ACA in 2014: Five Changes Employers Need to Know

The Affordable Care Act ("ACA") makes significant changes to the U.S. health care system. The various provisions of the ACA are being phased in over several years, with a number of major changes effective in 2014. In this Tip, we will address five of these provisions along with action items for employers.

ACA in 2014: Five Changes Employers Need to Know

The Affordable Care Act ("ACA") makes significant changes to the U.S. healthcare system. The various provisions of the ACA have been and will continue to be phased in over several years, with a number of major changes effective in 2014, including but not limited to:

- First year for which coverage can be obtained through the Health Insurance Marketplace by small employers and individuals.
- Most individuals are required to maintain health coverage or pay a fee (also known as the individual mandate).
- Maximum Small Business Health Care Tax Credit increases from 35% to 50%.
- Employers must provide Notice of Coverage Options to new hires. Note: The requirement to provide the Notice of Coverage Options took effect on October 1, 2013.
- Permitted wellness incentives increase from 20% of the cost of coverage to 30% (or up to 50% if the wellness program is established for the purpose of tobacco use prevention or reduction).

These requirements are covered in greater detail below:

Health Insurance Marketplace

The ACA created the Health Insurance Marketplace (the "Marketplace") where individuals and small employers can find and compare health plans. There are two components to the Marketplace: one for individuals and their families and one for small businesses (known as the "SHOP" Marketplace). Coverage purchased through the Marketplace was scheduled to begin as early as January 1, 2014.

Action Items:

Employers can determine whether they meet the eligibility requirements for SHOP and compare plans. To purchase coverage through SHOP, employers must generally:

- Have 50 or fewer full-time (or equivalent) employees (those working 30 or more hours per week on average);
- Offer coverage to all full-time employees; and
- Meet the minimum participation rate in their state. In many states, the minimum participation rate is 70 percent, meaning at least 70 percent of employees offered coverage must participate in the employer's SHOP plan.

Employers can preview SHOP plans and get premium estimates via Healthcare.gov here.

Individual Mandate

Beginning this year, most individuals are required to maintain minimum essential health coverage for themselves and their dependents or they may have to pay a penalty. Individuals can obtain qualifying coverage in a number of ways, including through the Marketplace, through their (or their spouse's) employer, Medicare, Medicaid, or a government-sponsored health plan.

If individuals enroll in a health insurance plan through the Marketplace by March 31, 2014, they won't have to pay the penalty for any month when they did not have coverage before the Marketplace coverage began. Note: Some individuals may be exempt from the penalty if they meet certain "hardship" criteria.

Action Items:

While there are no specific obligations for employers regarding the individual mandate, employees may come to them with questions. Employers may wish to prepare for such questions by gathering information and resources about their health plan, if they offer one, including whether the plan(s) satisfies the individual mandate. If the employee has coverage that is not through his or her employer, the employee can be directed to contact his or her insurance provider to determine whether such coverage satisfies the individual mandate. Employers can also direct employees to Healthcare.gov for more information on the individual mandate, the Marketplace, and tax credits for certain individuals with income between 100% and 400% of the poverty line.

Small Business Health Care Tax Credit

The Small Business Health Care Tax Credit is available to certain small employers that offer health coverage. To be eligible, the employer must meet specific requirements, including the "qualifying arrangement" requirement (they must pay a uniform percentage of their employees' health coverage that is at least 50 percent of the cost of such coverage). In addition, the employer must have fewer than 25 full-time equivalent employees (FTEs) for the taxable year with average annual wages of less than $50,000 per FTE. Beginning with the 2014 tax year, eligible small employers may receive a tax credit for up to 50 percent (35 percent for previous years) of health premiums paid. However, to be eligible for the tax credit for the 2014 tax year, and any subsequent years, employers must obtain a health plan through the SHOP Marketplace.

The credit is a general business credit and is claimed on the eligible employer's annual income tax return. IRS Form 8941 can be used by small businesses to calculate the credit.

Action Items:

Employers that wish to claim the credit for the 2014 tax year should ensure that they purchase a health plan through SHOP and meet the other eligibility requirements. In order to claim the tax credit for the 2014 tax year and after, employers need to get an official eligibility determination from the SHOP Marketplace.

Notice of Coverage Options

All employers covered by the Fair Labor Standards Act (FLSA) must provide a Notice of Coverage Options ("Notice") to their employees, regardless of whether they offer health coverage. The FLSA covers virtually all employers. Employers were required to provide the Notice to existing employees by October 1, 2013. Employees hired after October 1, 2013 must be provided the Notice within 14 days of hire.

The Notice must include information about:

- The services provided by the Marketplace;
- How to contact the Marketplace;
- The employee's potential eligibility for a premium tax credit if the employee purchases a qualified health plan through the Marketplace; and
- The potential impact on the employee if he or she purchases coverage through the Marketplace (e.g., the employee may lose the employer contribution toward health insurance and that all or a portion of such contribution may be excludable from income for Federal income tax purposes).

The Department of Labor has published two model notices. One is for employers that offer health coverage to employees. The other is for employers that don't offer health coverage. These model notices are available for download in the Forms & Documents section of HR411.

Action Items:

Employers should review new hire procedures to ensure that the Notice is provided to all employees within 14 days of hire. The Notice may be hand delivered, sent by first-class mail, or furnished electronically (provided the U.S. Department of Labor's electronic disclosure safe harbor rules are met (see 29 CFR 2520.104b-1(c) Disclosures through electronic media). It is a best practice to document that the Notice has been provided.

Wellness Incentives

The nondiscrimination provisions of the Health Insurance Portability and Accountability Act (HIPAA) generally prohibit group health plans from rewarding or penalizing individuals because of a health factor. However, there is an exception that allows health plans to offer rewards and penalties in connection with a wellness program, provided certain conditions are satisfied. One of those conditions is that any difference in premiums is limited.
Under the ACA, for plan years beginning on or after January 1, 2014, the maximum difference permitted is 30 percent of the cost of coverage (or up to 50% if the wellness program is established for the purpose of tobacco use prevention or reduction).

Action Items:

If employers offer wellness programs, they must ensure that they comply with HIPAA's nondiscrimination rules. In addition to the limitation on the size of the reward, wellness programs that base a reward on satisfying a standard related to a health factor (e.g., being a non-smoker) must comply with the following rules:

- The program must be reasonably designed to promote health or prevent disease.
- The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.
- The program must allow a "reasonable alternative standard" (or waiver of the initial standard) for individuals for whom it would be unreasonably difficult or medically inadvisable to meet the initial standard.
- All materials describing the terms of the program must disclose the availability of a reasonable alternative standard (or the possibility of a waiver of the initial standard).

For additional information on wellness programs, including information related to reasonable program design, click here.

These are just five of the ACA changes affecting employers and health plans in 2014. Other insurance reforms effective in 2014 include, but are not limited to:

- Ban on pre-existing condition exclusions now covers all ages.
- Ban on charging higher rates due to gender or health status takes effect.
- Annual dollar limits are banned for all group plans.
- Waiting periods for enrolling in health plans may not exceed 90 days.
- Insured employer group health plans may not discriminate in favor of highly compensated employees.

For more information and continued updates on Health Care Reform, check HR411, the Health Care Reform section ADP.com, and Healthcare.gov.

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