What's new in the Affordable Care Act

July 17, 2014

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Agenda

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- Recent updates for 2014 and beyond
- Employer's perspective
- Employer reimbursement of premiums paid for employee individual health coverage
- Health care taxes

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Recent updates for 2014 and beyond

Rules on waiting periods

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- Waiting periods limited to 90 days beginning with 2014 plan year
  - First of the month following 90 days not permissible
- Other eligibility conditions are permissible (unless designed to avoid compliance with 90-day limit)
  - Cumulative hours of service requirement cannot exceed 1,200 hours and must be one time only (not each year)
- Employers can use up to a 12-month measurement period to determine full-time status for variable hour employees
  - Coverage must be effective by 13 months from start date (plus remaining days in the month)

Notice of exchange/ Health Insurance Marketplace

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- Employers needed to provide exchange notices to current employees by Oct. 1, 2013 (and provide to new hires thereafter, within 14 days of DOH)
- COBRA notices now need to include exchange information

Limits on out-of-pocket expenses and cost sharing

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- Non-grandfathered group health plans subject to limits on cost sharing and out-of-pocket costs
- Out-of-pocket expenses may not exceed high deductible health plan limits
  - 2014: $6,350/$12,700
  - Apply to all non-grandfathered group health plans
- Limits indexed for inflation

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Recent updates for 2014 and beyond:
Individual mandate and exchanges/
Health Insurance Marketplace

Individual mandate

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- Effective Jan. 1, 2014
- Individuals must have “minimum essential coverage” (MEC) or pay a penalty
- Exceptions
  - Low income or hardship
  - Coverage is unaffordable
  - Religious exemption
  - Incarcerated
  - Member of Indian tribe or health care-sharing ministry
  - Short gap in coverage
  - Not lawfully present

Minimum essential coverage

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- Employer-sponsored coverage
  - Including COBRA and retiree coverage
- Individual coverage
- Medicare
- Medicaid
- Children's Health Insurance Program (CHIP) coverage
- Some veterans' health coverage
- TRICARE

Individual penalty amounts

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- Flat dollar amount or a percentage of income
  → whichever is greater
- Penalty amounts:
  - 2014 = $95 or 1 percent
  - 2015 = $325 or 2 percent
  - 2016 = $695 or 2.5 percent
- Family penalty limit:
  - 300 percent of the adult flat-dollar penalty or
  - Bronze-level exchange premium

Exchange/Health Insurance Marketplace

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- State options:
  - Establish state exchange
  - Establish partnership exchange with the Department of Health and Human Services (HHS)
  - Do nothing (HHS will set up federally facilitated exchange)
- State action:
  - 17 (and DC) state-based exchanges
  - 7 partnership exchanges
  - 26 defaulted to federal exchange

Exchange/Health Insurance Marketplace

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- Individuals and small employers can purchase coverage through an exchange
- Small Business Health Options Program (SHOP)
  - Small employers = up to 100 employees
  - Before 2016, states can define small employers as having up to 50 employees
- In 2017, states can allow employers of any size to purchase coverage through exchange
- Individuals and small employers can be eligible for tax credits/subsidized coverage (not available in private exchanges)

Qualified health plans

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- Must offer essential health benefits package
  - Provide essential benefits
  - Limit cost sharing
  - Provides bronze, silver, gold, or platinum coverage or catastrophic plan
- Metal levels
  - 60 percent to 90 percent of benefits
  - Allow consumers to compare plans

Exchange subsidies and tax credits

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- Individuals who **are not** offered employer coverage
  - Not eligible for government programs (like Medicaid)
  - Meet income requirements (less than 400 percent of federal poverty level); for 2014, 400 percent of federal poverty level is $46,680 for one person, $95,400 for a family of four
    - 133 percent to 400 percent of federal poverty level is a sliding scale of subsidies
- Individuals who **are** offered employer coverage
  - Not enrolled in employer's plan (enrollment = affordable)
  - Not eligible for government programs (like Medicaid)
  - Meet income requirements (less than 400 percent of federal poverty level)
  - **Employer's coverage is unaffordable (greater than 9.5 percent of income for single coverage) or not of minimum value (covers less than 60 percent of cost of benefits)**

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Recent updates for 2014 and beyond:

Determining large employer status for pay-or-play penalties

Applicable large employers

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- Applicable large employer (ALE):
  - Original definition: Average 50 or more full-time/full-time equivalent (FTE) employees in prior calendar year
  - For 2015: New “medium-sized” employers (defined in next slide)
- Common ownership rules
  - Controlled group rules apply
  - All employees taken into account
  - Liability and penalties apply separately to each controlled group member by tax ID number

Medium-sized employers (subset of ALEs)

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- Medium-sized employer transition relief was issued February 2014. Applicable to:
  - Groups that employ fewer than 100 full-time/full-time equivalent employees on business days during 2014
  - Groups that meet eligibility conditions
- These groups are *eligible* for another one-year delay of pay-or-play mandate. Groups must:
  - Qualify for delay
  - Request delay from IRS (not automatic)

Medium-sized employers (subset of ALEs)

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- Eligibility for transition relief:
  - Employers that change plan years after Feb. 9, 2014, to begin on a later calendar date, are not eligible for the delay.
  - Employers may not reduce workforce size or hours of service from Feb. 9, 2014, to Dec. 31, 2014, in order to qualify based on size.
    - Changes for bona fide business reasons permissible
  - Employers may not eliminate or materially reduce coverage offered as of Feb. 9, 2014, during maintenance coverage period.
  - Employers must certify that group meets all eligibility requirements.
    - Certification form expected to be part of final employer reporting requirements

Full-time employees

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With respect to a calendar month

An employee who is employed on average at least **30 hours of service per week**

130 hours of service in a calendar month = the monthly equivalent of 30 hours of service/week (30x52/12=130)

Full-time *equivalent* employees

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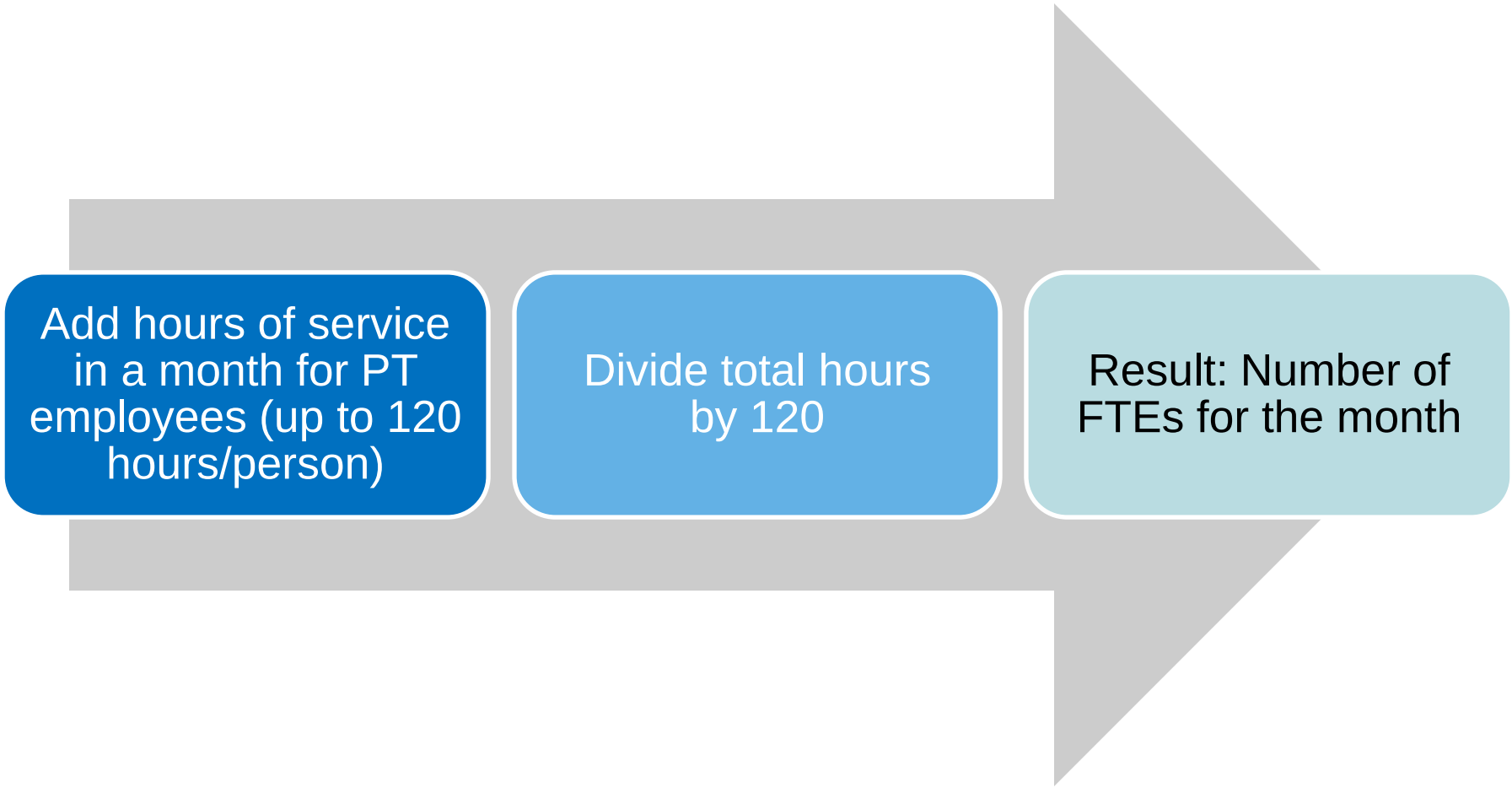

Counting employees

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1. Add full-time employees (including seasonal) for each calendar month in prior calendar year
2. Add FTEs (including seasonal) for each calendar month in prior calendar year
3. Add full-time employees and FTEs together for each month of prior calendar year
4. Add 12 monthly totals and divide by 12

* Special rule for 2015: employers can use six consecutive months in 2014

Special rules

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- Seasonal employees
  - An employer is not a large group if:
    1) the employer's workforce only exceeds 50 full-time employees for 120 days or less during the calendar year, and
    2) the employees in excess of 50 employed during that period were seasonal workers
- New companies
  - Calculation based on the average number of full-time employees the employer is "reasonably expected to employ" on business days in the current calendar year

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Recent updates for 2014 and beyond:
Providing coverage to full-time employees

Employer shared responsibility penalties

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- Large employers subject to pay-or-play rule
- Penalties may apply if the employer:
  - Fails to offer minimum essential coverage to 95 percent of full-time employees and dependents (percentage requirement phased in over 2 years)
    - 2015: must offer coverage to 70 percent of full-time employees
    - 2016 and beyond: offer coverage to 95 percent of full-time employees
  - Offers coverage that is not affordable or does not provide minimum value
- Penalties triggered if any full-time employee gets subsidized coverage through exchange

Employer penalties

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- Penalty A: employer failed to offer substantially all full-time employees and dependents opportunity to enroll in employer's plan
- Penalty B: employer plan is **unaffordable** or **not minimum value**

Employer penalty amounts

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- Penalty A: $2,000 per full-time employee, minus the first 30. (For 2015, groups with 100 or more full-time employees can reduce their full-time employee count by 80 when calculating the penalty.)
- Penalty B: $3,000 for each employee who receives subsidized coverage through an exchange.

Amounts shown are annual penalties. Penalties will be calculated on a monthly basis.

Employer reporting requirements

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- March 5, 2014, IRS issued final rules on reporting requirements. Section 6056 requires ALEs to:
  - File information returns with the IRS annually
  - Provide statements to **full-time** employees annually
- The final regulations apply for calendar years beginning after Dec. 31, 2014, not plan years.

Employer reporting requirements

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- Employers report to IRS info about health plan or that no plan is offered.
- Employers must provide 1095-C to full-time employees.

This info is needed for IRS to determine pay-or-play penalties and to also provide employees information needed when claiming a premium tax credit.

Employer reporting requirements

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Deadlines:

- Returns due Feb. 28 (March 31 if filed electronically*)
  - First return due Monday, March 1, 2016
- Employee statements due Jan. 31
  - First statements due Monday, Feb. 1, 2016
  - Electronic furnishing rules similar to W-2

*Electronic filing is required for all ALEs filing at least 250 returns under section 6056 during the calendar year. Only section 6056 returns are counted in applying the 250 return threshold, and each section 6056 return for a full-time employee is counted as a separate return.

Employer reporting requirements

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Pay-or-play transition relief:

> An ALE with fewer than 100 full-time employees must certify on its 2015 transmittal form that it meets the eligibility requirements. It's not automatic.

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Recent updates for 2014 and beyond:
Avoiding penalties

Affordability safe harbors

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- W-2 safe harbor
  - Measures employee's required contribution for single coverage against employee's W-2 wages
  - Coverage is affordable if cost is 9.5 percent or less of W-2 income
- Rate-of-pay safe harbor
  - Affordability based on employee's rate of pay
  - Employee's monthly contribution for single coverage is affordable if 9.5 percent (or lower) monthly wages
- Federal poverty level (FPL) safe harbor
  - Determines affordability based on FPL for single individual
  - Coverage is affordable if the employee's contribution for single coverage is 9.5 percent of that FPL (or lower)

Minimum value coverage

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- Minimum value measures cost sharing (similar to metal levels for qualified health plans)
- To provide minimum value, plan's share of total allowed costs of benefits provided under the plan must be at least 60 percent
  - Health reimbursement arrangement (HRA)/health savings account (HSA) amounts to be included
- Determining minimum value:
  - Minimum value calculator
  - Design-based safe harbor checklists
  - Appropriate certification by actuary

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Recent updates for 2014 and beyond:
Measuring full-time status

Safe harbor for variable hour/seasonal employees

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Standard measurement period

Counting hours of service (3-12 months)

Administrative period

Time for enrollment/disenrollment (Up to 90 days)

Stability period

Coverage provided (or not) – length depends on type of employee and whether FT or not

Ongoing employees: Safe harbor illustration

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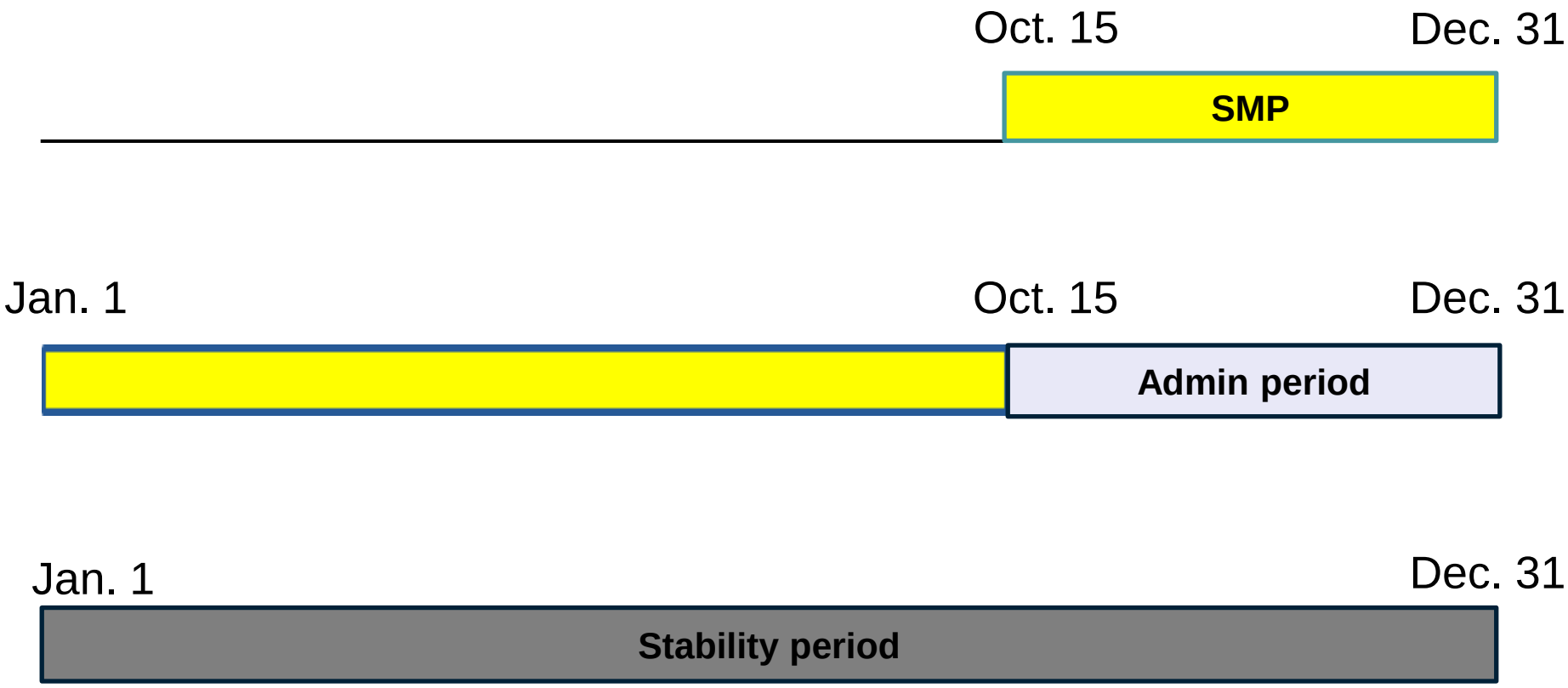

Non-calendar year plan years

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- Penalties will not apply right away on Jan. 1, 2015, if
  - plan is changed to avoid penalties at renewal
  - requirements are met
- No penalties for months of 2014 plan year that fall in calendar year 2015
- Employees must be offered affordable, minimum value coverage by first day of 2015 plan year
  - Plans will not need to make mid-year or advanced changes

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Recent updates for 2014 and beyond:
Still to come

Upcoming requirements

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Nondiscrimination rules

- Will apply to fully insured non-grandfathered plans
- Cannot discriminate in favor of highly compensated employees
- Effective after regulations issued

Automatic enrollment

- Will apply to large employers (> 200 full-time employees)
- Must automatically enroll/re-enroll employees in plan, provide notice, and allow them to opt out
- Effective after regulations issued

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Recent updates for 2014 and beyond:
Should you offer coverage?

Should you offer coverage?

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- Can an employer drop coverage but pay for individual coverage for employees pre-tax? NO!
- If employer increases salary to make up for lost benefits, employer FICA tax obligations will also increase.
- Penalties are not tax deductible.
- Penalties may be increased if more employers choose to pay them rather than provide coverage.

Government clearly wants employer-based system to remain.

Should you offer coverage?

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- If employees choose to remain uninsured:
  - Increased absenteeism and “presenteeism” may result
    - Work time wasted taking care of personal insurance needs
  - Worker compensation costs may go up for what are actually nonwork-related health costs
- Competitors may seek labor advantage by continuing to offer coverage

Should you offer coverage?

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- Coverage through the exchange may be more expensive due to the rating requirements
- Subsidies phase out rapidly and are significantly less for those at 3 to 4 times the poverty level than for those at 2 times and below
- Some employees may not be eligible for subsidies at all and will bear the cost entirely on their own

These employees may quit to seek employment elsewhere just to secure medical coverage.

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Employer’s perspective

Trends

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- Dependent coverage offerings
  - ACA requires coverage of children to age 26
  - Spouse not included in definition
  - Trends:
    - Spousal carve-out
    - Spousal surcharge
    - Dependent audits

Trends

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- Narrow networks
  - Health plan networks that are much more limited in terms of groups of providers that are in network
    - Fewer in-network doctors and hospitals
    - Limited choice equals lower plan costs
    - Pay for the “privilege” of choice
    - Less access to specialists or certain hospitals
  - Potential cost savings for larger plans
    - Consider provider disruption against cost savings

Trends

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- Cost controls
  - Limiting hours worked
    - More staff needed → increased recruiting and training costs
    - Candidate pool reduced – supply of candidates available for hire may be limited because of lack of benefits
  - Reduce benefits offered – if considering, look for benefits that are not valued by employee population
  - Plan design changes – done by employers on an ongoing basis
    - If plan is grandfathered, will lose grandfathered status
    - Changes will impact actuarial value of plan(s)
  - Increase employee contributions
    - Some employers expanding coverage tiers
    - Keep in mind coverage must be “affordable”

Pay or play

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- To play, employers must offer minimum essential coverage that is affordable and satisfies a minimum actuarial value (MAV)
- To pay, employers pay $2,000 per FTE (less the first 30 FTEs)
  - Penalties calculated on a monthly basis
- Employer considerations
  - Ability to attract and retain
    - Supply and demand of quality candidates
    - Candidate motivation
  - Decisions of direct competitors
  - Public perception
  - Cost

Pay or play

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- Large employer: 50 or more FTEs
  - Offer coverage to 95 percent of FTEs (70 percent for 2015)
  - Count employees on monthly basis and average over 12 months
- Medium employer: At least 50 FTEs but less than 100 FTEs
  - May delay one year
  - Must apply for delay
- Small employer: Fewer than 50 FTEs
  - Delayed to 2016

Pay or play

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- Testing period – must offer coverage to 95 percent or more of full-time employees
  - Full-time vs. variable hour employees
    - Measurement period: 3 to 12 months of service
    - Administrative period: up to 90 days
    - Stability period: equal measurement period
  - Employer considerations
    - Seasonality/cyclical nature of your variable hour employees
    - Terminating an employee does not start the clock over again
      - 26-week employment gap
      - 13-week employment gap – staffing agencies

Pay or play

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- Annual return filing/employee statements
  - IRC section 6056 employer shared responsibility reporting
    - Begins January 2016 for tax year 2015
    - Employee-level information
      - Demographics (including SSN)
      - Employee contribution for lowest plan cost
      - If plan offered met MEC and MAV
      - If plan met affordability safe harbor

Pay or play

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- Annual return filing/employee statements
  - W-2 reporting
    - Method for calculating
      - Premium charged method
      - COBRA-applicable premium method
      - Modified COBRA premium method
    - Include the following in calculation
      - Total medical premium (employee/employer cost)
      - Certain employer-paid FSA contributions
      - Premiums for self-insured plans subject to COBRA continuation
      - Prescription premium
      - EAP, wellness, onsite medical – when offered as COBRA

Skinny plan strategies

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- Limited plans designed to help employers avoid certain penalties
- Typically cover minimal requirements such as preventive services (and not much more)
- Don’t appear to meet 60 percent actuarial value threshold
- Employer considerations
  - Ability to attract and retain employees
  - What direct competitors are doing
  - Public perception
  - Cost: turnover, lost productivity

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Employer reimbursement of premiums paid for employee individual health coverage

Notice 2013-54/T.R. 2013-03 and Employer Reimbursement of Healthcare Premiums

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- Issued Friday, Sept. 13, 2013, the Notice and the DOL Technical Release read “word for word.”
- Eliminates an employer’s ability to use a “stand-alone” HRA or other tax-favored arrangement (such as a cafeteria plan) to help employees pay for individual health insurance policies on a tax-free basis.
  - Such arrangements would fail to satisfy the ACA’s annual dollar limit and the preventive health services “market reform” provisions
- Requires that a participant in an HRA or other employer-sponsored arrangement that is designed to pay for health coverage on a tax-free basis also be enrolled in a “group health plan.”

Notice 2013-54/T.R. 2013-03 and Employer Reimbursement of Healthcare Premiums

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- Defines an "employer payment plan" as a type of HRA that will not comply with the annual limit and preventive health services requirements unless it meets the rules in the Notice pertaining to participation in a group health plan.
  - "Employer payment plan" does not include an employer-sponsored arrangement under which an employee may choose either cash or an "after-tax" amount to be applied toward health coverage. Thus, premium reimbursement arrangements made on an after-tax basis are still permitted.
- A "premium only plan," under which employees pay for a portion of health insurance premiums through a cafeteria plan on a pre-tax basis, would generally not be permitted to the extent employees are paying for individual health insurance premiums.
  - IRC section 125(f)(3), effective for taxable years beginning in 2014, prohibits employees from purchasing coverage through a public exchange on a pre-tax basis by using the employer's cafeteria plan.

Q&As issued by the IRS – May 13, 2014

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- Discusses the consequences to an employer who reimburses its employees for premiums they pay for health insurance, either through a qualified health plan in the Marketplace or outside of it.
  - Reiterates Notice 2013-54 clarifies that employer payment plans cannot be integrated with individual policies to satisfy the market reforms.
  - Concludes that such an arrangement fails to satisfy the market reforms and may be subject to a $100/day excise tax per applicable employee ($36,500 per year, per employee) under IRC section.
    - This IRS position will impact employers, regardless of size. The excise tax is separate and apart from penalties that may be imposed on larger employers who fail to provide health insurance to their employees. Therefore, employers with fewer than 50 employees will owe the excise tax if they decide not to sponsor group health insurance and send their employees to the Marketplace and otherwise, reimbursing them for the cost of the premiums.
  - Reiterates the term “employer payment plan,” as addressed in Notice 2013-54, generally does not include an arrangement under which an employee may have an after-tax amount applied toward health coverage or take that amount in cash compensation.

Conclusions

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- Employer reimbursement of premiums on a pre-tax basis in accordance with Rev. Rul. 61-146, for individual coverage obtained by an employee in the Marketplace or otherwise, is no longer possible and may be subject to a $100/day excise tax per applicable employee under section 4980D. This tax applies to any employer.
  - The IRS position on the excise tax seems focused on the goal of preserving employer health plans.
- After-tax arrangements to pay for individual health insurance policies appear to be permissible, but employers who do this must be careful to fall within the Labor Department's voluntary plan safe harbor.
- **Planning tip**: If an employer chooses not to sponsor a group health plan, the best option may be to increase taxable wages so the additional compensation may be used by the employee for any purpose, including payment of premiums for individually obtained health care coverage.

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Health care taxes

Patient-Centered Outcomes Research Institute (PCORI) fees

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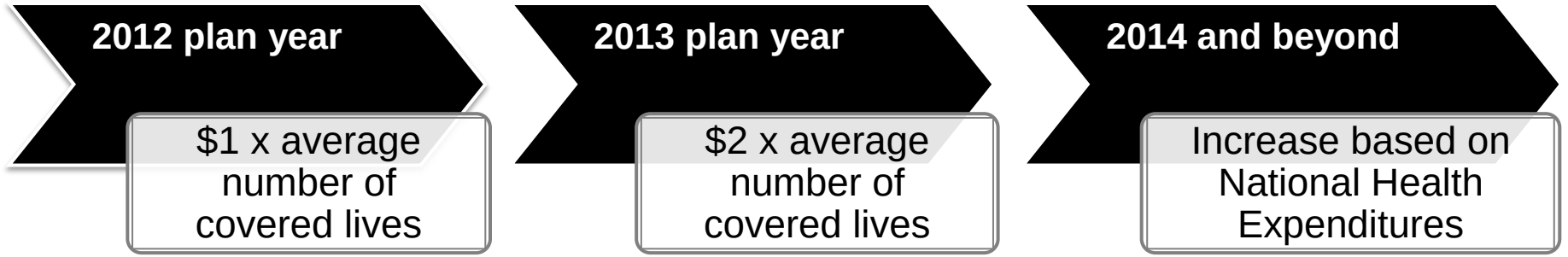
- Fee-to-fund research on informed health decisions
- Paid by issuers and self-funded plan sponsors
- Paying the fee
  - Use Form 720 by July 31 each year
  - Beginning with plan years ending on or after Oct. 1, 2012
  - Ending with the 2018 plan year



Reinsurance fees

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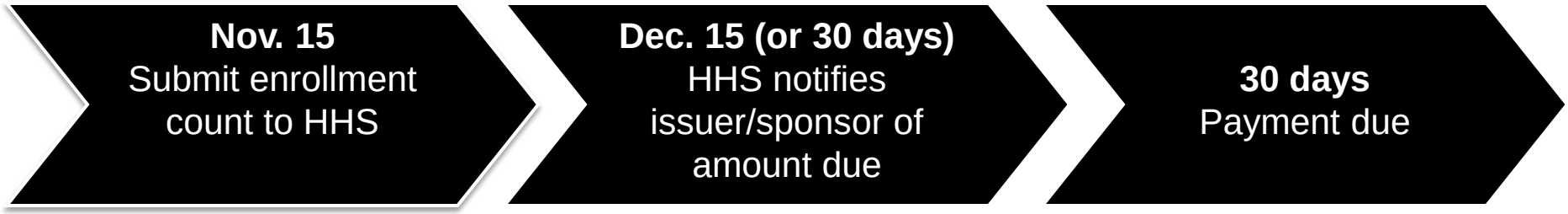
- Fee-to-fund reinsurance program to stabilize individual insurance market
  - Program to operate 2014-2016
- Paid by health insurance issuers and self-funded plan sponsors (with some exceptions)
- Fees based on annual national contribution rate
  - 2014: **$5.25/month ($63/year)** x average number of covered lives



Comparison of PCORI fee and transitional reinsurance fee

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PCORI fee

- Actual Count, Snapshot, and Form 5500 methods all permissible for determining covered lives.
- Can choose a different method for PCORI and reinsurance fee calculations.

Transitional reinsurance fee

- Actual Count, Snapshot, and Form 5500 methods all permissible for determining covered lives, but revised to determine an annualized covered life count during the first nine months of the calendar year.

Health insurance providers fee

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- Annual fee on health insurance providers:
  - Effective in 2014
  - Due Sept. 30 each year
  - Allocated according to market share: $8 billion in 2014 - $14.3 billion in 2018 (based on premium growth in later years)

Applies to:

- Covered entities
- Including health insurance issuers and HMOs

Does not apply to:

- Companies with $25 million or less in net premiums
- Self-insured employers
- Government and nonprofit entities

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Summary

Keys to remember

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- Pay close attention to PCORI and reinsurance fees
  - PCORI is due July 31
- Employers can no longer reimburse for individual coverage
  - Treat as compensation to employees
  - Watch reasonable compensation rules
- Are you a large employer
  - Determine how many FTE lives being covered
  - You will need this to:
    - Determine when employee mandate applies
    - Negotiate coverage
    - Calculate PCORI and transitional fees

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