ReedSmith

The business of relationships.SM

Affordable Care ACT

What you Need to Know

Presented by Rachel Cutler Shim

Agenda – What You Need to Know

- Up To Date ✓
  - Health Care FSA Contribution Limits ✓
  - Patient-Centered Outcome Research Fee ✓
  - Exchange Notice Requirement ✓
  - Increased Medicare Tax ✓
  - Additional Insurance Market Reforms ✓
  - Wellness Program Changes ✓
  - FSA $500 Carryover ✓

Agenda – What You Need To Know

- Legislative, Regulatory and Other Developments ✓
  - Employer Shared Responsibility Payment ✓
  - Employer Reporting Requirements ✓
  - Reinsurance Fee ✓
  - Marketplace Enrollment and Transition Rules ✓

ReedSmith

The business of relationships.SM

Up To Date

2013 – Up To Date

Health Care FSA Contribution LImit

- Health care FSAs must impose a limit on contributions of $2,500
- Effective as of the first day of the plan year beginning on or after January 1, 2013
  - Limit applies on a plan-year basis
  - Example – Plan with a July 1 through June 30 plan year will apply the limit based on the fiscal year
- Code Section 125 requires a plan document
  - Plan document amendments implementing $2,500 limit must be adopted prior to December 31, 2014
- Limit does not apply to employer contributions made to a Health Care FSA or to premium conversion contributions

2013 – Up To Date

Patient-Centered Outcome Research Fee

- Fee will be collected to fund research evaluating and comparing health outcomes, and the clinical effectiveness of two or more medical treatments and/or services
- Self-Insured group health plans and insurance companies are required to pay the fee
  - $1 per covered life per year, for plan years ending after Sept. 30, 2012
    - For a calendar year plan, plan years ending December 31, 2012
  - Adjusts to $2 per covered life for plan years ending after Oct. 1, 2013, and before Sept. 30, 2014
  - For plan years ending after Sept. 30, 2014, adjusted based on projected per-capita amount of national health expenditures
  - Will not apply to plan years ending after Sept. 30, 2019
  - Generally may not be paid with plan assets

2013 – Up To Date

Patient-Centered Outcome Research Fee

- Fee reported and paid on Form 720
  - Due by July 31 of the following calendar year (so first forms 720 reporting PCORI fee were due July 31, 2013)
- For self-insured plans, guidance provides three methods for determining number of covered lives:
  - Actual Count
  - Snap Shot Method
  - Form 5500 Method
- Fee will not apply to:
  - Stand-alone dental and vision plans
  - Employee assistance programs
  - Most health care FSAs and HRAs

2013 – Up To Date

Exchange Notice

- Employers must provide employees an exchange coverage notice
  - Requirement originally effective March 1, 2013, but DOL delayed effective date until October 1, 2013
  - Notice must include:
    - Basic information about the Exchanges
    - Description of value of employer coverage and possible subsidies available through an Exchange
    - Explanation that enrolling in exchange = loss of employer contribution
  - A model notice was issued by the DOL

2013 – Up To Date

Increased Medicare Tax

- The following individuals will be required to pay an additional .9% Medicare tax

Filing Status	Income Threshold
Single	$200,000
Married Filing Jointly	$250,000
Married Filing Single	$125,000

- Applies to income and compensation earned on or after January 1, 2013 that is in excess of the income threshold
- Employers must withhold the additional tax from wages it pays to an individual in excess of $200,000 in a calendar year, without regard to the individual's filing status

2014 – Up To Date

Additional Insurance Market Reforms

- Dependent coverage to age 26 for any covered employee's child
- No annual dollar limits permitted
- No pre-existing condition limits permitted
- Provider nondiscrimination prohibited
- Must cover routine medical costs of clinical trial participants
- Automatic Enrollment
  - Effective once guidance is issued
- Nondiscrimination Testing for Insured Plans
  - Effective once guidance is issued

2014 – Up To Date

Additional Insurance Market Reforms

- Deductible Limits
  - $2,000 single coverage/$4,000 all other types of coverage (employee + 1, family, etc.)
  - Only applies to individual policies and policies issued in the small employer group health plan market
  - Small employer group health plan market provides policies for employers with 50 or less employees

2014 – Up To Date

Additional Insurance Market Reforms

- Out-Of-Pocket Limits
  - $6,250 single coverage/$12,500 all other types of coverage
  - Applies to self-insured and large employer group health plan policies
  - Calculation must include deductibles, coinsurance, and copayments for in-network providers
    - Does not apply to out-of-network care
  - For 2014 employers with multiple different out-of-pockets limits administered by different TPAs – no aggregation required

2014 – Up To Date

Additional Insurance Market Reforms

- 90 Day Waiting Period
- Eligible employees and dependent can't be required to wait more than 90 days before coverage is effective
  - Eligibility Periods
    - Time based – no longer than 90 days
      - Eligibility date cannot be the first day of a month after 90 days.
    - Hours based – no longer than 1,200 hours
    - Variable hour employee – time period for determining whether an employee meets eligibility conditions will not violate the 90-day waiting period limitation if coverage is made effective no later than 13 months from the employee's start date.

2014 – Up To Date

Additional Insurance Market Reforms

- Wellness Programs - Two Categories
  - Participatory
    - No requirements associated with a health status factor
    - Examples: take an HRA; engage in certain screenings; incentive for joining a gym; participate in health classes
    - No physical activity involved
  - Health-Contingent
    - Requirements associated with a health status factor
    - Activity Only
    - Outcome Based

2014 – Up To Date

Additional Insurance Market Reforms

- Health Contingent – Subject to HIPAA 5 Wellness Program Requirements
  - Activity Only
    - Require an individual to perform or complete an activity to obtain a reward
    - Examples – Program requires employees to walk daily or exercise daily to receive a reward
  - Outcome Based
    - Require an individual to obtain or maintain a specific health outcome to receive a reward
    - Examples – Program rewards non-smokers, individuals who maintain a certain weight; maintain a certain cholesterol

2014 – Up To Date

Additional Insurance Market Reforms

- Activity Only –5 HIPAA Requirements
  - Individuals must have opportunity to qualify for the reward once a yr.
  - Maximum reward 30% of the cost of coverage.
    - Additional 20% can be applied to tobacco cessation program.
  - Programs must be designed to promote health or prevent disease.
    - See CDC's Guide to Community Preventive Services
  - The reward must be available to all similarly situated individuals.
    - Satisfies requirement if it allows a reasonable alternative standard (or waiver) for any individual for whom, unreasonably difficult due to a medical condition to satisfy the standard or medically inadvisable to attempt to satisfy the standard
  - Disclosure standards require that any reasonable alternative standard to qualify for the reward be described in all plan materials describing the program.

2014 – Up To Date

Additional Insurance Market Reforms

- Outcome Based – 5 HIPAA Requirements
  - Individuals must have opportunity to qualify for the reward once a yr.
  - Maximum reward 30% of the cost of coverage.
    - Additional 20% can be applied to tobacco cessation program.
  - Programs must be designed to promote health or prevent disease.
    - See CDC's Guide to Community Preventive Services
  - The reward must be available to all similarly situated individuals.
    - Satisfies requirement if it allows a reasonable alternative standard for any individual who does not meet the initial standard based on the measurement, test, or screening.
      - Note: Applies to *any* individual who does not meet the initial (healthy) standard, regardless of the individual's medical condition or other health status.
  - Disclosure standards require that any reasonable alternative standard to qualify for the reward be described in all plan materials describing the program.

2015 Requirements - Get Ready Now

Health Care FSA $500 Carry Over

- October 2013, IRS issued Notice 2013-71
- Allows employer to amend their Health Care FSA plans to permit the annual carry over of $500 of unused health care FSA contributions
  - To implement, plan sponsors should adopt an amendment
  - Amendment has to be adopted prior to the end of the plan year in which the carry over will be provided
    - For the 2013 plan year a plan sponsor wishing to allow carryover of 2013 balances into the 2014 plan year has until the last day of the 2014 plan year to adopt the amendment
  - Cannot be combined with a grace period

ReedSmith

The business of relationships.SM

2015 Requirements – Get Ready Now

2015 Requirements - Get Ready Now

Shared Responsibility Payment

- Large employers must offer affordable, minimum value health coverage to full-time employees or be subject to a shared responsibility penalty (excise tax) if one or more full-time employees receive a premium tax credit to purchase Marketplace coverage.
  - Originally Effective January 1, 2014
  - In Notice 2013-45 IRS delayed implementation of the penalty for one year
  - Shared responsibility payment was delayed in response to the delay of Code 6056 reporting requirements
  - Regulations were issued, but additional guidance is expected in 2104

2015 Requirements - Get Ready Now

Shared Responsibility Payment

- Current regulations provide that a shared responsibility payment will be due only for an employer that employs more than:
  - 50 full-time employees, or
  - 50 full-time equivalent employees
- Full-time employee – works more than 30 hours a week
- Full-time equivalent employees – for example - two employees working 15 hours a week equals one full-time employee

2015 Requirements - Get Ready Now

Shared Responsibility Payment

- **Employer Without Coverage** – An employer that does not offer coverage or that offers coverage to less than 95% of its full-time employees and their dependents will be required to pay a shared responsibility payment if at least one employee receives a premium tax credit to pay for coverage purchased through the Marketplace.

- **Employer That Provides Coverage** – An employer that offers coverage to more than 95% of its full-time employees and their dependents will be required to pay a shared responsibility payment if at least one full-time employee forgoes employer coverage, enrolls in coverage through the Marketplace and receives a premium tax credit to help pay for Marketplace coverage because the employer coverage is unaffordable or does not provide minimum value.

2015 Requirements – Get Ready Now

Shared Responsibility Payment

- **Identifying Full-Time Employees**
  - Monthly Determination
  - Alternative – Standard Measurement Period (SMP) or Initial Measurement Period (IMP) and Stability Period (SP)
    - SMP or IMP – Must be at least 3 months and not more than 12 months.
    - SP – If an employee averaged at least 30 hours of service over the SMP or IMP, treated as a full-time employee over the SP
    - Employer may use 90 day administrative period (AP) between the SMP and the SP
      - SMP and SP may be changed annually
      - IMP based on the employee's date of hire
      - Coordinate so AP is open enrollment to first day of the plan year

2015 Requirements – Get Ready Now

Shared Responsibility Payment

- **Calculated on a Monthly Basis**
- **Employer Without Coverage** –
  - Penalty is the product of the number of the employer's full-time employees over 30 multiplied by one-twelfth of $2,000 (or $166.67).
- **Employer With Coverage** –
  - Penalty is the lesser of the product of (i) the number of employees who enroll and receive assistance because coverage is unaffordable or does not provide minimum value multiplied by one-twelfth of $3,000, or (ii) the number of full-time employees (not counting the first 30 employees) multiplied by one-twelfth of $2,000.

2015 Requirements – Get Ready Now

Shared Responsibility Payment

- Premium Tax Credit - Premium tax credits generally are available for employees who:
  - Are between 100% and 400% of the federal poverty level and enroll in coverage through an Exchange
  - Are not eligible for coverage through a government-sponsored program like Medicaid or CHIP
  - Are not eligible for coverage offered by an employer, or are eligible for employer coverage but the coverage is (1) unaffordable or (2) does not provide minimum value

2015 Requirements – Get Ready Now

Shared Responsibility Payment

- Coverage is unaffordable if:
  - An employee's share of the premium for employer-provided coverage costs more than 9.5% of the employee's annual household income
    - Multiple coverage options – use lowest-cost option
- Affordability Safe Harbors
  - W-2 – Based on compensation report on Form W-2.
  - Rate of Pay –Based on the rate of pay as of the beginning of the coverage period
  - Federal Poverty Line - Based on the federal poverty line (FPL) for a single individual.

2015 Requirements – Get Ready Now

Shared Responsibility Payment

- Coverage will provide the minimum value if the plan provides benefits for 60% of the total allowed cost of benefits that are expected to be incurred under the plan
  - A calculator will be made available by the IRS and the Department of Health & Human Services (HHS)
  - Employer will input certain information about the plan, such as deductibles and co-pays, and get a determination as to whether the plan provides minimum value
- The IRS will contact employers to inform them when a Shared Responsibility Payment is due

2015 Requirements - Get Ready Now

Reporting Requirements

- Code Sections 6055 and 6056 impose certain reporting requirements on insurers and employers
- Originally effective January 1, 2014
  - Notice 2013-45 delayed the effective date until January 1, 2015
- Proposed regulations issued in September 5 of 2013 provide:
  - Under Code Section 6055, insurers and self-insured employers will have to file an information return to report whether coverage provides minimum essential coverage
  - Under Code Section 6056, employers will have to file an information return to report information about health care coverage provided to full-time employees
  - Reports must also be furnished to participants

2015 Requirements - Get Ready Now

Reporting Requirements

- When and how is the Section 6055 filing made?
  - IRS Form 1095-B and IRS Form 1094-B - draft versions available at a later date.
  - 6055 filings will be due on or before February 28 (or March 31 if filed electronically) of the year following the calendar year for which the report is due
    - First filing will be due on February 28, 2016, with respect to the 2015 calendar year.
- When is the Section 6056 filing made?
  - Information return must be filed with the IRS on or before February 28 (or March 31 if filed electronically) of the year following the calendar year for which the report is due
  - Electronic returns will be required for large employers that are required to file more than 250 returns, of any type, in a calendar year

2015 Requirements - Get Ready Now

Reporting Requirements

- Comments to the proposed regulations have asked the IRS to:
  - Combine the 6055 and 6056 reporting requirements for self-insured group health plans
  - Eliminate the 6056 reporting requirement and allow for an employer certification process
  - Eliminate the 6055 reporting requirement and allow employers to provide the information upon request only
  - Provide for the use of the Form W-2 as an option for employers in satisfying the Code Section 6056 reporting obligations

2015 Requirements - Get Ready Now

Reinsurance Fee

- ACA requires states to establish reinsurance program
- Federal government will maintain a reinsurance program for states that do not establish one
- Federal reinsurance program will be funded with fees collected from:
  - Insurers and Self Insured Plans
  - Fees estimated at between $60 to $80 per participant (employees, spouses and dependents) for 2014
- Fee applies in 2014, 2015 and 2016
- Recent guidance indicates that sponsors of self-administered and self-insured plans may not be required to pay the reinsurance fee for 2015 and 2016
  - Most meaningful for multiemployer plans

2015 Requirements - Get Ready Now

Marketplace Enrollment

- Enrollment for small employers in the Small Business Health Options Program (SHOP) delayed until 2015
  - Online enrollment will not be available until November 2014
  - Small employers can purchase Marketplace SHOP coverage from a broker or agent
- Enrollment for 2015 Marketplace Coverage Rescheduled –
  - Nov. 15, 2014 - Jan. 15, instead of Oct. 15 - Dec. 7, 2014.
  - Some cite this as an attempt to delay the enrollment period until after the mid-term elections

Questions

Please feel free to contact me if you have any questions:

Rachel Cutler Shim, Esq.

Reed Smith LLP

Thank you for your time!