
Administration delays reporting, enforcement of employer mandate for 2014

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In brief

The Obama Administration has announced that there will be an additional year before the mandatory employer and insurer reporting requirements under the Affordable Care Act (ACA) begin, and, accordingly, a one-year delay in enforcement of the employer mandate until 2015. Formal guidance describing this transition will be published shortly.

In detail

Background

The ACA imposes penalties on employers with more than 50 full-time equivalent employees that fail to offer health coverage to at least 95% of their full-time employees who work at least 30 hours a week, if at least one full-time employee obtains subsidized coverage from an exchange. The annual penalty is \$2,000 times the number of full-time employees (less 30), and is assessed monthly for any month in which coverage is not offered as required.

Alternatively, if the coverage that is offered is not minimum coverage or is not affordable for any employee who then receives subsidized coverage on an exchange, the annual penalty is \$3,000 for each such employee, also assessed monthly. These 'shared responsibility'

provisions, also called the 'employer mandate' or 'pay or play', are effective January 1, 2014.

The ACA requires information reporting (under Code Section 6055) by insurers, self-insuring employers, and other parties that provide health coverage — regardless of size. It also requires information reporting (under Section 6056) by certain employers with respect to the health coverage offered to their full-time employees. Proposed rules implementing these provisions are expected to be released this summer.

Implementation delay

Due to the complexity of implementing these reporting requirements and the need to consult with employers and insurers to minimize reporting burdens, the Obama

Administration has announced a one-year delay in mandatory reporting, until 2015. Once proposed regulations have been issued, the Administration will encourage voluntary reporting in 2014, in order to ensure a smooth transition in 2015.

Because the delay in reporting will make it difficult to determine which employers owe shared responsibility payments for 2014, the transition relief is also being extended to the employer mandate. Employer shared responsibility payments will not apply for 2014; these payments will begin to apply in 2015.

Observations

The reporting delay is welcome relief for all who would have been subject to the reporting

requirements. Without guidance it was impossible for those employers, insurers and others to begin to create the necessary systems and capabilities.

For the most part, the delay in the underlying shared responsibility or pay or play requirements won't disturb the health coverage that many employers now offer their workers. However, it does give employers extra time to develop and implement their pay or play strategies. This extension will be particularly helpful to employers with significant part-time, seasonal, per diem, or other variable hour workers. With additional time, employers in hard-hit industries like retail, hospitality, health care, higher education, entertainment and media, and transportation will have time to identify full-time employees, test new systems and develop appropriate benefit offerings.

Many ACA provisions are unaffected by the delay, and employers must continue to implement and comply with them. New individual and group health plan requirements taking effect for 2014 plan years include a ban on annual dollar limits on essential health benefits, a 90-day limit on eligibility waiting periods, new out-of-pocket limit maximums, the elimination of preexisting conditions exclusions for adults, and coverage of clinical trial participant costs. New fees and assessments, including the PCORI fee, transitional reinsurance fee, and a health insurer tax, remain undisturbed by the delay.

With the delay in the shared responsibility provisions and reporting, some key questions remain open, including whether waivers for limited medical or mini-med plans will be extended, whether and how IRS will enforce the individual coverage mandate, and the impact on

individual applications for exchange coverage and federal subsidies.

The takeaway

Despite the delay in implementation of the shared responsibility penalties, some employers will decide to stay their selected course for 2014, while others will explore alternatives. The delay gives employers a chance to take another look at what may have been hurried decisions around changes in health benefit eligibility or new health plan offerings. For the time being, however, the individual mandate for coverage remains in place, so employers will want to keep aware of options available to employees who may not have other coverage available to them, as well as options available on public exchanges.

Let's talk

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