percentage of income amount."

The penalty will start at the greater of $95 per person or 1% of income for 2014. Income for this purpose is the taxpayer's household income minus the taxpayer's exemption (or exemptions for a married couple) and standard deductions. The penalty amount increases to $325 or up to 2% of income in 2015. In 2016 and thereafter, the penalty increases to $695 or up to 2.5% of income.

2014	$95 per person/1 percent of income
2015	$325 per person/2 percent of income
2016 and later years	$695 per person/2.5 percent of income

The penalty is capped at the national average of the annual bronze plan premium. Families will pay half the penalty amount for children, up to a family cap of three times the annual flat dollar amount per year.