Impact of the Affordable Care Act on Libraries – Large and Small

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What will this presentation cover?

• Employer Penalties
  — How is 50 FTE test counted?
  — Who must be offered coverage?
  — What type of coverage must be offered?

• Why “small” employers (less than 50 FTEs) need to monitor these rules.
2014 - Marketplaces

• States may set up exchanges (rebranded “Marketplaces”) where individuals and small employers can buy insurance.
  – HHS will administer an exchange if a state does not.
  – “Small employer” can be defined as not more than 50 or not more than 100 employees (must be 100 starting in 2016).
  – Small employer exchange (SHOP exchange) may be combined with the individual exchange.
“Large Employer” Penalties

- An employer with at least 50 “full-time equivalent” employees that does not offer health coverage to *almost* all of its full-time employees and their “dependents” must pay a penalty (no-offer penalty) equal to $2,000 * (all full-time employees – 30).

- An employer with at least 50 “full-time equivalent” employees who are *almost* all offered coverage (for full-time employees and their “dependents”) that is not “affordable” and “adequate” coverage may still have to pay a penalty (unaffordable coverage penalty) equal to $3,000 * each full-time employee who buys insurance through the Marketplace with a subsidy.
Overview of Employer Penalties

Applicable large employer?
→ yes → Does employer member offer coverage to at least 95% of its FT employees (and their children)?
  ↓ ↓ yes ↓ ↓
  ↓ ↓ no ↓ ↓

NO PENALTY

Is coverage affordable?
→ no → Does FT employee of employer member get premium assistance?
  ↓ ↓ no ↓ ↓
  ↓ ↓ yes ↓ ↓

NO PENALTY

Is coverage adequate?
→ no → Does FT employee of employer member get premium assistance?
  ↓ ↓ no ↓ ↓
  ↓ ↓ yes ↓ ↓

NO PENALTY

→ yes → No offer penalty

→ yes → Unaffordable / inadequate coverage penalty

→ yes → Unaffordable / inadequate coverage penalty

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Overview of Employer Penalties

Applicable large employer?
→ yes
  ↓ no
  ↓ NO PENALTY

Does employer member offer coverage to at least 95% of its FT employees (and their children)?
→ yes
  ↓ no
  ↓ NO PENALTY

Is coverage affordable?
→ yes
  ↓ no
  ↓ NO PENALTY

Does FT employee of employer member get premium assistance?
→ yes
  ↓ no
  ↓ NO PENALTY

Is coverage adequate?
→ yes
  ↓ no
  ↓ NO PENALTY

Does FT employee of employer member get premium assistance?
→ yes
  ↓ no
  ↓ NO PENALTY

Unaffordable / inadequate coverage penalty

Unaffordable / inadequate coverage penalty

NO PENALTY
Question 1 – Are you an applicable large employer?

- No penalties if the employer (when aggregated with all of its controlled group / affiliated service group members) employs less than 50 full-time equivalent employees.
  - Based on number of employees in the prior calendar year.
  - Each person who works more than 120 hours in a month counts as 1.
  - Add together everyone else’s hours in the month and divide by 120 to calculate the number of additional FTEs.
    - **DO NOT ROUND**
  - If the average monthly total of FT plus FTEs is more than 50, check the seasonal employee rule.
Question 1 – Seasonal Employee Rule

• If you employee less than 50 full-time employees for most of the year, the seasonal employee rule may let you avoid large employer status.

• You are still “small” if:
  — You have more than 50 full-time employees for no more than 120 days or four calendar months during a calendar year.
  — You go over the threshold due to seasonal employees.
    ▪ Until further guidance is issued, employers may apply a reasonable, good-faith interpretation of “seasonal.”
  — The days or months are not required to be consecutive.
Overview of Employer Penalties

Applicable large employer?

→ yes →

Does employer member offer coverage to at least 95% of its FT employees (and their children)?

→ no →

→ yes →

Does FT employee of employer member get premium assistance?

→ no →

→ yes →

Is coverage affordable?

→ no →

→ yes →

Is coverage adequate?

→ no →

→ yes →

No offer penalty

Unaffordable / inadequate coverage penalty

No offer penalty

Unaffordable / inadequate coverage penalty

NO PENALTY

NO PENALTY

NO PENALTY

NO PENALTY

NO PENALTY

NO PENALTY

NO PENALTY

NO PENALTY
Question 2 – Are any employees eligible for premium subsidies?

- The individual refundable tax credit (or an equivalent premium subsidy) is available for certain individuals:
  - whose household income is between 100% and 400% of the Federal Poverty Level (FPL);
  - who do not have access to “affordable” and “adequate” health insurance through their employer or a governmental program (e.g., Medicare, Medicaid, CHIP, etc.); and
  - who purchase insurance through a state exchange.

  - There is litigation pending challenging whether the premium subsidies are available in the federally facilitated exchanges (like Ohio’s).
Premium subsidy analysis continued

• Eligibility for subsidized insurance and how much someone has to pay toward an exchange policy depends on the number of household members and household income compared to the federal poverty level.

<table>
<thead>
<tr>
<th>Household size</th>
<th>100%</th>
<th>133%</th>
<th>138%</th>
<th>150%</th>
<th>200%</th>
<th>250%</th>
<th>300%</th>
<th>400%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>11,490</td>
<td>15,282</td>
<td>15,856</td>
<td>17,235</td>
<td>22,980</td>
<td>28,725</td>
<td>34,470</td>
<td>45,960</td>
</tr>
<tr>
<td>2</td>
<td>15,510</td>
<td>20,628</td>
<td>21,404</td>
<td>23,265</td>
<td>31,020</td>
<td>38,775</td>
<td>46,530</td>
<td>62,040</td>
</tr>
<tr>
<td>3</td>
<td>19,530</td>
<td>25,975</td>
<td>26,951</td>
<td>29,295</td>
<td>39,060</td>
<td>48,875</td>
<td>58,590</td>
<td>78,120</td>
</tr>
<tr>
<td>4</td>
<td>23,550</td>
<td>31,322</td>
<td>32,499</td>
<td>35,325</td>
<td>47,100</td>
<td>58,875</td>
<td>70,650</td>
<td>94,200</td>
</tr>
</tbody>
</table>

• 68% of U.S. households are estimated to have income below 400% of the federal poverty level.
Premium subsidy analysis continued

- How much an individual must pay toward an exchange policy ranges from 2% to 9.5% of household income, depending on the household income as a multiple of the federal poverty level.

<table>
<thead>
<tr>
<th>Household income multiple of the FPL</th>
<th>Applicable percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 133%</td>
<td>2.0% to 2.0%</td>
</tr>
<tr>
<td>133% up to 150%</td>
<td>3.0% to 4.0%</td>
</tr>
<tr>
<td>150% up to 200%</td>
<td>4.0% to 6.3%</td>
</tr>
<tr>
<td>200% up to 250%</td>
<td>6.3% to 8.05%</td>
</tr>
<tr>
<td>250% up to 300%</td>
<td>8.05% to 9.5%</td>
</tr>
<tr>
<td>300% up to 400%</td>
<td>9.5% to 9.5%</td>
</tr>
</tbody>
</table>
Premium assistance sweetened

• If an individual’s household income does not exceed 250% of the FPL, the federal government will pay to reduce the individual’s out-of-pocket costs for covered services.
  — 200-250% of the FPL: 73% of costs covered;
  — 150-200% of the FPL: 87% of costs covered; and
  — 100-150% of the FPL: 94% of costs covered.
Premium subsidy analysis continued

• Example: single employee with household income of $11,500 (just over 100% of the FPL for 2013).
  — Employee’s premium cost to buy a policy on the exchange would = 2% of household income = $230 for the whole year’s premium ($19.17 per month).
  — That premium would purchase a policy that covered 94% of expected claims costs.
  — This employee would be financially better off under a Marketplace policy instead of most employer’s plans.
Premium subsidy analysis continued

• Example 2: single employee with household income of $16,000 (approximately 139% of the FPL for 2013).
  — Employee’s premium cost to buy a policy on the exchange would = 3.37% of household income = $539 for the whole year’s premium (approximately $45 per month).
  — That premium would purchase a policy that covered 94% of expected claims costs.
  — This employee would be financially better off under a Marketplace policy instead of most employer’s plans.
Individual Year-End Reconciliation

- The actual subsidy available depends on the total household income (a number an individual usually doesn’t know until after year-end).
- An individual can choose to estimate their household income and pay a discounted premium each month.
- BUT, if they underestimated their income, they will have to repay some (or all) of the subsidy they received.

<table>
<thead>
<tr>
<th>Household income as % of FPL</th>
<th>Repayment cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 200%</td>
<td>$600</td>
</tr>
<tr>
<td>Between 200% and 300%</td>
<td>$1,500</td>
</tr>
<tr>
<td>Between 300% and 400%</td>
<td>$2,500</td>
</tr>
<tr>
<td>More than 400%</td>
<td>No cap</td>
</tr>
</tbody>
</table>
Overview of Employer Penalties

- **Applicable large employer?**
  - yes
  - no

- **Does employer member offer coverage to at least 95% of its FT employees (and their children)?**
  - yes
  - no

- **Does FT employee of employer member get premium assistance?**
  - yes
  - no

- **Is coverage affordable?**
  - yes
  - no

- **Is coverage adequate?**
  - yes
  - no

- **Does FT employee of employer member get premium assistance?**
  - yes
  - no

**Penalties:**
- **No offer penalty**
- **Unaffordable / inadequate coverage penalty**

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Question 3 – Is coverage offered to substantially all FT employees/dependents?

• Although 50 FTE test is done on the controlled group, the actual tax is imposed by tax-entity.

• Although statute requires coverage to be offered to all full-time employees and their dependents:
  — Dependents limited to children by birth/adoption, step-children and foster children.
  — No-offer penalty avoided so long as coverage is offered to at least 95% of FT employees.
  — Several safe-harbors for measuring whether an employee works at least 30 hours per week.
Question 3 – FT Safe Harbor Explained

• 3 Periods for variable hour employees:
  – Measurement – Track hours worked or entitled to pay.
  – Administrative – Average the hours worked and offer coverage if the average exceeded 30 hours per week.
  – Stability – Continue to treat as FT or PT depending on calculated average hours, regardless of actual hours.

• Longer periods typically reduce the number of FT employees.
Overview of Employer Penalties

1. Applicable large employer? → yes →
   - Does employer member offer coverage to at least 95% of its FT employees (and their children)?
     - yes →
       - Is coverage affordable? → no →
         - Does FT employee of employer member get premium assistance? → yes →
           - No offer penalty
         - no →
       - yes →
         - Is coverage adequate? → no →
           - Does FT employee of employer member get premium assistance? → yes →
             - Unaffordable / inadequate coverage penalty
           - no →
         - no →
       - no →
     - no →
   - no →

2. no →
   - NO PENALTY

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Question 4 – Is coverage “Affordable”?

- Coverage is “affordable” if the employee contribution for the lowest cost coverage does not exceed 9.5% of the employee’s household income.
  - For premium subsidies, “affordability” is measured based on the employee’s estimated household income (not recalculated unless the employee provided incorrect information with reckless disregard for facts).
  - For employer penalties, “affordability” is determined based on the cost of employee only coverage.
Question 4 – “Affordable” Safe Harbors

For avoiding the employer penalties, Treasury has proposed three safe harbors:

- Form W-2 – may justify higher employee premiums BUT need to be wary of impact of pre-tax deferrals and unpaid leaves of absence which could make coverage appear unaffordable.
- Rate of pay – usually the best choice.
- Federal poverty level – best for tipped employees making less than minimum wage.
“Affordable” safe harbor examples

• Assume an employee is paid $8.00 per hour, works 1,560 hours per year, and defers 5% of his pay into a 401(k) plan. The employee’s W-2 would show $11,856 of pay after the 401(k) deferral (95% * $8 * 1560).

  Form W-2 Safe Harbor  Rate of Pay Safe Harbor  FPL Safe Harbor
  9.5% X ($11,856 ÷ 12) =  9.5% X $8.00 X 130 =  9.5% X ($11,440 ÷ 12) =
  $93.86        $98.80        $90.96

• So long as the employee’s share of the monthly premium does not exceed $98.80, the coverage is deemed to be affordable and the unaffordable/inadequate coverage penalty is avoided (assuming the offered coverage is adequate).
“Affordable” safe harbor examples

• For many low wage employees, cash is king and they will decline any offered coverage (so it may not cost you to offer the coverage).

• As low wage employees begin to understand the incredible subsidy, offering “affordable” coverage that is less advantageous (costs more and/or covers less) than the federally subsidized benefit may become a competitive disadvantage. **WE AREN’T THERE YET.**

• Remember, the employee’s actual eligibility for premium assistance to buy health insurance on an exchange will be based on the premium cost as a percentage of employee’s actual household income.
Overview of Employer Penalties

Applicable large employer?
  → no
  NO PENALTY

Does employer member offer coverage to at least 95% of its FT employees (and their children)?
  → yes
  ↓
  ↓
  yes
  ↓

Is coverage affordable?
  → no
  ↓
  ↓
  yes
  ↓

Is coverage adequate?
  → no
  ↓
  ↓
  yes
  ↓

→ yes
No offer penalty

Does FT employee of employer member get premium assistance?
  → no
  ↓
  ↓
  no
  ↓

NO PENALTY

→ yes
Unaffordable / inadequate coverage penalty

Does FT employee of employer member get premium assistance?
  → no
  ↓
  ↓
  no
  ↓

NO PENALTY

→ yes
Unaffordable / inadequate coverage penalty

Does FT employee of employer member get premium assistance?
  → no
  ↓
  ↓
  no
  ↓

NO PENALTY

→ yes
Unaffordable / inadequate coverage penalty

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Question 5 – Is coverage “Adequate”?

• Coverage is “adequate” if it is expected to cover at least 60% of standardized claims costs.
  — Most popular plan designs meet this standard.
  — There will be several ways for an employer to demonstrate that its plan passes this standard including pre-approved plan designs, a calculator, and actuary certification.
Impact on “small” employers

- Explanation of exchanges late summer/fall 2013.
- If you offer insurance to any employees, you will have to file a new IRS form regarding that coverage.
  - No details yet about full content or timing.
- May receive information requests from the Exchange regarding employee insurance eligibility.
  - Participating in an appeal is not required but might save employees from tax issues.
- May receive information requests from the IRS regarding potential penalty assessments.
  - May need to prove “small” status.
# 2014 Mandates

## Mandates for the First Plan Year after 1/1/2014

<table>
<thead>
<tr>
<th>Mandates for All Plans</th>
<th>Extra Mandates for Non-Grandfathered Plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>No pre-existing condition limitations (before 2014 plan year, pre-existing conditions banned for children under 19, but permitted for others).</td>
<td>Mandated coverage of clinical trial expenses related to cancer or other life-threatening diseases.</td>
</tr>
<tr>
<td>Must cover adult children up to age 26, even if the child is eligible for other (non-parental) employment-based coverage.</td>
<td>Cost-sharing limited to HSA-compatible HDHP out-of-pocket maximum ($5,950 for individual coverage and $11,900 for family coverage, indexed for inflation).</td>
</tr>
<tr>
<td>New rules for standards-based wellness programs.</td>
<td></td>
</tr>
<tr>
<td>No waiting period in excess of 90 days.</td>
<td></td>
</tr>
<tr>
<td>Annual dollar limits on “essential benefits” fully phased out.</td>
<td></td>
</tr>
</tbody>
</table>
Useful Links and Caveats

- Links to government resources:  
- Link to Vorys health care reform webpage:  
- Link to a webpage to compare Marketplace policies:  
  [http://www.thehealthsherpa.com](http://www.thehealthsherpa.com)
Background

The following slides lay out some other information that may be useful as you confirm that your plans comply with the Affordable Care Act.
## Overview of the ACA – What Should You Be Doing Already?

### Verify Comply with 2011 Mandates (First PY after 9/23/2010)

<table>
<thead>
<tr>
<th>Mandates for All Plans</th>
<th>Extra Mandates for Non-Grandfathered Plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage of adult children to age 26 (may exclude kids with access to other coverage until 2014).</td>
<td>Coverage of adult children to age 26 (even if they have access to other coverage).</td>
</tr>
<tr>
<td>No pre-existing condition limits under age 19.</td>
<td>First dollar coverage of in-network preventative services.</td>
</tr>
<tr>
<td>No lifetime dollar limits on “essential benefits.”</td>
<td>Non-discrimination rules for insured plans (delayed enforcement until regulations are issued).</td>
</tr>
<tr>
<td>Annual dollar limits on “essential benefits” phased out.</td>
<td>Coverage of non-network emergency services on the same basis as in-network.</td>
</tr>
<tr>
<td>Insurers must report loss ratios and provide rebates.</td>
<td>Pre-authorizations prohibited for OB/GYN care and must allow selection of any primary care physician.</td>
</tr>
<tr>
<td>Rescission prohibited.</td>
<td>New appeals standard.</td>
</tr>
</tbody>
</table>
What should you be doing now?

- **Verify comply with 2012 Mandates:**
  - W-2 reporting (if you issue more than 250 W-2s for a year)
  - Issuing SBCs
  - Dealing with Rebates

- **Prepare for new requirements:**
  - Educating employees about exchanges
  - Patient centered research fee
  - Responding to HHS data requests
  - New limits on health FSAs
  - New taxes on high income persons
  - New EDI certifications
  - New 2014 coverage mandates
  - Individual Mandate tax
  - New IRS reporting to enable verification of employee eligibility for exchange subsidies
  - Plan for large employer tax penalties (no offer or unaffordable coverage)
  - Issuing SBCs
  - Dealing with Rebates
W-2 Reporting

- Form W-2’s will have to show the cost of health coverage starting with the 2012 calendar year (reported in January 2013).
  - No reporting is required for:
    - Small employers (less than 250 Form W-2s issued for that year).
    - Coverage provided under a Taft-Hartley multiemployer plan.
    - Individuals who are not otherwise required to receive a W-2 (like people who retired or terminated in a prior year, former spouses on COBRA, etc.).
    - W-2’s issued before a year ends.
Summaries of Benefits and Coverage “SBCs”

• SBC is a new standardized explanation of medical benefits – does not replace the SPD or other employee communications.
  — Formerly known as the “4-page summary.”
    ▪ 4 pages = 8 pages (and excludes 4 page standardized glossary).

• Intended to facilitate apples-to-apples comparisons when individuals shop for health insurance on state exchanges.
SBCs continued.

• Distribution. Starting open enrollment or first plan year beginning after 9/23/2012:
  – Initial enrollment.
  – Annual enrollment.
  – Special enrollment.
  – Upon request.
  – 60 days advance notice of mid-year changes.
    ▪ Special 30 day rule for open enrollment.
Medical Loss Ratio Rebates

• Insurers whose claims payments are less than a specified portion of their premiums on claims must issue a rebate.
  — The first rebates were issued in July 2012 based on 2011 premiums and claims.
  — Many services, like claims and appeals processing, brokers fees and call center expenses, do not count as claims expenses under the MLR standard.
  — This standard may cause carriers to reduce customer services that count as ineligible overhead.

• If you receive a rebate, you have a fiduciary obligation to use the portion of the rebate attributable to employee paid premiums for the benefit of employees through premium refunds, premium reductions or premium holidays. The DOL has indicated that you are not required to match the rebate to the employees whose premium payments resulted in the rebate.
Patient-Centered Outcomes Research Fee

• Fees fund Patient-Centered Outcomes Research Trust Fund created to study comparative effectiveness of various clinical treatments.

• Paid by self-insured (plan sponsor) and insured (carrier) plans.

• Applies to plan years ending on or after 10/1/2012 and before 10/1/2019 (seven years).

• $1 ($2 after first year, then indexed) per-covered-individual fee.

• For most plans, first payment due 7/31/2013.

• Annual payment made by filing IRS Form 720.
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