HealthTrust

Affordable Care Act Update

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Agenda

- Recent ACA Legislation, Case Law and Guidance
- Employer Shared Responsibility (ESR) for 2016
  - No more 2015 Transition Relief
  - Opt-Out Arrangements and "Affordability"
- CY 2016 IRS Reporting due in early 2017
- ACA Documentation Checklist
- Excise Tax on Certain High-Cost Plans ("Cadillac Tax") (2020)

ACA Update

Recent Legislation, Case Law and Guidance

Recent ACA Legislation

12/18/2015 Budget/Tax Legislation ACA Changes

- **Cadillac Tax Amendments**
  - **Two-year delay of effective date (now 1/1/2020)**
  - Now deductible for taxable employers
  - Reconsider benchmarks for age and gender adjustments to thresholds
- One-year moratorium (2017) on Health Insurance Provider Fee
- Two-year moratorium (2016 and 2017) on Medical Device Excise Tax
- Automatic Enrollment Requirement Repealed

Obama FY2017 Budget Proposal

- Regionalization of Cadillac Tax thresholds based on Gold Level Exchange plans

ACA Repeal Efforts Continue

- 1/6/2016 Congress sent President a bill repealing core elements of the ACA (first time significant repeal effort passed both House and Senate)
- Obama vetoed bill on 1/8/2016

Recent ACA Case Law

- **King v. Burwell - US Supreme Court** decided in **June 2015** (6-3 vote) that ACA premium tax credits and cost sharing subsidies for low/moderate income individuals **are available on Federally Facilitated Marketplace/Exchanges** (as well as State established Exchanges)

- **US House of Representatives v. Burwell – Federal District Court for D.C.** decided **May 12, 2016** that Congress authorized *but did not appropriate monies* for the cost sharing subsidies on the Marketplace/Exchanges
  - Subsidies can continue pending appeal (Federal Government has appealed)
  - Legislative v. Executive Branch dispute over spending powers

Recent ACA Case Law

- **Health Republic Ins. Co. v. United States** (Federal Claims Court, No. 16-259, filed 2/24/16), a case brought by an Oregon health insurance cooperative.
  - Alleges that federal government owes unpaid risk corridor payments to insurers. One of at least 8 cases that have been filed by insurers on this issue.
  - The risk corridor program is 1 of 3 premium stabilization programs created by the ACA to compensate insurers for assuming greater-than-expected risks.
  - Due to funding constraints, only a fraction of the risk corridor payments have been made; Co-ops' financial losses have forced many of them out of business.
  - Of the 23 Co-ops that were established under the ACA, only 10 continue to write individual health insurance policies.

Recent IRS Guidance

Final ACA Regulations on Nondiscrimination in Coverage

ACA Section 1557 Final Rule on Nondiscrimination in Health Programs and Activities issued 5/18/2016 (81 Federal Register p. 31376)

- Prohibits "Covered Entities" from discriminating in provision of health services and coverage on the basis of race, color, national origin, age, disability, or sex, **including discrimination based on gender identity**
- **"Covered Entity**" is an entity that operates a Health Program or Activity, any part of which receives federal funding from HHS (e.g. health insurers, group health plans, and healthcare providers.)
- **"Covered Entity**" also may include employers that either:
  - Maintain a group health plan that receives HHS funding (such as a retiree plan that receives CMS retiree drug subsidy payments) or
  - Operate a health program that receives HHS funding (such as school districts that receive Medicare or Medicaid funds)
- Regulations prohibit health plans from categorically excluding or limiting coverage for all health services related to gender transition; also impose notice, language access and other requirements upon covered entities
- Although HealthTrust is not a "Covered Entity", we are removing current exclusion in our medical plan for gender transition services, effective for 2017 Plan Years

Recent IRS Guidance

IRS Notice 2015-87 – Additional Guidance on Various ACA Items

- HRAs and employer premium reimbursement plans (Q&As 1-6)
  - Rules for integrated HRA and stand-alone HRAs
- "Affordability" of employer health coverage for purposes of ESR and Individual Mandate Penalties and Premium Tax Credits on Exchange (Q&As 7-12)
  - Impact of HRA contributions, Health flex contributions and Opt-Out payments (AGRIP provided comments)
  - Adjustments to 9.5% of income affordability thresholds (9.56% for 2015 plan year; 9.66% for 2016 plan year)
- Adjustments to ESR penalty amounts (Q&A 13)
  - $2,000 "Offer Penalty" is $2,080 for 2015 and $2,160 for 2016
  - $3,000 "Affordability Penalty" is $3,120 for 2015 and $3,240 for 2016
- "*Clarification*" of rules for Government Entities (Q&As 18-19)
  - Aggregation rules in determining ALE Status – "reasonable good faith interpretation"
  - Separate IRS Reporting by EIN
- Health FSA $500 carryover rules and application of COBRA (Q&As 21-25)

Recent IRS Guidance

2016 Proposed Regulations

- **Proposed Rule on Health Insurance Premium Tax Credits issued 7/8/2016 (81 Federal Register p. 44557)**
  - Provides further guidance on the impact of Opt-Out Arrangements on determining Employee Required Contribution amount and "Affordability" for purposes of Employer Shared Responsibility penalties and IRS Reporting
- **Proposed Rule on IRS Reporting Issues under IRC Section 6055 issued 8/2/2016 (81 Federal Register p. 50671)**
  - Additional guidance and clarifications on IRS Reporting of Minimum Essential Coverage
  - SSN Solicitation Rules and "Reasonable Cause" exception/Waiver of Penalties for Missing and Incorrect SSNs

IRS Revenue Procedure 2016-55 – 2017 COLA Adjustments for Health FSA

- **Maximum voluntary employee salary reduction contribution to Health FSA adjusted to $2,600 beginning in 2017** (plan documents may need to be amended to allow for increased maximum)

Other Recent ACA News

- **2016 Marketplace/Exchange Issues**
  - 2016 Enrollment below expectations nationwide (12 M overall, 90K in NH including 42K Medicaid) due in part to difficulty enrolling young and healthy population
  - Adverse enrollment and claims experience resulting in average rate increases for 2017 on Federal Exchanges nationwide of 22% for benchmark Silver plan nationwide (range from -4% to 145%, with NH at 2%)
  - Premiums and out of pocket costs unaffordable for many low/moderate income despite over 80% of enrollees nationwide (67% in NH) qualifying for federal subsidies/credits
  - Major insurers (e.g. United Healthcare; Aetna) have begun exiting Exchanges due to significant losses from sick and late enrollees causing adverse selection; Maine Community Health Options will not offer plans on NH Exchange in 2017
  - More than to $1.4 M people will lose their current ACA plan for 2017
  - **CMS/HHS began providing Notices to Employers in Spring 2016 about employees qualifying for advance premium tax credits on Federal Marketplaces/Exchanges (state-based exchanges may have their own notifications) –** different from IRS penalty notices

ACA Update

Employer Shared Responsibility (ESR) for 2016

Employer Shared Responsibility (ESR) Penalties 2016 Overview

- **For 2016 plan years, "Large Employers" (50 or more FTE employees)** may be subject to penalties unless the employer:
  - (a) **Offers** group health plan coverage to "**substantially all**" **(at least 95%)** of its "**Full-Time Employees**"(those averaging 30 hours or more per week) and their dependents; and
  - (b) the coverage is both "**affordable**" and provides "**minimum value**"
- Penalties could apply if one affected Full-Time Employee **purchases coverage from an Exchange and qualifies for a premium tax credit or subsidy**

ESR Rule Changes for ALEs for 2016 Plan Year

	2015 Plan Years*	2016 Plan Years
Transition Relief (50-99 FTEs) – ALE Status Threshold	**YES** **100 or more FTEs**	**NO** **50 or more FTEs**
Applicable Large Employer (ALE) Test	**6 Months**	**Full 12 months of 2015**
(a) Penalty - Offers group health plan coverage to **"substantially all"** of its "Full-Time Employees"	Must Offer MEC to **70%** of Full-Time Employees **$2,080** x ALL FT Emps **(-80)**	Must Offer MEC to **95%** of Full-Time Employees **$2,160** x ALL FT Emps **(-30)**

**2015 Plan Year Transition Relief applies through 6/30/16 for July Plan Year groups*

ESR "No-Offer Penalty"

a. Penalty for Not *Offering* Coverage ("Play or Pay")

- If coverage is not offered to "Substantially All" (at least **70%** for 2015 PY*, **95%** for 2016 PY and beyond) Full-Time Employees (and their dependents) and one Full-Time Employee obtains Exchange coverage and qualifies for a tax credit,
- Large Employer will owe a **penalty of $2,000 per year*** (assessed on a monthly basis = $167/ month) times total number of Full-Time Employees (**minus 80** for 2015 PY*, **minus 30** for 2016 PY)

**2015 Plan Year Transition Relief applies through 6/30/16 for July Plan Year groups*

**** Penalty amount is adjusted annually beginning for 2015.***
For 2015 the penalty is $2,080 ($173.33 per month) per year.
For 2016, the penalty is $2,160 ($180 per month).

ESR Penalty if Coverage is Not "Affordable"

b. Penalty for not offering "*Affordable" or "Minimum Value"* Coverage

- If ALE **offers** coverage to "Substantially All" (at least 70% for 2015 PY, 95% for 2016 PY and beyond) Full-Time Employees, **but**
  - the coverage is either not "Affordable" or does not provide "Minimum Value", **and**
  - a Full-Time Employee obtains Exchange coverage and qualifies for a tax credit or subsidy, **then**
- ALE will owe a **penalty*of $3,000 per year*** (assessed on a monthly basis) for each such Full-Time Employee
  - This penalty is assessed **only** with respect to each Full-Time Employee who obtains subsidized Exchange coverage *(not all Full-Time Employees)* and may not exceed the maximum "No-Offer Penalty" applicable to employer

**2015 Plan Year Transition Relief applies through 6/30/16 for July Plan Year groups with 50-99 FTEs*

**** Penalty amount is adjusted annually beginning for 2015.***
For 2015 the annual penalty is $3,120 ($260 per month).
For 2016 the annual penalty is $3,240 ($270 per month).

ESR Penalty if Coverage is Not "Affordable"

- **Affordable** = **the employee's contribution for the employer's lowest cost single (employee-only) coverage does not exceed 9.5%* of the employee's household income** (if exceeds 9.5%*, then not affordable)

  3 Safe Harbors in determining the **affordability** of employer coverage; employer can use 9.5%* of

  - **Employee's W-2:** Box 1 for year
  - **Employee's Rate of Pay:** Monthly salary or hourly rate times 130 hours, or
  - **Federal Poverty Line (FPL):** calculated using current affordability percentage times the applicable FPL for a single individual for that plan year.

*As adjusted for inflation - 9.56% for 2015 PY; 9.66% for 2016 PY.

Opt-Out Arrangements & Affordability

- **IRS Notice 2015-87, Q&A-9 and IRS Proposed Regulations on Premium Tax Credits issued 7/8/2016 (81 FR 44557) address impact of Opt-Out Payments on determining Employee Required Contribution amount and "Affordability"**
  - **"Unconditional" Opt-Out Arrangement -** Opt-Out payment is conditioned solely on an employee declining employer's coverage.
    - Amount of **Unconditional Opt-Out Payment** made available will increase an Employee's Required Contribution in determining "Affordability" for purposes of large employer ESR Penalties and IRS Reporting
    - Opt-Out amount will be included regardless of whether the employee elects the Opt-Out Payment or enrolls in the employer plan

Contact your attorney or tax advisor for guidance

Opt-Out Arrangements & Affordability

- **"Conditional" Opt-Out Arrangement** - Opt-Out payment **is** conditioned on the employee **not only declining the employer's coverage**, **but also satisfying additional condition** (such as having other group coverage through a spouse or otherwise).
  - Proposed Regulations state that payment will count toward Employee's Required Contribution **unless** Conditional Opt-Out is considered an "**Eligible Opt-Out Arrangement"** that meets certain criteria
  - To be an **"Eligible Opt-Out Arrangement",** the Opt-Out payment must be conditioned on
    - Employee providing reasonable evidence (which may include an attestation) that the employee and all members of the "employee's expected tax family" will have other group coverage (not individual insurance through Exchange or otherwise)
    - Attestation (or other evidence) must be obtained annually

Contact your attorney or tax advisor for guidance

Opt-Out Arrangements & Affordability

Effective Dates

- **New rules generally will apply for purposes of ESR Affordability Penalty and IRS Reporting only for periods after final regulations are issued (not before 2017 Plan Year).**
  - **Exception**: **If employer adopts a new Unconditional Opt-Out Arrangement after 12/16/2015,** Opt-Out amounts offered or provided will need to be included in the Employee's Required Contribution for periods after 12/16/2015 (a "non-relief eligible arrangement")
- **Special Rule for CBAs in effect prior to 12/16/2015.**
  - IRS proposes that new rules will not apply to Opt-Out Arrangements (Conditional or Unconditional) contained in pre-12/16/2015 CBAs until the later of (i) the first plan year following expiration of CBA (without extensions) or (ii) applicability date of final regulations

Contact your attorney or tax advisor for guidance

Opt-Out Example

Employer offers medical plan coverage with an **Employee Required Contribution of $75 per month** for single coverage. Employer also offers an **"Unconditional" Opt-Out** Payment of $100 per month in taxable wages to an employee who declines employer plan coverage.

IRS intends (after final regulations are issued) to treat this **Unconditional Arrangement** as requiring an employee contribution of **$175 per month** when calculating Affordability for ESR penalty and IRS Reporting purposes. This is because an employee electing coverage under the health plan must forgo $100 per month in compensation in addition to the $75 per month stated premium cost for single coverage.

Conclusion

- **Provided an employer does not adopt a new "Unconditional" Opt-Out Arrangement after 12/16/2015, any Opt-Out Payments do not need to be included in the calculation of affordability, at least until final regulations are issued (not before 2017 Plan Year).**
- **Employer should review existing arrangements to see if "Eligible Opt-Out Arrangement" criteria are met**

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IRS Reporting for CY 2016

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Overview of IRS Reporting Requirements

Minimum Essential Coverage (MEC) Reporting (IRC Section 6055)
Offers of Health Insurance Coverage by Employers (IRC Section 6056)

Minimum Essential Coverage (MEC)	Intent is to help IRS administer and enforce the Individual Mandate by reporting MEC coverage for each enrolled individual by month
ALEs must report additional information	ALEs must also report information about offers and cost of coverage for FT Employees by month for purposes of ESR compliance and Marketplace tax credit/subsidy eligibility for individuals
What type of coverage and offers are reported?	Major medical coverage provided by employer through a group health plan (MEC) to employees, under 65 retirees and COBRA Beneficiaries AND offers of coverage to Full-Time Employees
What coverage is NOT reported?	Excepted Benefits (i.e. dental plans, Health FSAs), Medicomp, integrated HRAs and HSAs
Penalties for not reporting	**Potential Penalties** if fail to timely file accurate and complete forms; 2015 "good faith" compliance exception no longer applies for 2016

CY2016 IRS Reporting Deadlines

Reporting Dates in 2017

Form 1095-B or Form 1095-C must be furnished to each enrolled employee or other "Responsible Individual" by January 31, 2017

or

Form 1094-B or 1094-C and copies of Form 1095s must be filed with the IRS by

February 28, 2017 (if filing on Paper)

or

March 31, 2017 (if filing Electronically)

IRS Reporting Penalties

Page 6 of Instructions for Forms 1094-C and 1095-C

- **Failure to timely file a correct information return (Form 1094-C)**
  - **$260 for each statement for which the failure occurs**
- **Failure to timely furnish correct statements (Form 1095-Cs) to employee/responsible individuals**
  - **$260 for each statement for which the failure occurs**
- **Waiver of Penalties may apply if the failure was due to reasonable cause and not willful neglect**
  - **"Reasonable Cause" = If acted responsibly and failure was due to significant mitigating factors or events beyond the reporting entity's control**
- **"Good Faith" exception to penalties for CY 2015 reporting no longer applies for CY 2016**

IRS Reporting Penalties – Missing SSNs

"Reasonable Cause" and Waiver of Penalties for Missing SSNs

- In the case of a **missing SSN**, reporting entity will be treated as acting responsibly if it makes initial solicitation and two annual solicitations in accordance with IRS rules -
  - **Initial solicitation may be made on enrollment application**
  - **First "annual" solicitation must be made within 75 days* after initial enrollment application is received *(previously was by 12/31 of enrollment year)***

    ** NEW rule under Proposed Regulations Section 1.6055-1(h) issued 8/2/2016. See 81 Federal Register p. 50671 at https://www.gpo.gov/fdsys/pkg/FR-2016-08-02/pdf/2016-18100.pdf*
  - **Second "annual" solicitation (third solicitation overall) must be made by 12/31 of the year following the year the initial enrollment application is received**
- *For more information on timing and manner of soliciting SSNs, see Prop. Regs. 1.6055-1 (h) and IRS Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs.*

ACA Update

Document

Document

Document!

Maintain Records

- ☑ Document test confirming Small Employer v. Large Employer status
- ☑ Large Employers - Track and maintain records of Full-Time employee status determinations
  - ☑ Monthly Measurement Method v. Look-Back Measurement Method
  - ☑ For variable hour employees – measurement periods, stability periods, hours and offers of coverage
  - ☑ Payroll/timesheet records of hours of service and employee contribution schedules
- ☑ Keep copies of enrollment forms and materials including opt-out elections if applicable
- ☑ Confirm proper collection of dependent SSNs based on IRS rules
  - ☑ 3 separate requests (an initial request and two "annual" requests) in order to avoid IRS penalties
- ☑ Keep backup documentation on covered months for each enrollee and dependent (MEC report or other source)
- ☑ Keep copies of 1094s and 1095s for at least 3 years, including any corrections

ACA Update

Excise Tax on High-Cost Plans
"Cadillac Tax" ~~2018~~ (2020)

Excise Tax on High-Cost Plans "Cadillac Tax" 2018 (2020)

- **IRC Section 4980I - Excise Tax on High-Cost Employer-Sponsored Health Coverage** (**aka "Cadillac Tax**")
  - **Postponed two-years to 1/1/2020 by Dec 2015 Budget Legislation**
  - Applies to plans of **all size employers** (large and small) with respect to coverage of "**employees**"
  - "**Employee**" includes a former employee (retirees and COBRA beneficiaries), surviving spouse, or other primary insured individual
  - Expressly applies to plans of **governmental employers**
  - Tax will be **calculated on a monthly basis** per employee/retiree/COBRA beneficiary; taxable period is Calendar Year, not Plan Year
- **No regulations to date** but IRS issued two notices during 2015
  - **IRS Notice 2015-16 issued 2/23/2015**
  - **IRS Notice 2015-52 issued 7/30/2015**

Excise Tax on High-Cost Plans "Cadillac Tax" 2018 (2020)

What is the Excise Tax?

- **40% tax** on the **"Excess Benefit"** of high cost employer sponsored coverage for employees and former employees (retirees)
- "**Excess Benefit**" is the **total aggregate cost of "applicable coverage"** for each covered employee/retiree above the following annual per employee statutory limits (2018) (actual tax will be monthly):
  - **Standard annual limit: $10,200** for single coverage/**$27,500** for other than single coverage (2-Person or Family)
  - **Higher limits: $11,850/$30,950** for early retirees (age 55-65) and **plans with majority** of employees in high-risk occupations (police and fire)
  - Initial 2018 limits may be **increased** based on **actual medical inflation from 2010 to 2018**, and per an **age and gender adjustment; starting in 2019 limits will be indexed for inflation (CPI), not medical trend**

Excise Tax on High-Cost Plans "Cadillac Tax" 2018 (2020)

What is "Cost" of "Applicable Coverage"?

- **"Cost" of "Applicable Coverage"** for employees and former employees includes:
  - **Primary medical plan coverage** – "**Cost**" includes **total premium** ***(both employer and employee contributions)***
  - **Health FSAs** – "**Cost**" includes **total of *employee salary reduction contributions and any additional amounts reimbursed from employer contributions***
  - **HSAs** – "**Cost**" includes **total of both *employer and employee salary reduction contributions*** – *but not employee "after-tax" contributions*
  - **HRAs -** "**Cost**" determination subject to further guidance (IRS has suggested three alternatives for comment, but clearly recognizes that it's wicked hard!)
  - *Should **not** include (i) cost of dental plan coverage or (ii) any costs attributable to the excise tax.*

Excise Tax on High-Cost Plans "Cadillac Tax" 2018 (2020)

Who is responsible to calculate the Excise Tax?

- **Employers** will be responsible to:
  - **Calculate** excess benefit subject to tax for each covered employee, retiree or COBRA beneficiary;
  - **Allocate** the tax among the coverage providers; and
  - **Report** to the IRS and the "coverage providers" the allocated taxable amounts

Who is responsible to pay the Excise Tax?

- Liability to pay tax is on "**Coverage Provider,**" which means
  - The insurer for fully insured group health plans
  - The employer for Health Savings Account (HSA) plan contributions
  - The "**person that administers the plan benefits**" for other employer sponsored group health plan coverage **(self-insured plans)**

Excise Tax on High-Cost Plans "Cadillac Tax" 2018 (2020)

"Coverage Provider" for self-insured plans is the **"person or entity that administers plan benefits"**

IRS Notice 2015-52 issued 7/30/2015, provides two possible alternatives for identifying the "person or entity that administers plan benefits". It could be the person or entity that either:

1. Is responsible for day-to-day functions related to administration of the plan, such as processing claims (TPA); or
2. Has ultimate authority or responsibility with respect to plan administration (could be HealthTrust or possibly the Employer)

If HealthTrust or TPA is liable to pay the tax, it will be charged back to Employers

QUESTIONS?

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