



***COUNTDOWN TO 2014:  
PPACA COMPLIANCE PRIORITIES  
FOR EMPLOYERS***

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# OVERVIEW

- **DOL PPACA Audits**
- **PPACA Update**
  - Summary of 2013 Requirements
  - 2014 Coverage Changes
  - 2014 Shared Responsibility Requirements
- **Questions**

# **DOL AUDITS OF HEALTH CARE REFORM COMPLIANCE**

- **Age 26 Coverage**
- **Prohibition on Rescissions**
- **Lifetime and Annual Monetary Limits on EHB**
- **Grandfathered Plan Status**
- **Choice of Provider Notice**
- **Claims and External Review Documents**
- **DOL Self-Compliance Tool**

# **2013 PPACA REQUIREMENTS**

- **Salary Reductions for FSAs**
  - Limited to \$2,500
  - Effective for plan years beginning in 2013
- **Medicare Tax Increase**
- **Medicare Tax on Investment Income**
- **Modification to Medicare Part D Subsidy Deduction**
- **New Guidance on SBCs**
- **New IRS Form 720 for Paying PCORI recently issued**

# 2014 PPACA COVERAGE CHANGES

- **Pre-existing Condition Exclusion Eliminated**
- **Waiting Periods**
  - 90-day maximum for all plans
- **Annual Dollar Benefit Limits Eliminated**
- **Dependent Adult Child Coverage**
  - "Other coverage" exclusion eliminated
- **Wellness Programs**
  - Financial incentive limit increased to 30% (50% if related to tobacco use)
  - Final IRS regulations have been issued

# 2014 PPACA COVERAGE CHANGES

- **Transitional Reinsurance Program and Fee (2014-2016)**
  - \$5.25 per covered life per month
  - First payment due January 2015
- **Automatic Enrollment (pending)**
- **Application of Nondiscrimination Rules to Fully Insured Plans (pending)**
  - May have a significant impact on certain employers
  - Penalty for noncompliance is imposed on the employer
- **Limits on Cost-sharing / Deductibles / OOP Maximum**

# THE NEW WORLD ORDER IN 2014

- **Individual Mandate**
  - To steer employees and others to obtain available affordable coverage
- **Shared Responsibility Rules**
  - To steer large employers to offer affordable coverage to full-time employees
- **Health Care Exchanges**
  - To make affordable coverage available to individuals lacking coverage and to small employers

# EXCHANGES AND MANDATES

- **PA To Have Federally-facilitated Exchange**
- **Benchmark Plan:**
  - Aetna Health PA POS Cost Sharing 34 / 1500 Deductible
- **Health Care Exchanges**
  - Tax credits / subsidies to purchase coverage on HCE available to individuals who:
    - Have household incomes from 100 - 400% of federal poverty line (FPL) and
    - Don't have affordable coverage available through employer-sponsored plan



# EXCHANGES AND MANDATES

- **Penalty If No Coverage**
  - Amounts range from greater of 1% of gross household income or \$95/person in 2014 up to 2.5% or \$695/person in 2016
- **Small Employers**
  - Employers with 100 [50 in PA] or fewer employees may also obtain coverage via exchanges
  - Open to larger employers in 2017

# A QUICK LOOK AT FPL (2013 DATA)

<u>Family Size</u>	<u>100% FPL</u>	<u>400% FPL</u>
1	\$11,490	\$45,960
2	\$15,510	\$62,040
3	\$19,530	\$78,120
4	\$23,550	\$94,200
5	\$27,570	\$110,280

- **Federal Premium Subsidy Varies by Income**
  - *E.g.*, individuals earning 133% of FPL will pay no more than 2% of income for QHP on exchange; those earning 400% will pay no more than 9.5% of income for QHP

# NOTICE OF HEALTH CARE EXCHANGES

- **Implementation delayed – now October 1, 2013**
- **Department of Labor Technical Release No. 2013-02**
  - Must provide notice of coverage options to employees, regardless of enrollment status or of employment classification (e.g., full-time)
  - Model notice
- **Current employees must get Notice by October 1; new hires within 14 days of hire**

# SHARED RESPONSIBILITY RULE FOR EMPLOYERS

- **Effective January 1, 2014:**
  - Large employers (50 or more FTEs)
  - Must extend "offer of coverage" under an "eligible employer sponsored plan"
  - To "full-time employees" and "dependents"
  - Coverage must be "minimum essential coverage" (MEC) that is "affordable" and of "minimum value"
  - FT employees not offered coverage may qualify for tax credit/subsidy to buy coverage on exchange
  - Should this occur, employer issued "Section 1411 certification" triggering "shared responsibility" penalty
  - Amount of penalty depends on whether (a) ER failed to offer MEC or (b) MEC offered but not affordable to EE

# COMPLIANCE DATE FOR FISCAL YEAR PLANS?

- **Shared Responsibility Compliance May Be Deferred to First Day of 2014 Fiscal Plan Year IF:**
  1. ER has at least  $\frac{1}{4}$  of EEs covered under 1 or more FY plans with same plan year as of 12/27/12 or offered coverage under those plans to  $\frac{1}{3}$  or more EEs during most recent open enrollment period before 12/27/12; and
  2. Those EEs are not eligible for calendar year plan offered by ER; and
  3. PPACA compliant coverage is offered on first day of 2014 plan year

# FULL-TIME EMPLOYEES

- **Employee = "Common law standard"**
  - Employer controls how work is done
  - Control group rules apply
- **FT v. FTE distinction**
  - FTE (50 FTEs) = 130 hours of service/month
  - FT (pay or play) = 30 hours of service/week
  - "Hours of service" include all hours for which EE is paid, or entitled to pay (vacation, holiday, illness, incapacity, layoff, jury duty, military duty or leave of absence)
  - ERISA Section 510 Concern?

# **FT OR NOT?: VARIABLE HOUR EMPLOYEES**

- **Standard Measurement Period (SMP) for Ongoing EEs**
  - ER chooses SMP of 3 - 12 months in duration
  - Must be applied consistently among EEs in same "category"
- **FT Determination Remains in Effect thru "Stability Period"**
  - Stability Period = at least 6 months and no shorter than SMP
- **Changes in Job or Hours during Stability Period Do Not Impact Status**

# EE CATEGORIES FOR APPLYING MEASUREMENT PERIODS

- **Categories**
  - Salaried v. Hourly
  - EEs whose primary workplaces are in different states
  - Collectively bargained EEs v. Not
  - Different bargaining units



# SPECIAL UNPAID LEAVE

- **When calculating average hours of service for ongoing EEs, periods of "special unpaid leave" are excluded (or treated as hours of service at avg. rate)**
  - Unpaid FMLA leave
  - Unpaid USERRA leave (military)
  - Unpaid jury duty leave
  - Employment break periods
    - \*\*Educational organizations

# BREAK IN SERVICE RULES

- **When may EE returning from period of absence be treated as a new hire?**
  - Break in service if no hours of service for 26 consecutive weeks
  - Rule of Parity: Break in service if EE has no hours of service for a period of at least 4 weeks and absence is longer than EE's previous period of employment
  - If returning EE treated as continuing EE, current stability period FT/PT status applies

# VARIABLE HOUR NEW HIRES

- **Variable Hour/Seasonal EEs v. Non-Variable Hour EEs**
  - Non-variable Hour EEs: if EE expected to be FT on start date, coverage must be offered (subject to 90-day maximum waiting period)
  - If new variable hour EE changes job/hours and is now expected to be FT → 90-day waiting period applies
    - Unless IMP results in coverage sooner

# MEASUREMENT OF VARIABLE HOUR NEW HIRES

- **Initial Measurement Period (IMP)**
  - Determined by ER
  - Duration of 3 - 12 months
  - Begins any date b/t EE start date and first day of following month
  - Stability period rules apply (min. 6 months; no shorter than IMP)
- **IMP (new EEs) v. SMP (ongoing EEs)**

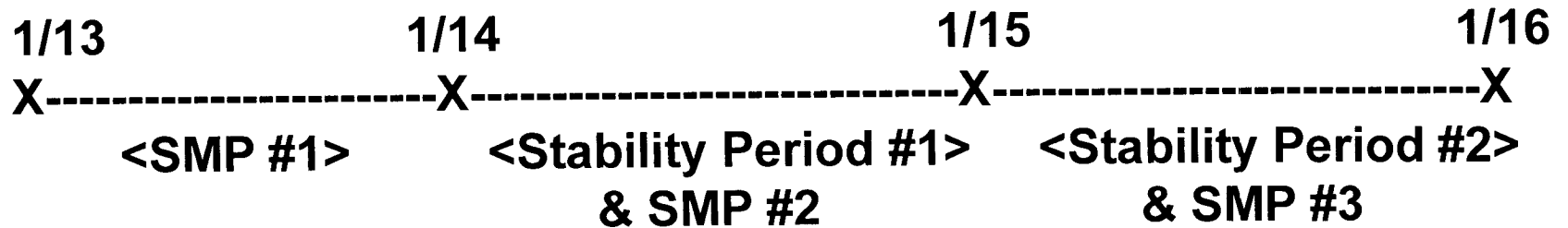
# NON-HOURLY EMPLOYEES AND FULL-TIME DETERMINATION

## ▪ Available Methods

- Use actual hours of service from payroll records
- Use a days-worked equivalency of 8 hours per day
- Use a weeks-worked equivalency of 40 hours per week
- Note: May not use a method that "substantially understates" actual hours

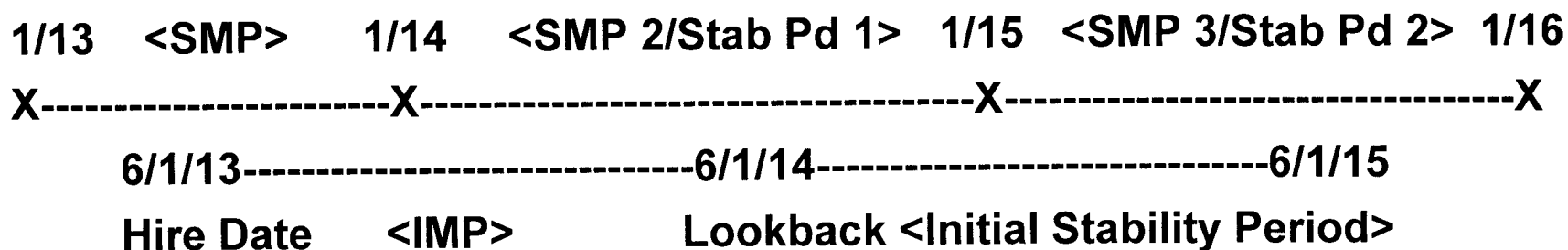
# FULL-TIME DETERMINATIONS (ONGOING VARIABLE HOUR EEs)

## 1. Calendar Year Plan with 12-month SMP



- EE employed average of 30+ "hours of service" per week through SMP #1 is deemed FT through Stability Period #1
- EE deemed FT during Stability Period #1 who changes to PT status, nevertheless, is deemed FT through remainder of Stability Period #1
  - Reverse also true if change from PT to FT

## 2. Newly Hired Variable Hourly EEs



- EE averaging 30+ "hours of service" per week through IMP is deemed FT through Stability Period.
- Must measure hours at end of SMP 2 (1/15). If EE averaged 30+ "hours of service" per week through SMP 2, deemed FT through Stability Period 2, regardless of IMP hours.
  - Reverse NOT true: If EE is FT during IMP, remains FT through Stability Period, even if not FT during SMP 2. In such case, EE loses FT status at end of Initial Stability Period.
- PT variable hour EE whose hours are increased to average 30 hours during IMP may be subject to 90-day waiting period applied on date of change.

# ADMINISTRATIVE PERIOD

- **Period to "do the math" between measurement / stability periods**
  - May neither reduce nor lengthen measurement or stability periods
  - May not create gaps in coverage
  - May not exceed 90 days (including all days not within IMP falling between start date and offer of coverage)
  - Combined IMP + Administrative Period max = last day of 1<sup>st</sup> month starting on / after 1<sup>st</sup> anniversary of EE start date



# HOW ADMINISTRATIVE PERIOD WORKS

**SMP #1: 10/15/12 – 10/14/13**

**Admin Period #1: 10/15/13 – 12/31/13\***

**Stability Period #1: 1/1/14 - 12/31/14**

**SMP #2: 10/15/13 – 10/14/14**

**Admin Period #2: 10/15/14 – 12/31/14**

**Stability Period #2: 1/1/15 - 12/31/15**

**SMP #3: 10/15/14 – 10/14/15**

**Admin Period #3: 10/15/15 – 12/31/15**

**Stability Period #3: 1/1/16 - 12/31/16**

# WHO IS A DEPENDENT?

- **Definition of "Dependent":**
  - "Child (as defined in section 152) ... of an employee who has not attained age 26"
  - "Dependent does not include spouse of EE"
- **Implication:**
  - No penalty if spousal coverage is not offered or if it is not affordable

# MINIMUM ESSENTIAL COVERAGE

- **Lack of Guidance**

- Treasury has not yet proposed regulations defining "minimum essential coverage"
- Treasury likely to be mindful of "essential health benefits," which must be included in health plans offered on exchanges
- HIPAA-excepted benefits are not treated as minimum essential coverage
- Do "skinny plans" suffice?

# MINIMUM VALUE

- **Coverage Must Be of "Minimum Value"**
  - Plan does not offer minimum value if plan's share of total allowed costs of benefits provided under plan is  $< 60\%$  of such costs
  - Determination of minimum value is a measure of cost-sharing under plan with respect to essential health benefits provided to the "MV Standard Population"
  - Review (1) deductibles, (2) co-insurance, and (3) maximum OOP

# MINIMUM VALUE

- **3 Possible Approaches for Determining Minimum Value**
  - Minimum value calculator
  - Design-based safe harbor checklists
  - Appropriate certification by actuary
    - Use when employer-sponsored plan has "nonstandard" features such as quantitative limits (e.g., limits on the number of physician visits or covered days in the hospital)
  - "Appropriate portion" of ER contributions to HRAs and HSAs can be counted

# **PROPOSED REGULATIONS ON MINIMUM VALUE**

- **Self-insured plans and large plans are not required to cover every EHB category or conform to the EHB benchmarks for qualified health plans**
- **A small group plan may satisfy the minimum value requirement by offering a "bronze level" plan**
- **HSA – All employer contributions for the current year may be counted**
- **HRA – All employer contributions for the current year to an "integrated" HRA that can only be used for cost-sharing may be counted**

# **PROPOSED REGULATIONS ON MINIMUM VALUE**

- **Wellness program cost-sharing reductions**
  - Rewards are not taken into account except with respect to nondiscriminatory programs related to tobacco use
- **Three proposed safe harbors**
- **No de minimis exception to the 60% requirement**

# AFFORDABILITY

- **MEC Offering Minimum Value Must Be "Affordable" or Employer Subject to Penalties**
  - To be considered "affordable" EE's share of premium for ER's lowest cost self-only coverage cannot exceed 9.5% of EE's "adjusted household income" for taxable year
  - EE may still qualify for tax credit/subsidy if premium charge exceeds 9.5% of "gross household income"
- **3 Safe Harbors in Proposed Regs**
  - ER may use different safe harbors for different categories of EEs provided categories are reasonable and safe harbors used on uniform and consistent basis for every EE in category



# W-2 AFFORDABILITY SAFE HARBOR

- Form W-2 Safe Harbor
  - Required employee contribution for self-only coverage for lowest cost option that provides minimum value must not exceed 9.5% of the employee's Form W-2 wages (Box 1) for that calendar year
  - Caveat
    - Employee's required contribution (amount or percentage) must remain consistent during the calendar year (or plan year)

# W-2 AFFORDABILITY SAFE HARBOR

- **Considerations:**
  - Serves as a year-end "lookback" test, unless premiums are set as a percentage of W-2 wages
  - Box 1 W-2 wages do not include 401(k), 403(b) and 125 salary reductions
  - W-2 wages are adjusted to take into account situations where period of coverage is less than entire year

# RATE OF PAY AFFORDABILITY SAFE HARBOR

- Rate of Pay Safe Harbor (Look Forward)
  - ER may take hourly rate of pay for each eligible hourly EE and multiply by 130 to determine affordability based on monthly wage
    - Affordable coverage requires a contribution of  $\leq 9.5\%$  of monthly wage
  - Caveat
    - Only applicable if ER "does not reduce" wages/salaries during calendar year

# FEDERAL POVERTY LEVEL AFFORDABILITY SAFE HARBOR

- **FPL Safe Harbor**
  - ER may rely on a design-based safe harbor that will be satisfied if the self-only cost of coverage does not exceed 9.5% of the most recently published FPL for a single individual
    - 2012: \$11,170

# **PROPOSED REGULATIONS ON AFFORDABILITY**

- **Current year employer contributions to an integrated HRA that can be used for either premiums or for cost-sharing may be taken into account to determine affordability**
- **Employer contributions to HSAs have no impact because they cannot be used to pay premiums**

# PROPOSED REGULATIONS ON AFFORDABILITY

- **Wellness program cost-sharing reductions**
  - Rewards are not taken into account for purposes of determining affordability except with respect to nondiscriminatory programs related to tobacco use
  - Transitional rule for 2014 – No employer penalty if the coverage would have been affordable taking into account any nondiscriminatory wellness program

# SHARED RESPONSIBILITY PENALTIES

- **AKA: "Assessable Payments" or "Play Or Pay"**
- **"No Coverage" Penalty—4980H(a)**
  - Triggered if ER fails to offer FT employee ability to enroll in MEC and employee purchases tax-subsidized coverage on HCE
- **"Unaffordable Coverage" Penalty—4980H(b)**
  - Triggered if ER offers MEC that is not affordable or not "minimum value" and employee purchases tax-subsidized coverage on HCE
- **ER Notified of Penalty via Section 1141 Certification**

# **NO COVERAGE PENALTY: \$2000 x [# FT EMPLOYEES – 30]**

- **Penalty Based on Monthly Compliance**
  - One month of non-compliance = 1/12 of penalty
- **Triggering Penalty**
  - One EE can trigger penalty by purchasing subsidized coverage on HCE (if Section 1411 certification is issued)
- **Margin for Error**
  - ERs who have offered coverage to all but 5% of FT employees (or, if greater, 5 FT employees) for a calendar month will be deemed in compliance for that month
  - BUT does not excuse from unaffordability penalty
- **Control Group Situations**
  - 30 EE credit is allocated



# UNAFFORDABILITY PENALTY: \$3000 x # OF EMPLOYEES ON HCE

- **Certain EEs Cannot Trigger Penalty:**
  - EEs in first 90 days of employment
  - Variable hour/seasonal EEs during IMP
  - EEs offered MEC that was affordable/minimum value
    - **NOTE**: Unaffordability penalty amount cannot exceed "no coverage" penalty
    - **NOTE**: EEs excluded from coverage under 5% grace for "no coverage" penalty can trigger unaffordability penalty

# **THE "BIG UNKNOWNNS"**

- **Will Federal Exchange be Ready by 2014?**
- **Is Individual Mandate Sufficient to Drive "Young Invincibles" to Exchange?**
- **What will Exchange Plans Cost?**
- **Will "Skinny Plans" Satisfy MEC?**
- **Nondiscrimination, MEC, Automatic Enrollment**
- **Political Roadblocks / Saviors**

# **WHAT TO WATCH FOR**

- **PPACA-compliant Employer Plan Options (No Spouse / Minimum Cost)**
- **Employee Premium Contributions Based on % of Income?**
- **Dependent Premium Surcharge Based on Availability of Other Coverage?**
- **Many 29-hour Employees and 49-Employee Employers?**
- **Time / Cost for Determining / Defending Penalty Assessments**

**QUESTIONS?**



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