ACA Essentials

A Guide to ACA Regulations, Requirements & More

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Summary of ACA Employer Mandates

Summary Compiled
February 14, 2013

Preventive Care

Effective Date: Plan years beginning on or after 8/1/12

- Services include care such as mammograms, cancer screenings, prenatal care, domestic violence counseling, contraceptives, immunizations, and other services.
- Plans can no longer charge a copayment, coinsurance or deductible for these services when delivered by a network provider.

Summary of Benefits & Coverage (SBC)

Effective Date: 9/23/12

- Employers are required to provide participants a HHS-approved summary of benefits and coverage explanation prior to enrollment, re-enrollment, or if material modifications are made.
- For each willful violation, $1,000 penalty.
- Plan sponsor or insurance company must submit certain information to HHS.
- This requirement is in addition to summary plan description and summary of material modification requirements under ERISA.

Payroll Tax Increases

Effective Date: 1/1/13

- Medicare Part A tax rate increases by 0.9% (from 1.45% to 2.35%) on earnings over $200,000 for individual taxpayers, $250,000 for married couples filing jointly and $125,000 for married taxpayers who file separately.
- Employer is responsible for withholding the Additional Medicare Tax from wages or compensation it pays to an employee in excess of $200,000 in a calendar year.
- A 3.8% surtax will be added to all investment income (interest, dividends, cap. gains, annuity withdrawals, passive rent, and royalties) for individual taxpayers earning over $200,000; $250,000 for married couples.

Health Flexible Spending Account Limits

Effective Date: 1/1/13

- Limits the amount of contributions to a flexible spending account for medical expenses to $2,500 per year, increased annually by the cost of living adjustment.
- Limit based on plan year, not tax year.

W-2 Reporting

Effective Date: 1/1/12 optional; 1/1/13 required

- Applies to employers that issue 250+ W-2's in a year.
- Employers must report the aggregate cost of employer-sponsored health care coverage on the Form W-2.
- The amount reported is not taxable.
- The reporting is informational only and intended to provide greater transparency into overall health care costs.

90-Day Waiting Period

Effective Date: 1/1/14

- Group health plans cannot apply a waiting period of longer than 90 days.
- Waiting period doesn't begin until an employee is "otherwise eligible" for coverage.
- Certain conditions apply to newly-hired variable hour employees.

Comparative Effectiveness Fees (PCORI fee)

Effective Date: plan/policy years ending on or after 10/1/12 and before 10/1/19

- Applies to fully-insured and self-funded group health and accident plans (with some exceptions) as well as individual fully-insured policies.
- Does not apply to HIPAA excepted benefits or most health FSA's.
- Fees will be used to fund the Patient-Centered Outcomes Research Institute.
- Fully insured group health plans – insurer is responsible for calculating and paying the fee.

- Self-funded health plans – plan sponsor is responsible for calculating and paying the fee:
  - Year 1 (2012) - $1 per covered life per year under the plan (including dependents).
  - Year 2 (2013) - $2 per covered life per year under the plan (including dependents).
  - Years 3 – 7 (2014 – 2018) – to be indexed.
- Payment due by 7/31 of the calendar year immediately following the end of the plan year.
- For calendar year plans, 2012 plan year fees must be paid by 7/31/13.

Reinsurance Fee

Effective Date: 2014 – 2016 benefit years

- Temporary "reinsurance" payments to insurers who cover higher-risk populations.
- Fully insured group health plans – insurer is responsible for calculating and paying the fee.
- Self-funded health plans – plan sponsor is responsible for calculating and paying the fee:
  - Self-funded plan sponsors should submit 2014 plan enrollment data to HHS by 11/15/13.
  - Within 15 days HHS will notify the plan sponsor of the amount due.
  - Payment is due to HHS within 30 days of notification.
- 2014 fee is $5.25 per covered life per month ($63 per year). This could change under final regulations.
- Fee ***does*** apply to COBRA participants; ***does not*** apply to retirees who are also enrolled in Medicare.
- Benefit year is based on calendar year; not an employer's actual plan year.

Exchange Notice

Effective Date: ⓘ *(delayed pending further guidance)*

- Employers required to provide written notice to employees about the Exchanges offered in 2014.
- Notice must contain the specific information regarding exchanges and eligibility for premium tax credits and cost sharing reductions, if applicable.
- The Dept. of Labor is expected to provide a model notice in Q3 2013 to coordinate with the Exchanges' open enrollment period.

Employer Shared Responsibility (Play or Pay; Free Rider)

Effective Date: 1/1/14

- Employers with 50+ employees that do not offer coverage and have at least one full-time employee who receives a premium tax credit will be assessed a fee of $2,000 per full-time employee, excluding the first 30 employees
- Employers with 50+ employees that offer coverage (but is unaffordable or does not provide the minimum value) and have at least one full-time employee receiving a premium tax credit, will pay the lesser of $3,000 for each employee receiving a premium credit or $2,000 for each full-time employee, excluding the first 30 employees.
- Coverage must be offered to 95% of 'full-time employees' and their dependents
  - Spouses are not included in definition of 'dependent' but adopted and foster children are
  - FTE = average of 30 hrs/week or 130 hrs/calendar month
- Coverage must be affordable
  - EE only contribution not greater than 9.5% of household income
  - Affordability Safe Harbor permits determination based on employee W-2 income, OR hourly rate of pay*130, **OR** monthly salary
- Coverage must provide minimum value
  - Minimum value = pays for at least 60% of all plan benefits excluding co-pays, deductibles, co-insurance and employee contributions
  - MV Actuarial calculator to be developed by Agencies to measure 4 categories of benefits:
    1. Physician and mid-level practitioner care
    2. Hospital and emergency room services
    3. Pharmacy benefits
    4. Laboratory and imaging services

Summary of Benefits & Coverage
ACA Requirements

December 11, 2012

ACA requires group health plans to provide a summary of benefits and coverage ("SBC") to all individuals eligible for coverage under the Plan. The SBC describes the benefits and coverage available under the Plan. Employers will be responsible for distributing it to participants and beneficiaries as described below. An employer may deliver the SBC to a participant on behalf of a beneficiary, unless the employer knows that the beneficiary resides at a different address.

Employers must provide the SBC on the first day of any open enrollment period that begins on or after September 23, 2012 to participants and beneficiaries who enroll or re-enroll. If the employer does not have an open enrollment period, the employer must provide the SBC to participants and beneficiaries on January 1, 2013. Thereafter, the…

SBC must be distributed in the following circumstances:

- Upon initial enrollment – with enrollment materials.
- At open enrollment – with enrollment materials, but if renewal is automatic – within 30 days before the beginning of the plan year.
- Upon special enrollment – within 90 days after enrollment.
- Upon request – within 7 business days.
- Material Modification – if there is a change that impacts the SBC, the SBC must be provided to eligible employees and dependents 60 days prior to the effective date of the change.

The SBC may be provided to a participant on behalf of that participant's beneficiary, unless the employer knows that the beneficiary resides at a separate address. The SBC may be provided in paper form. In the alternative, the…

SBC may be distributed electronically as follows:

- For participants and beneficiaries who are enrolled in coverage who:
  - Have access to the intranet at work and who are expected to access the intranet as part of their job duties: The SBC may be distributed electronically provided you:
    - **ensure** that the electronic delivery results in actual receipt of the document (e.g. e-mail a link to the SBC with electronic return receipt), and
    - **provide** notice of the significance of the document to the employees and their right to receive a paper copy of the document.

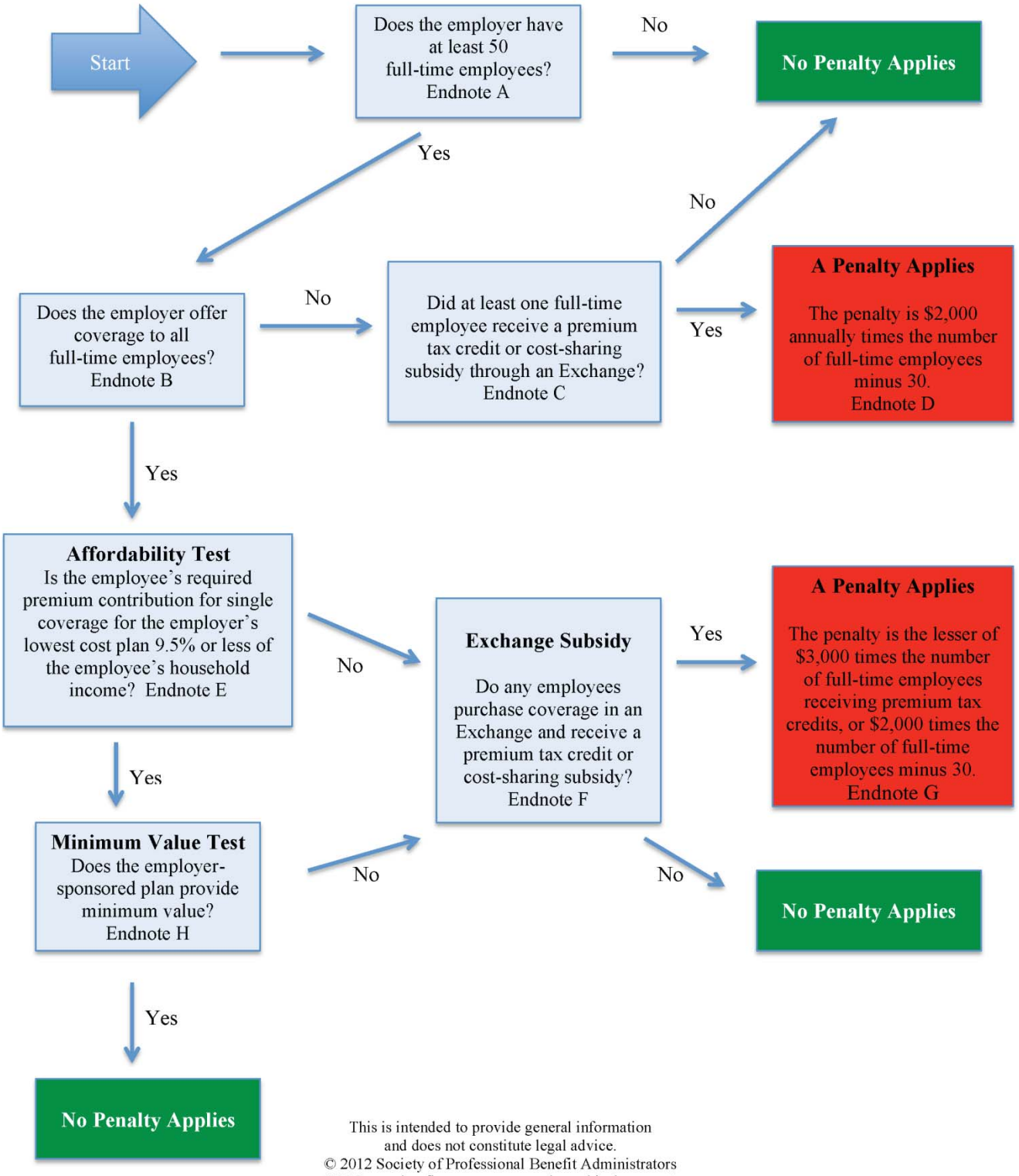
- Do not have access to the intranet at work or who would not be expected to access the intranet as part of their job duties: The SBC may be distributed electronically provided you:
  - **obtain** the employees' consent to receive electronic distributions in advance. If the disclosure is provided through email or a link to a posting, the employee must consent electronically in a manner that demonstrates the employee's ability to access the information. For example, if the disclosure will be attached in an email, the employee can consent in an email to the employer. If the disclosure will be posted on the employer's intranet, the employee can consent by clicking on a link to the employer's intranet leading the employee to an electronic consent. Before an employee consents to electronic disclosure, the employee must first receive a detailed statement describing the documents that they will receive, their right to revoke consent, the procedures for revoking consent and updating their e-mail address, their right to receive a paper copy of the statements, and the hardware and software required to receive the documents.

- For participants and beneficiaries who are eligible for but not enrolled in coverage the SBC may be delivered electronically, provided:
  - the format is readily accessible (e.g., HTML, MS Word, PDF);
  - the SBC is provided in paper form free of charge upon request; and
  - if the SBC is provided via an Internet posting, the employer timely advises participants that the SBC is available via a "post card" or "e-card" sent by e-mail.

You should contact your insurers to ensure that you and your employees receive the SBC's in time for your annual open enrollment period.

PPACA "Play or Pay" Penalties Flowchart

Beginning in 2014



This is intended to provide general information and does not constitute legal advice.

"Play or Pay" Flowchart Endnotes

Endnote A – Employers count full-time employees (or full-time equivalents) on business days during the preceding calendar year. According to IRS Notice 2011-36, the "Patient Protection and Affordable Care Act" (called ACA by the agencies) treats an employee who has an average of at least 30 hours of service per week as a full-time employee. IRS contemplates that proposed regulations would provide that 130 hours of service in a calendar month would be treated as the monthly equivalent of at least 30 hours of service per week.

An employee's hours of service would include each hour for which an employee is paid, or entitled to payment by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. IRS further contemplates that no more than 160 hours of service would be counted for an employee on account of any single continuous period during which the employee was paid or entitled to payment but performed no duties. See IRS Notice 2012-58 for more.

Endnote B – The current interpretation of the statutory language requires the offering of single-only coverage to avoid the penalty. However, there are discussions that the interpretation could change to include the offering of dependent coverage to avoid the penalty. A penalty could be triggered if even one full-time employee in a controlled group is not offered health coverage. IRS contemplates in IRS Notice 2011-36 that the proposed regulations to be released at some future date on the employer shared responsibility provisions will make clear that an employer offering coverage to "all, or substantially all" of its full-time employees will not be subject to the §4980H(a) provision. The definition of "substantially all" will be important, especially for employers who have plans that are in compliance with IRC section 105(h), but do not offer coverage to all full-time employees.

Endnote C - Two types of subsidies are required to become available in 2014: health premium tax credits and cost- sharing reductions. These subsidies are available to individuals with household income starting at 100% of the federal poverty level up to 400% of the federal poverty level. 400% of the federal poverty level in 2014 for a family of four is estimated to be approximately $91,000. Household income includes the income of the taxpayer and all individuals for whom the taxpayer can claim a personal exemption.

Health premium tax credits operate on a sliding scale. The tax credit begins at 2% of household income for taxpayers at 100% of the federal poverty level and phases out at 9.5% of household income for those above 400% of the federal poverty level. For example, an individual at 100% of the federal poverty level would be expected to pay 2% of their household income for coverage; the premium tax credit would equal the balance of the cost of coverage for a "benchmark plan" (defined as the second-lowest-cost plan in the Exchange). No one would receive a credit that is larger than the amount they actually pay for their plan.

Cost-sharing reductions lower the annual out-of-pocket expenditures for deductibles, coinsurance, copayments and similar charges. Cost-sharing reductions do not include premiums, balance billing amounts for non-network providers or spending for non-covered services. They phase out after household income exceeds 400% of the federal poverty level.

Endnote D – This is the §4980H(a) penalty; it is calculated on a monthly basis. No level of employer contribution is required to avoid this penalty. Employers are not subject to this penalty for failing to offer coverage to an employee for the initial three calendar months of employment.

Endnote E - IRS' current interpretation of the affordability test (for purposes of calculating an employer penalty) is based on the required contribution for single coverage. This could change. An employee's W-2 wages may be used to determine affordability through 2014 (IRS Notice 2012-58).

Endnote F - In a proposed regulation, the IRS stated that family members would **not** be eligible for the advance premium tax credits when affordable coverage was available to the employee but not to the family. The final IRS regulations on the premium tax credits (released in June 2012) have placeholders for addressing the issue of affordability for family members. The issue remains under discussion. The cost estimates of the premium tax credits to the American taxpayers were based on the assumption that only employees would be eligible for the premium credits when unaffordable coverage was offered.

Endnote G - This is the §4980H(b) penalty; it is calculated on a monthly basis.

Endnote H - Under the minimum value rule, an employer must pay at least 60% of the cost of a basket of health care expenses. The agencies are in the process of deciding what health care expenses will be in the basket. The IRS released a request for comments (Notice 2012-31) on several possible approaches to determining whether health coverage under an employer-sponsored plan provides "minimum value." These approaches include an actuarial value calculator, safe harbors in the form of checklists, or certification by an actuary. Most employer-sponsored plans, excluding mini-meds, are expected to meet the minimum value requirements, according to a report released by HHS.

Useful Links

We want to make things quick and easy for you to get to the facts you need. We've compiled a list of online resources where we often turn for the most UP-TO-DATE information.

The Henry J. Kaiser Family Foundation

An interactive ACA timeline:
http://healthreform.kff.org/timeline.aspx

IRS

ACA related tax provisions:
http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions

Department of Labor

ACA regulations, guidance and FAQs:
http://www.dol.gov/ebsa/healthreform/

ERISA Self-Compliance tool for Health Care Reform and HIPAA:
http://www.dol.gov/ebsa/healthlawschecksheets.html

Department of Health and Human Services

Private health insurance related provisions (exchanges, SBC's, essential health benefits, etc):
http://cciio.cms.gov/

BCC Benefits Blog

Get all of our updates to "ACA Quick Essentials" and current news you can use:
http://benxcel.wordpress.com/

About Us

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Headquarters
100 Ryan Court
Pittsburgh, PA 15205
412.276.1111

Marketing & Sales
3838 Camino del Rio N. Ste.380
San Diego, CA 92108
619.624.9500

Benxcel.com
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