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Health Care Reform

But Wait…. There's More!

September 2013

Agenda

- Welcome and introduction
- A Perspective from a CEO
- The Employer Mandate review and update
- Financial impact of Health Care Reform
- Wellness programs and The Affordable Care Act
- Closing remarks and questions

The Employer Shared Responsibility Mandate

"Pay or Play"

Applicable Large Employer (ALE)

- An ALE is an employer who employed an average of at least 50 full time employees on business days during the preceding calendar year. An ALE is subject to penalties under the Employer Mandate.
- IRS requires employers to include hours worked by full-time equivalent individuals (part time employees).
- Control group rules (Code §414) apply when determining ALE status, all entities under common control are treated as a single employer in determining ALE status.
- ALE status will be determined by calculating employee totals for 2014.
- *IRS Optional Transition Rules No Longer Apply:*
  - *Allows employers to choose any period of six consecutive months in 2013 (rather than the entire calendar year) to determine their 2014 ALE status.*

Employer Shared Responsibility Mandate

- ALEs are subject to the Employer Mandate and may be subject to a penalty tax for:
  - Failing to offer minimum essential coverage to substantially all full time employees (and their dependents); **or**
  - Offering employer sponsored coverage that does not offer "minimum value" (60% actuarial value) or offering coverage that is not "affordable" (exceeds a specified percentage of the employee's household income).

Compliance Dates for ALEs

- All Applicable Large Employers (ALEs) need to comply as of 1/1/2015 regardless of plan renewal month.
- *Prior transition rules for fiscal year plans are no longer valid:*
  - *No penalties for months of 2013 plan year that fall in 2014 for*
    - *Employees who were eligible as of 12/27/12 that are offered a compliant plan on the 1st day of the 2014 plan year and;*
    - *Other employees (not eligible) if at least 1/4 of employees **were covered** under fiscal year plan as of 12/27/2012 or at least 1/3 of employees **were offered coverage** under such plan as of 12/27/2012.*
- One Time Section 125 Plan amendment allowed for a special enrollment 1/1/2014 available for all employers.

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Who is a full time employee?

- The law defines a full time employee (FT), with respect to any month, as an employee who is employed on average at least 30 hours of service per week (130 hours of service per month).
- Hours of Service is defined as:
  - Each hour for which an employee is paid or entitled to payment (vacation, illness, layoff, military, disability, incapacity, etc.)
- Common-law definition of an employee is used
  - “Anyone who performs services for you is your employee if you can control what will be done and how it will be done.” – IRS.gov
  - Common-law employer is the issuer of Form W-2s unless another party “controls” the terms of employment.

IRS Safe Harbors: Employee Classifications

- Ongoing Employee
  - An employee who has been employed for at least one complete standard measurement period
- New Employee expected to work 30 hours of service
  - Offer coverage after 90 day waiting period
- Varied Hour (VH) Employee
  - When hired, employer cannot reasonably determine employee will average 30 hours per week
  - New Guidance: a new employee working FT but expected to work for a limited duration cannot be treated as a Varied Hour Employee
- Seasonal Employee
  - Employers permitted to use a reasonable, good faith interpretation of “seasonal”

Determining FT Status – Defined Periods

- **Measurement Period** (period of 3 to 12 months)
  - Standard measurement period used for ongoing VH employees
  - Initial measurement period used for new VH employees
- **Stability Period** (FT/PT status is locked in)
  - Minimum of 6 months but must match measurement period
  - Coverage can be terminated for failure to pay premium, grace period will apply
- ***Transition Rule****: Measurement period in 2013 may be as short as 6 months. Measurement period must begin by 7/1/13; end 90 days before start of 2014 plan year. Clarification needed.*
- If change in employment status, employer must treat VH or seasonal employee as FT by 1st of 4th month following change in status.

Determining FT Status – Defined Periods

- **Administrative Period**
  - Period after the measurement period, but before stability period to be used for determination of FT status and enrollment of FT employees
  - Maximum length is 90 days
  - Initial measurement period plus administrative period cannot extend past the last day of the 1st calendar month on or after the 1 year anniversary of **new** VH employee's hire date. **This means that you can't make a new employee wait more than 13 months for coverage if using a 12 month measurement period.**
- Different measurement/stability periods allowed only for:
  - Union/non-union; salaried/hourly; employees of different entities within a control group; employees in different states
- A terminated employee cannot be treated as a new employee unless separated for 26 consecutive weeks or rule of parity.

§4980H(a) Penalty

- §4980H(a) Penalty (Penalty A) applies when an applicable large employer fails to offer "substantially all" full time employees (and dependents) an opportunity to enroll in minimum essential coverage.
- **Monthly Penalty Amount = $2,000 X # FT Employees minus 30 ÷ 12**
- "Substantially all" FT employees is defined as 95% of FT employees
  - Means that failing to offer coverage to as few as 5% of FT employees (and dependents) will cause Penalty A to apply to all FT employees (minus 30).
- Dependents are defined as children to age 26
  - Code §152(f)(1) definition, includes stepchildren and foster children
  - Spouses need not be included in offer of coverage

§4980H(b) Penalty

- §4980H(b) Penalty (Penalty B) applies when an applicable large employer offers coverage but coverage is not affordable or fails to provide minimum value and an employee receives subsidized Exchange coverage.
- **Monthly Penalty Amount = lesser of**
  - **\$3,000 X # FT Employees with subsidized coverage ÷ 12**
  - Unlike Penalty A, Penalty B is **<u>not</u>** reduced by 30
  - Penalty B is capped so that it cannot exceed the Penalty A amount
- Affordable: Employee premium contribution for self-only coverage in base plan offered is less than 9.5% of household income.
  - Since employers cannot know household income, safe harbors apply for determining affordability (next slide).
- Minimum Value (MV): 60% actuarial value in plan design

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Employee Contributions - Affordability Safe Harbors

- IRS safe harbors allow an employer to determine affordability based on:
  - **Employee W-2 earnings reported in Box 1**
    - Employers will need to determine if they met the affordability safe harbor for *2015* for an employee by looking at the employee's W-2 wages for *2015* and comparing 9.5% of that amount to the employee's required *2015* premium contribution for self only coverage.
  - **Employee Rate of Pay**
    - Step 1: Determine the hourly wage rate for each hourly employee who is eligible as of the beginning of the coverage period.
    - Step 2: Multiply that rate by 130 hours per month
    - Step 3: Compare employee's monthly contribution for self-only coverage to the monthly wage making certain it is 9.5% or less.
    - For salaried employees, Step 1 and 2 are not necessary, the employer should use the employee's monthly salary.
  - **Federal Poverty Level** – contribution amount based on FPL for single individual in state where employee is employed. Estimate of *$91* per month for self-only coverage made in informal, non-binding comments.

Plan Design - Minimum Value

- An employer sponsored plan provides minimum value (MV) if the plan's share of the total allowed costs of benefits provided under the plan is at least 60% of such costs (known as 60% actuarial value).
- Determining Minimum Value
  - Minimum Value Calculator
  - Design-Based Safe Harbor Checklist
  - Actuarial Certification
- HRA and employer HSA contributions are used in calculation of actuarial value.

Employee Receives Subsidized Coverage

- Subsidized coverage is available to those at 400% of FPL and below who do not have employer sponsored coverage or who’s employer coverage is deemed unaffordable / does not provide minimum value.
- Coverage will be available in the Exchange (Marketplace). OE begins 10/1/13.
- Subsidies are based on FPL of household income.

2013 Federal Poverty Guidelines

Household Size	100%	133%	150%	200%	300%	400%
1	$11,490	$15,285	$17,235	$22,980	$34,470	$45,960
2	$15,510	$20,628	$23,265	$31,020	$46,530	$62,040
3	$19,530	$25,975	$29,295	$39,060	$58,590	$78,120
4	$23,550	$31,322	$35,325	$47,100	$70,650	$94,200
5	$27,570	$36,668	$41,355	$55,140	$82,710	$110,280

Play or Pay – Payment of Penalty Amounts

- The penalty tax (assessable payment) is triggered, in part, by the employer receiving a certification that one of its employees is determined to be eligible for subsidized coverage in the Exchange.
- The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand of payment is made.
- The contact for a given calendar year will not occur until after employee's individual tax returns are due for that year and required employer reporting is due.
- For control groups, penalties apply separately to each control group member/entity (but not the 30 employee reduction for Penalty A).
- Penalty amounts are <u>not</u> tax deductible.
- CBO projects $117 billion between 2014-2022 in employer penalties.

Compliance Items Unaffected by the Delay

- Exchange Marketplace Notice (10/1/13)
- Taxes
- Rating Changes
- W-2 Reporting (250 or more per entity)
- Summary of Benefits and Coverage Notice
- 90 Day Waiting Period (2014 Renewal)

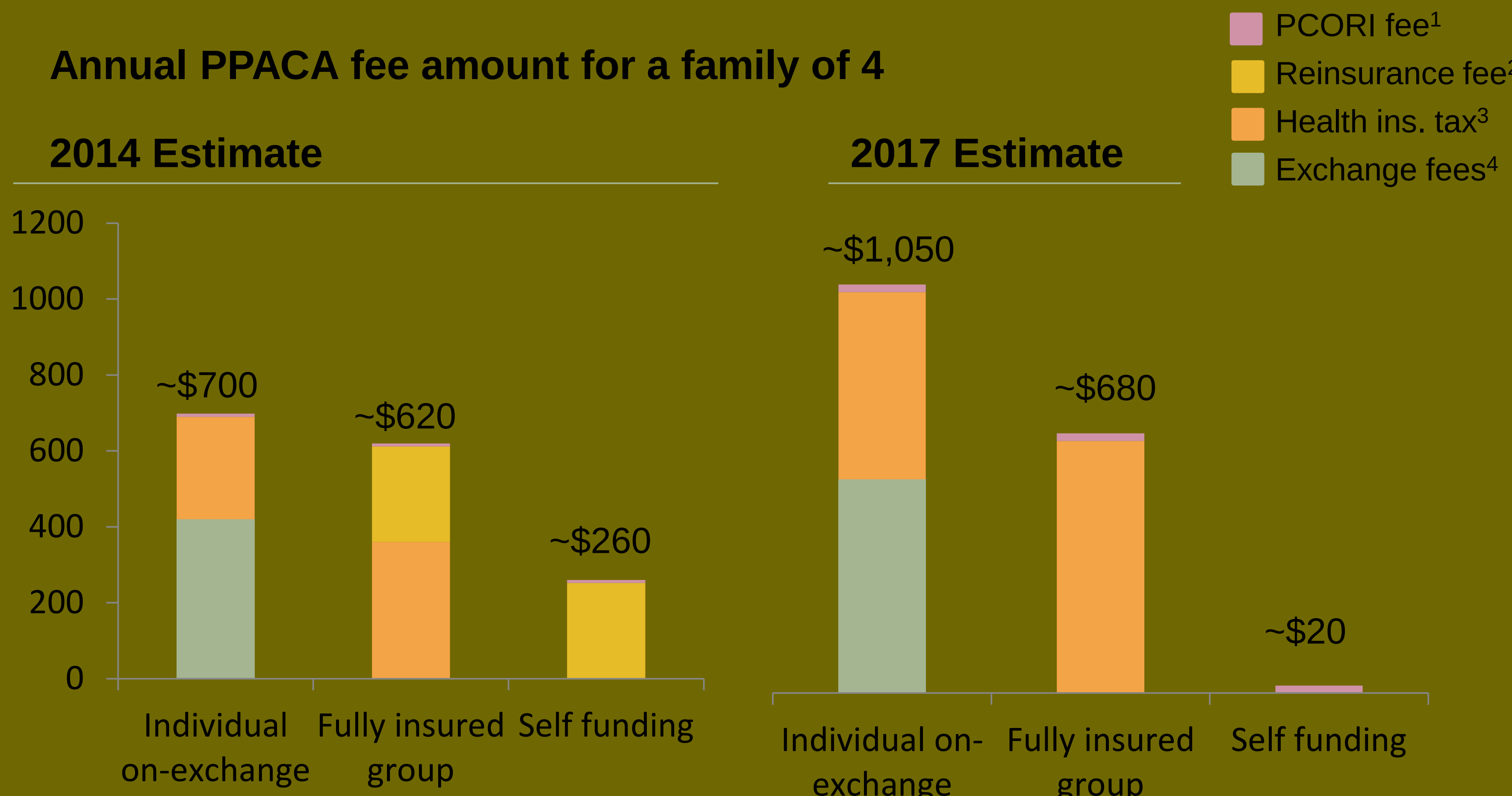
The Financial Impact of Health Care Reform

New Taxes on Insurance

- PCOR Fee: $1 per covered life in 2013, $2 in 2014
  - Self funded plans and fully insured plans with an HRA will pay this tax directly on IRS Form 720 in by July of each year. Fully insured plans will have this amount added to premium calculations.
- Reinsurance Fee: $63 per covered life in 2014
  - Self funded plans will pay this amount directly to the Dept. of Labor in December of 2014. Fully Insured plans will have this amount added to premium calculations. Supposed to go away after 2016.
- Health Insurance Industry Tax: $8 billion tax in 2014
  - Carriers will pay amount of tax based on market share, will impact fully insured plans <u>only</u>. Will increase through 2018 to $16 billion.
- Exchange Fee: 3.5% of Exchange (Marketplace) Premiums
  - Carrier tax to participate in Exchange, will impact fully insured plans only.

Healthcare Reform Fees

Estimated Amount for Family of 4



1. Annual fee of $2 per member; per year increases to $5 per member in 2017 (Source: IRS)
2. $63 per member; per year; tax sunsets in 2016 (Source: IRS)
3. Estimated premium impact of annual fees assessed on health insurance plans (Source: Oliver Wyman)
4. Assumes annual $12K cost per family; 10% annual premium growth and 3.5% fee; not applicable off-exchange

Rating Reforms

Insurance companies that offer fully insured group products in 2014 are restricted in how they determine premiums:

- Restricted premium rating (Small Group):
  - (age, rating area, coverage tier, tobacco use)
- No use of health status-related factors
- No use of pre-existing condition exclusions
- Required to provide guaranteed issue policies with guaranteed renewability

Self Insurance Under Health Care Reform

- Insurance companies are now offering self insurance programs to small groups
- Self Insured plans are not subject to:
  - Essential health benefits package*
  - Medical Loss Ratio requirements
  - Health Insurance Industry Tax
  - Exchange Premium Tax
  - Annual deductible limits ($2,000 / $4,000)

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Wellness Programs and The Affordable Care Act

Types of Wellness Programs Defined

Final regulations categorize wellness programs into two categories:

- Participatory programs
  - Ex: Fitness center reimbursements, attending a health seminar, reimbursement for smoking cessation programs
- Health-contingent programs
  - Activity only
    - Ex: walking, diet, or exercise program
  - Outcome-based
    - Requires and individual to attain or maintain a certain health outcome in order to receive a reward
      - Ex: Biometric screening results tied to premium contributions

Rewards Offered In a Health Contingent Program

- Participants must be able to qualify for the reward at least once per year.
- Program must provide a reasonable alternative standard to obtain the reward
- Program must provide an “alternative to the alternative standard” to obtain the reward
- Reward amounts can be a max of 30% of the total cost of employee coverage (or 50% max if the program is designed to prevent tobacco use)
- Employers must determine affordability (9.5%) using the non-participant/non-smoker contribution

Closing Remarks

Why Seubert?

- Compliance
- Financials
- Wellness

Questions?

Thank You!