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Health Care Reform Employer Obligations

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Agenda

- Timeline of Key Changes For Employers
- Obligations 2014 and Beyond
- Employer Shared Responsibility
- Resources

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Timeline of Key Changes for Employers Since 2012

1/1/12
- W-2 Reporting (Jan. 2013)
- Summary of Benefits and Coverage
- SCOTUS decision
- Women's Preventive Health Benefits
- MLR
- CER Fee/PCORI Fee

1/1/13
- FSA limit reduced
- Notification to employees about exchanges
- W-2 reporting

1/1/14
- Individual Mandate
- Exchanges
- Changes to waiting periods, pre-ex
- Transitional Reinsurance Fee
- Health Insurer Fee
- OOP limits capped
- Annual dollar limits prohibition
- Dependent children to age 26
- Clinical Trials

1/1/15+
- Employer Mandate - 2015, or 2016 for ERs with 50-99 EEs
- Employer reporting (due 2016)
- Cadillac Tax (2018)

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2014

- Marketplaces Operational
- No pre-existing condition exclusions for <u>any</u> eligible individual
- Coverage of EHBs (small group, non-GF plans)
- Prohibition of annual limits on EHBs
- Prohibition on excessive waiting periods (90 days)
- Clinical trial coverage (non-GF plans)
- Transitional Reinsurance Fee
- Health Insurer Fee (insured plans only)

Looking Ahead! 2015-2018

- **Employer Mandate (Delayed until 2015)**
  - "Pay or Play" penalty
    - ESR penalty delayed until 2016
      - 50-99 employees (certain criteria applies)
    - 100+ employees, offer of coverage to 95% of FT employees in 2016
      - Must offer to 70% in 2015 only
    - Certain criteria must be met
- **Health Insurance Coverage Reporting (2016)**
  - Begin information gathering in 2015
- **"Cadillac Tax" (2018)**
  - Tax on high-cost health coverage

Fees

- **Patient-Centered Outcomes Institute Research Fee (PCORI fee)**
- **Transitional Reinsurance Fee**
- **Health Insurer Fee (insured plans only)**

Fees

- **Patient-Centered Outcomes Institute Research Fee (PCORI fee)**
  - What is it?
    - A new nonprofit corporation created by PPACA
      - To support clinical effectiveness research
      - Funded in part by fees on insurers and self-funded health plans
      - Applies to policy or plan years ending after September 30, 2012 and before October 1, 2019

Fees

- **Patient-Centered Outcomes Institute Research Fee (PCORI fee)**
  - Who pays?
    - Insurers of health insurance policies
    - Plan sponsors of self-insured plans
    - Applies regardless of grandfathered status or size
      - Due by July 31 of following year
      - IRS Form 720 ("Quarterly Federal Excise Tax Return")

Fees

- **Patient-Centered Outcomes Institute Research Fee (PCORI fee)**
  - How much is the fee?
    - First plan year (ending between October 1, 2012 & September 30, 2013): **$1 per covered life** under the plan
    - Second plan year (ending between October 1, 2013 & September 30, 2014): **$2 per covered life** under the plan
    - Next five plan years (ending between October 1, 2014 & September 30, 2019): TBD!

Fees

- **Transitional Reinsurance Fee**
  - What is it?
    - Temporary program established in each state to fund individual market
    - Spreads the risk across all insurance plans and policies
      - Shifts the risk of covering high expenses (for newly eligible enrollees) from primary insurer to a reinsurer

Fees

- **Transitional Reinsurance Fee**
  - Who pays?
    - Funded by reinsurance payments from "contributing entities" during 2014-2016
    - Health insurers and TPAs *on behalf of self-funded group health plans* must make contributions for each covered life
  - How much?
    - $63/year per covered life for the first year of the program
    - Decreased to $44 in 2015
    - Significantly less in 2016

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Fees

- **Health Insurer Fee (insured plans only)**
  - What is it?
    - A fee imposed on entities providing health insurance
    - Based on health insurance premiums collected by all "covered entities"
    - Due no later than September 30 of each calendar year
      - Begins in 2014
      - No expiration date
    - Will be indexed to average growth of health insurance premiums after 2018

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Fees

- **Health Insurer Fee (insured plans only)**
  - Who pays?
    - Covered entities, i.e., health insurers
      - Multiple Employer Welfare Arrangements ("MEWAs")*
      - Certain other organizations excluded
        - Governmental entities
        - Educational institutions must qualify for an exclusion
        - Voluntary Employee Beneficiary Associations ("VEBAs")
    - Self-funded plans excluded

* MEWAs that are not fully insured are generally covered entities, but specified MEWAs will not be treated as covered entities.

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Fees

- **Health Insurer Fee (insured plans only)**
  - How much?
    - Specific dollar amount not known
    - Based on each prior year's collected premium
    - Covered entities must report net premiums on Form 8963
      - Form due April 15 of fee year
    - Aggregate annual fee (applicable amount)
      - $8.0 billion for calendar year 2014
      - $11.3 billion for calendar years 2015 and 2016
      - $13.9 billion for calendar year 2017
      - $14.3 billion for calendar year 2018

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ESR: Large Employers

- **Employer shared responsibility provisions apply to "applicable large employers" ("ALEs")**
  - Average of at least 50 full-time & full-time equivalent employees during preceding calendar year
  - Determined on the basis of a controlled group

ESR: Penalty Triggers

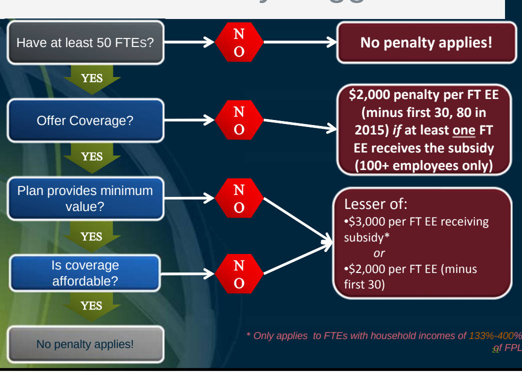
- **Failure to offer coverage ($2,000 penalty)**
  - — Employers with over 100 FTE must offer MEC to 95% of all full-time employees beginning in 2016
    - 70% for 2015 only
  - — Must offer coverage to children (but not spouses)
    - Final regulations exclude stepchildren and foster children
  - — Must have annual opportunity to accept or decline coverage
    - Unless coverage is provided that meets MV and is affordable based upon the federal poverty line safe harbor
  - — $2,000 x all full-time employees (minus first 30 employees) if any employee purchases coverage through Marketplace and qualifies for premium assistance
    - Minus first 80 for 2015 only, minus first 30 2016 and beyond

ESR: Penalty Triggers

- **Failure to offer affordable coverage ($3,000 penalty)**
  - —Employee-only coverage cost to employee must not exceed 9.5% of employee's compensation
  - —$3,000 per employee who purchases coverage through Exchange Marketplace and qualifies for premium assistance
- **Failure to offer coverage providing minimum value ($3,000 penalty)**
  - —Plan must pay for at least 60% of claims costs
  - —$3,000 per employee who purchases coverage through Exchange Marketplace and qualifies for premium assistance

Only full-time employees trigger penalty and count toward calculation

ESR: Penalty Triggers



ESR: Who is a full-time employee?

- **What is full-time?**
  - Average 30 or more "hours of service" per week OR 130 "hours of service" per month
  - Different from definition of "full-time" when determining applicable large employer status
- **Hours for <u>all</u> <u>employees</u> must be tracked using either the new "Monthly Measurement Method" or "Look Back Method"** (discussed later in presentation)

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ESR: Who is a Full-Time Employee?

NEW FULL-TIME EMPLOYEES

- If a new employee is reasonably expected to be employed on average at least 30 hours a week, then coverage must be offered within three months of his or her start date
- Must correspond to 90-day maximum waiting period
- Can have up to 30-day orientation period
  - Be careful! ESR penalties may still be triggered!

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ESR: Who is a Full-Time Employee?

<u>**4 Employee Categories**</u>

- Full-time employee
  - Hired to work average 30 hours per week
  - Coverage must be offered within three months of start date
- Part-time employee
  - Hired to work less than average of 30 hours per week
  - New employee who is reasonably expected at his/her start date to not be full-time and not variable hour or seasonal
  - Must use safe harbors for tracking hours
- Variable hour employee
  - As of date of hire, employer cannot reasonably determine if full-time employee because hours are "variable" or uncertain
  - Safe harbors for tracking hours

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ESR: Who is a Full-Time Employee?

4 Employee Categories

- Seasonal employee
  - Must be in a position for which customary annual employment is 6 months or less
  - Employment period begins in same part of year (e.g., summer or winter)
  - Employee still considered seasonal if employment period extends beyond customary duration (e.g., ski instructors during long snow season)

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ESR: Who is a Full-Time Employee?

- full-time Employee Status Clarified
  - Must use reasonable method of crediting hours for categories of employees with unique hours of service (e.g., commissioned salespeople, adjunct faculty, airline employees, layover or on-call hours)
  - Hour of service for “bona fide” volunteers not counted
  - No general exception for student interns; unless full-time interns are unpaid (no hour of service)
  - Common law employees

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ESR: Who is a Full-Time Employee?

- What is an hour of service?
  - An hour of service includes:
    - Hours worked, where employee credited for an hour of service for which s/he is paid or entitled to payment
    - Paid Time Off, where employee credited for each hour she or he is paid or entitled to payment for the period of time for days not actually worked
- All paid leaves get counted
- Hours attributable to foreign-sourced income not counted

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ESR: Who is a Full-Time Employee?

- **What about new full-time employees?**
  - Recall the "reasonably expects" standard for new part-time, variable hour, and seasonal employees
  - Employees expected to work full-time not subject to the initial measurement period rules
  - New hires must receive offer of coverage by 1st day following 3 months of hire date

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ESR: Counting Hours

- **Counting Hours**
  - "Safe harbor" method for determining whether or not an employee qualifies as FT
    - Used to determine, in advance of a coverage period, which EEs qualify as FT
    - Must make this determination before Employer Shared Responsibility goes into effect in 2015
    - Start counting hours in 2013 or 2014

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ESR: Counting Hours

- **How to count hours of service**
  - 3 methods
    - Actual Hours: count actual hours of service worked from records & other non-worked hours
    - Days-Worked Equivalency: credit 8 hours of service if the employee works at least 1 hour in a day
    - Weeks-Worked Equivalency: credit 40 hours of service if the employee works 1 hour in a week
  - Can use different methods for different classes, but must be reasonable and consistent

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ESR: Counting Hours

- **Factors to determine if employee is full-time**
  - (1) Is employee replacing FT employee or non-FT employee?
  - (2) Have ongoing employees in same/comparable position varied above/below average of 30 hours of service per week?
  - (3) Was job advertised, communicated, or documented as requiring hours of service that would average 30 or more/less?

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ESR: Counting Hours

- **Look Back Measurement Method (Ongoing Employees)**
  - Ongoing employee: employed for at least one complete standard measurement period
  - Standard measurement period of 3-12 months
  - Administrative period of no longer than 90 days
  - Stability period (at least 6 months) which is at least as long as preceding standard measurement period

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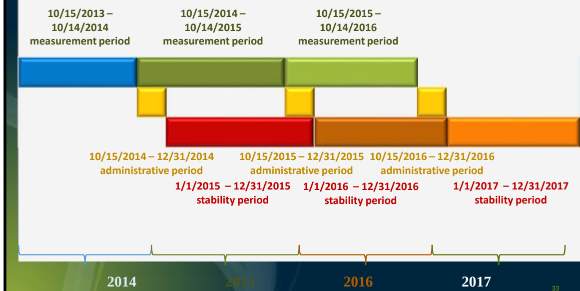
ESR: Counting Hours

12-month measurement period & 77 Day administrative period (ongoing)



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ESR: Counting Hours

- **Look Back Measurement Method (Ongoing Employees) cont'd**
  - Special transition rule for 2015: employers may use measurement period as little as 6 months and use a longer stability period if
    - Measurement period begins by no later than 7/1/14 AND
    - Measurement period ends no earlier than 90 days before start of 2015 plan year

ESR: Counting Hours

- **Look Back Measurement Method (New Employees)**
  - Part-time, variable hour, and seasonal status: based on the employer's reasonable expectations at the time the employee is hired
  - Initial measurement period of 3-12 months, beginning on employee's start date, or as late as the first day of the first calendar month after the employee's start date
  - Administrative period of no longer than 90 days
  - Stability period (at least 6 months) must be the same as the stability period for ongoing employees

ESR: Counting Hours

- **Common Issues to Consider**
  - Slightly different rules for <u>new</u> VH or seasonal EEs
  - Transition from new employee to ongoing employee
    - Requires inclusion in Standard Measurement Period
    - This results in some overlap in Measurement Periods
      - Regardless of whether the new employee "met" the full-time requirement during the Initial Measurement Period

ESR: Counting Hours

- **Monthly Measurement Method**
  - New monthly measurement method for employers not using look-back method
  - FT status determined on monthly basis – Count hours during a particular month
  - Special rule for employee first eligible for coverage
    - 3 month rule – No 4980H penalty if offers coverage by 1st day of 4th full calendar month after employee otherwise eligible
  - "Weekly rule" to accommodate payroll periods
    - 4-week period: FT if 120 hours of service
    - 5-week period: FT if 150 hours of service

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ESR: Counting Hours

- **Transitional Relief**
  - Non-calendar year plans will be required to comply with the ESR provisions by Jan. 1, 2015, or may be able to wait until the first day of their 2015 plan year

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ESR: 6055 Reporting

- **MEC Reporting**
  - Plans must provide information regarding "minimum essential coverage" (or "MEC")
  - Applies to
    - Issuers of individual and fully insured group insurance
    - Employers who sponsor a self-funded medical plan REGARDLESS of the number of employees

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ESR: 6055 Reporting

- **MEC Reporting**
  - What must be reported?

(1) Name, address and EIN of reporting entity
(2) Name, address, and TIN (i.e. SS#) for most "responsible individuals"
(3) Name and TIN of each covered individual
(4) Months when the individual was covered during the calendar year
(5) For insured group health plans, the name, address and EIN of the employer sponsoring the plan
(6) Whether coverage is a QHP enrolled through the SHOP exchange, and the SHOP's unique identifier

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ESR: 6055 Reporting

- **MEC Reporting**
  - Timing of reporting
    - Due February 28 of each year (with respect to the prior calendar year)
      - March 31 if filed electronically
      - Electronic filing *may* be required
    - Reporting done on calendar year basis regardless of plan year

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ESR: 6056 Reporting

- **ALE Reporting**
  - Employer mandate tracking
  - Individual eligibility for federal subsidies through an exchange
  - Only applies to employers that were an "ALE" during the year being reported
  - Applies to each ALE "member" in controlled groups

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ESR: 6056 Reporting

- **ALE Reporting**
  - What must be reported?
    - Name, address, and employer identification number (EIN) of the ALE member (employer)
    - Name and telephone number of the ALE member's (employer's) contact person
    - Calendar year for which the information is reported

ESR: 6056 Reporting

- **ALE Reporting**
  - What must be reported?
    - Proof (each month) that full-time employees and their dependents had opportunity to enroll in MEC
    - The months MEC available under the plan
    - Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage
    - Number of full-time employees for each month during the calendar year along with name, address and TIN

ESR: 6056 Reporting

- **ALE Reporting**
  - Timing
    - Same due dates as 6055 reporting on previous slides
  - No model forms available "yet"
    - Expected to be released this year! (fingers crossed)

ESR: Marketplace Notice

- **Provides Basic Information to Employees About:**
  - The new Marketplace; and
  - Health coverage offered through their employers (if applicable)

ESR: Marketplace notice

- **To Whom:**
  - Current employees and new hires (W-2 employees)
- **How:**
  - First class mail or DOL electronic delivery standards
  - Hand delivery?
- **When:**
  - October 1, 2013 for current employees, plus new employees at time of hire (within 14 days)

ESR: Marketplace notice

- **Consider including employer plan information**


PART B: Information About Health Coverage Offered by Your Employer

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- Timeline of Key Changes For Employers
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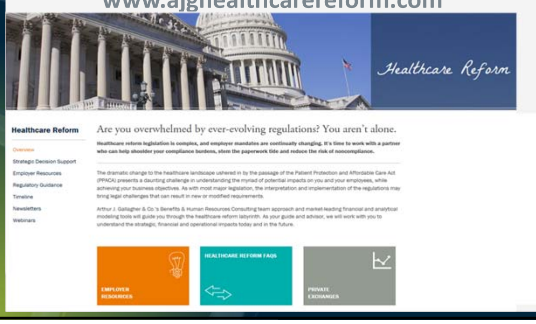
- **Resources**

Resources

www.ajghealthcarereform.com



Thank You!

Questions?

The intent of this analysis is to provide you with general Information regarding the status of, and/or Potential concerns related t0, your current employee Benefits issues and health care reform. It does not Necessarily fully address all of your specific issues. It should not be construed as, nor is it intended to Provide, legal advice. Questions regarding specific Issues should be addressed by the client's general Counsel or an attorney who specializes in this Practice area.

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