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# How the Affordable Care Act is Currently Affecting Cities and Other Governmental Agencies

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February 20, 2013

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# Agenda

- Introduction
- Information Reporting by Large Employers
- Information Reporting of Minimum Essential Coverage
- \$500 Carryover for Health FSAs
- ACA Fees
- Administrative Simplification
- Identifying Full-Time Employees
- Questions

# Introduction

- Affordable Care Act (ACA) is here – maybe to stay
- Employers will have substantial new reporting responsibilities over the next two calendar years
  - Government agencies need to work with their IT departments and payroll vendors to make necessary changes in software and payroll reporting
  - CalPERS and other government units may not be willing to take on these responsibilities, and relieve local agencies of these reporting obligations

# Information Reporting by Large Employers

- IRS issued proposed regulations (September 9, 2013) on Code section 6056; waiting for final regulations to be issued
  - Employers will use the report to avoid penalties under ACA employer shared responsibility
- Reporting entities are applicable large employers – those with an average of 50 or more full-time and full-time equivalent employees during business days in the prior calendar year
  - CalPERS has declined to accept responsibility for reporting

# Information Reporting by Large Employers

## Special Reporting Rule for Governmental Units

- A governmental unit may be designated to comply with the information reporting obligation for an employer, if the employer is itself a governmental unit that is part of or related to the governmental unit that is designated for compliance
  - The designation must be in writing, and signed by both governmental units
  - The designated governmental unit must comply with information reporting separately for each employer/governmental unit
- State Controller's Office is evaluating whether to accept this designation on behalf of governmental units in California

# Information Reporting by Large Employers

## Time and Manner of Reporting

- Report to IRS on Forms 1095-C and 1094-C (not yet available) by February 28 (or March 31 if filed electronically) of the year following the calendar year for which information is required to be reported
  - Applies to calendar years after 2014; first reporting deadline is February 28, 2016
  - Report must be filed electronically if 250 or more returns of any kind are filed during the year
  - Voluntary reporting permitted for 2014 calendar year

# Information Reporting by Large Employers

## Time and Manner of Reporting (continued)

- Statement must be furnished to each full-time employee on Form 1095-C or another form to be identified (perhaps Form W-2)
  - Applies to calendar years after 2014; first reporting deadline is January 31, 2016 (pushed forward to February 1, 2016 because January 31 is a Sunday)
  - Statement may be furnished electronically with the employee's affirmative consent

# Information Reporting by Large Employers

## Information Required to be Reported to IRS

- Name, address and EIN of the employer
- Name and telephone number of the contact person at the employer
- Calendar year for which the information is reported
- Certification that the employer offered minimum essential coverage under an eligible employer-sponsored group medical plan to its full-time employees (and their dependents), by calendar month
- Months during the calendar year for which coverage under plan was available

# Information Reporting by Large Employers

## Information Required to be Reported to IRS (continued)

- Each full-time employee's share of the lowest cost monthly premium (self-only coverage) for coverage providing minimum value offered to that employee under the plan, by calendar month
- Number of full-time employees for each month during the calendar year
- Name, address and TIN of each full-time employee during the calendar year, and the months (if any) during which the employee was covered under the plan
- Other information that IRS may prescribe

# Information Reporting by Large Employers

## Information Required to Be Reported to Full-Time Employees

- The same information required to be reported to IRS, but only to the extent that the information relates to the employee

# Information Reporting of Minimum Essential Coverage

- IRS issued proposed regulations (September 9, 2013) on Code section 6055; waiting for final regulations to be issued
  - Covered individuals will rely on these reports as proof of coverage, and to avoid penalties under ACA individual shared responsibility
- Reporting entities include insurance carriers and plan sponsors of self-insured group health plans (other than excepted benefits)
  - CalPERS has accepted responsibility for reporting on its plans

# Information Reporting of Minimum Essential Coverage

## Time and Manner of Reporting

- Report to IRS on Form 1095-B and 1094-B (not yet available) by February 28 (or March 31 if filed electronically) of the year following the calendar year in which minimum essential coverage was provided
  - Applies to calendar years after 2014; first reporting deadline is February 28, 2016
  - Report must be filed electronically if 250 or more returns are filed during the year

# Information Reporting of Minimum Essential Coverage

## Time and Manner of Reporting (continued)

- Statement must be furnished to covered individuals by January 31 of the year following the calendar year in which minimum essential coverage was provided
  - Applies to calendar years after 2014; first reporting deadline is February 1, 2016 (because January 31, 2016 is a Sunday)
  - Statement may be furnished electronically with the individual's affirmative consent

# Information Reporting of Minimum Essential Coverage

## Information Required to be Reported

- Name, address, and EIN of the employer sponsoring the plan
- Name, address, and either the TIN or date of birth of each individual covered under the policy or program
- Coverage dates for each covered individual (i.e. the months for which, on at least one day of the month, the individual was entitled to receive benefits under the plan)
- Any other information specified in forms, instructions, or published guidance

# \$500 Carryover for Health FSAs

Up to \$500 in an employee's health flexible spending arrangement may be automatically carried over into the next plan year; unused amounts in excess of \$500 are still forfeited

- Carryover is in addition to an employee pre-tax contributions to a health FSA (up to \$2,500 per year in 2014)
- Health FSA cannot have both the carryover rule and a 2-1/2 month grace period
- Carryover may prevent contributions to a health savings account
- Plan amendment required to adopt the carryover rule, must be adopted by the end of the year (except that plan amendment may be made by December 31, 2014 for carryovers relating to 2013)

# ACA Fees

Health insurer fee – applies to insurance carriers providing medical, dental or vision care insurance, to help pay for cost of operating insurance marketplaces

- Estimated fee is 2% to 2.5% of premium cost in 2014, increasing to 3% to 4% thereafter
- Fee does NOT apply to self-insured plans

Transitional reinsurance fee – applies to insurance policies and self-insured plans, to help stabilize premiums for individual coverage sold through insurance marketplaces despite adverse selection

- Estimated fee is \$63 per covered person per year in 2014, reducing by 60% by 2016 before expiring
- Fee does NOT apply to excepted benefits

# ACA Fees

Patient-centered outcomes research fee – applies to insurance policies and self-insured plans, to fund research on the effectiveness, risk and benefits of medical treatments

- Fee is \$1 per covered person per plan year in the first year, then \$2 in year two, and indeed to inflation thereafter for the next 5 years before expiring
- Fee does NOT apply to excepted benefits

# ACA Fees

- CalPERS has factored these fees into the required contributions for PPO and HMO coverage
  - Public agency with CalPERS coverage may be liable for the transitional reinsurance fee and PCOR fee if dental or vision care coverage are self-insured and are NOT an excepted benefit
- Public agencies without CalPERS coverage are liable for the transitional reinsurance fee and PCOR fee if self-insured for medical, dental or vision care coverage (unless an excepted benefit)

# ACA Fees

Type of Plan	Requirements to be HIPAA Excepted
<b>Group dental plan or group vision care plan</b>	<p>One of the following must be met (unless proposed regulations are adopted, which would eliminate the last sub-bullet point):</p> <ul style="list-style-type: none"><li>• Benefits under the plan are provided under a separate policy, certificate or contract of insurance; OR</li><li>• Both of the following must be met:<ul style="list-style-type: none"><li>○ Participants have the right NOT to receive coverage under the plan, AND</li><li>○ If participants elect to receive coverage under the plan, they must pay an additional contribution for the coverage</li></ul></li></ul>

# ACA Fees

Type of Plan	Requirements to be HIPAA Excepted
<b>Health flexible spending arrangement (FSA)</b>	<p>All of the following must be met:</p> <ul style="list-style-type: none"><li>• The maximum annual benefit under the health FSA for any participant does NOT exceed 2x the employee's salary reduction election for the year under the health FSA (OR, if greater, \$500 plus the amount of the employee's salary reduction election for the year under the health FSA); AND</li><li>• Other non-excepted group health plan coverage (i.e. major medical coverage) is available for the year to participants in the health FSA by reason of their employment</li></ul>

# ACA Fees

Type of Plan	Requirements to be HIPAA Excepted
<b>Employee assistance plan</b>	<p>According to proposed regulations, all of the following must be met:</p> <ul style="list-style-type: none"><li>• The EAP does NOT provide significant benefits in the nature of medical care;</li><li>• No employee premiums or contributions may be required as a condition of participation in the EAP;</li><li>• There is no cost sharing under the EAP; and (see next slide)</li></ul>

# ACA Fees

Type of Plan	Requirements to be HIPAA Excepted
<b>Employee assistance plan</b>	<ul style="list-style-type: none"><li>• Benefits under the EAP cannot be coordinated with benefits under another group health plan, as follows:<ul style="list-style-type: none"><li>○ Participants in the other group health plan must not be required to exhaust benefits under the EAP (making the EAP a gatekeeper) before an individual is eligible for benefits under the other group health plan;</li><li>○ Participant eligibility for benefits under the EAP must not depend on participation in another group health plan; and</li><li>○ Benefits under the EAP must not be financed by another group health plan</li></ul></li></ul>

# Administrative Simplification

- Health Insurance Portability and Accountability Act of 1996 (HIPAA) adopted “administrative simplification”
  - Regulates the transfer of healthcare information among group health plans, healthcare providers (i.e. doctors and hospitals), and healthcare clearinghouses
  - Facilitates better outcomes in the treatment of patients
- ACA includes new standards for administrative simplification
  - Applies to insurance carriers and third-party administrators
  - Also applies to employers that self-administer a self-insured group health plan (if the plan is not an “excepted benefit”)
- Separate deadlines apply to small health plans (a plan with annual receipts of \$5 million or less, that either provides medical care to 50 or more participating employees, or is administered by an entity other than the employer)

# Administrative Simplification

To demonstrate compliance with administrative simplification, the plan must obtain a Council for Affordable Quality Healthcare (CAQH) Committee on Operating Rules for Information Exchange (CORE):

- Certification seal for Phase III CAQH CORE electronic funds transfer and electronic remittance advice operating rules; or
- HIPAA credential for the operating rules for
  - Eligibility for a health plan,
  - Healthcare claim status, and
  - Healthcare electronic funds transfers and remittance advice

# Administrative Simplification

New Requirement	Deadline
Implement operating rules for eligibility for health plan and health claims status transactions	January 1, 2013
Implement standards and operating rules for electronic funds transfers and remittance advice transactions	January 1, 2014
Implement ICD-10 CM and IC-10 PCS	October 1, 2014

# Administrative Simplification

<b>New Requirement</b>	<b>Deadline</b>
Large health plans must obtain a Health Plan Identifier (HPID)	November 5, 2014
Small health plans must obtain a HPID	November 5, 2015
Large health plans must file a statement with HHS certifying compliance with standards and operating rules	January 1, 2015 to December 31, 2015
Small health plans must file a statement with HHS certifying compliance with standards and operating rules	Within 365 calendar days of obtaining the HPID

# Identifying Full-Time Employees

- Prior to ACA, employers typically offered coverage under a group medical plan to all full-time employees, based on whether the employee was reasonably expected to work at or above a particular hourly threshold (as set by the employer)
- ACA could have required employers to offer coverage under a group medical plan to all employees, regardless of hours worked
- Instead, ACA gives employers a choice between (i) offering qualifying coverage under a group medical plan to all employees who have an average of 30 hours of service or more per week, or (ii) paying a penalty

# Identifying Full-Time Employees

IRS ~~proposed~~ **final** regulations broadly divide employees into the following categories:

- New employees
  - Employees reasonably expected (at their start date) to have an average of 30 hours of service or more per week over an initial measurement period
  - Variable hour employees
  - Seasonal employees
  - **Part-time employees**
- Ongoing employees

An “hour of service” means an hour paid to work or an hour paid not to work; it also includes unpaid absences protected under federal law, such as FMLA (~~not clear whether it also includes~~ **it does NOT include** unpaid absences protected under state law, such as pregnancy disability leave)

# Identifying Full-Time Employees

First step for new employees – offer coverage under a group medical plan to new employees who are reasonably expected (at their start date) to have an average of 30 hours of service or more per week over an initial measurement period

- **Final regulations allow the plan to delay coverage (without penalty) until the first day of the calendar month that coincides with or next follows the employee's completion of three full calendar months of employment**
- Under federal law, a waiting period of up to 90 calendar days may apply
- Under California law, a waiting period of up to 60 calendar days may apply to insured medical plans and HMOs (subject to regulatory interpretation)

# Identifying Full-Time Employees

Second step for new employees – conduct a look-back measurement period for new employees who are seasonal, variable hour, or part-time, to determine if they are full-time employees

- Measurement period begins on the employee's first day of work, or on the first day of the month after he/she begins work for the employer
- Measurement period must be at least 3 months long, but not longer than 12 consecutive calendar months, as chosen by the employer
- Unclear if the measurement period must be formally adopted by the employer

**Final regulations give employers the option of using a monthly measurement to determine if an employee is full-time (rather than using the look-back measurement period); any employee with 130 or more hours of service in a calendar month is full-time**

# Identifying Full-Time Employees

Example of a **look-back** measurement period for new employee

- Andrew is a new variable-hour employee who begins working for the employer on June 14, 2014
- The employer has chosen a 12 month measurement period for determining “full-time employee” status; in this case, the employee’s measurement period begins on July 1, 2014, and ends on June 30, 2015
- Andrew must have at least 1,560 hours of service during the measurement period (i.e. 30 hours of service multiplied by 52 weeks) to qualify as a “full-time employee”

# Identifying Full-Time Employees

Third step for new employees – based on the results of the measurement period, treat the employee as a “full-time employee” (or not) during a stability period

- At the end of the **look-back** measurement period, the employer may evaluate the results during an administrative period (or waiting period) that does not exceed 90 calendar days (or possibly 60 calendar days under California law); special rules may also limit the duration of this period
- Stability period begins when the administrative period ends; it must be at least 6 months long, and cannot be shorter than the measurement period
- Unclear if the administrative period and measurement period must be formally adopted by the employer

**If the employer uses the monthly measurement to determine if an employee is full-time, then there is no stability period; the determination is made month-by-month**

# Identifying Full-Time Employees

## Example of stability period for new employee

- Andrew is the new employee who has a measurement period that begins on July 1, 2014 and ends on June 30, 2015
- Andrew has at least 1,560 hours of service during the measurement period that ends on June 30, 2015, and is therefore determined to be a full-time employee
- The employer uses an administrative period that is one calendar month long; in this case, the administrative period is July 2015
- Because the measurement period is 12 months long, the stability period must be 12 months long as well; in this case, Andrew is treated as a full-time employee during the stability period that begins on August 1, 2015 and ends on July 31, 2016
- Andrew starts working 15 hours per week on December 1, 2015; he is still considered a “full-time employee” through the end of the stability period on July 31, 2016

# Identifying Full-Time Employees

First step for ongoing employees – identify the plan year, which will typically be chosen as the stability period for ongoing employees who are full-time employees

- The plan year for public agencies with CalPERS is the calendar year
- The first stability period under the ACA will begin in 2015; for calendar year plans, the first stability period is January 1, 2015 to December 31, 2015
- Stability period must be at least 6 months long, and cannot be shorter than the measurement period (see next slide)
- Unclear if the stability period must be formally adopted by the employer

**Final regulations give employers the option of using a monthly measurement to determine if an employee is full-time (rather than using the look-back measurement period); if this method is used, there is no stability period**

# Identifying Full-Time Employees

Second step for ongoing employees – conduct a look-back measurement period for ongoing employees to determine if they are full-time employees

- Measurement period must be at least 3 months long, but not longer than 12 consecutive calendar months, as chosen by the employer
- Measurement period must end within 90 calendar days (or possibly 60 calendar days under California law) of the start of the stability period; this is the administrative period (or waiting period)
- An ongoing employee is defined as any employee who is employed by the employer on the first day of the measurement period for ongoing employees
- Unclear if the measurement period and administrative period must be formally adopted by the employer

# Identifying Full-Time Employees

Second step for ongoing employees – conduct a look-back measurement period for ongoing employees to determine if they are full-time employees (continued)

- **Transition rule under the final regulations – for the stability period beginning in 2015, the employer may use a look-back measurement period that:**
  - Is not less than 6 consecutive months long; and
  - Begins no later than July 1, 2014; and
  - Ends no earlier than 90 days before the first day of the 2015 stability period
- **Final regulations give employers the option of using a monthly measurement to determine if an employee is full-time (rather than using the look-back measurement period); any employee with 130 or more hours of service in a calendar month is full-time**

# Identifying Full-Time Employees

Example of **look-back** measurement period and stability period for ongoing employee

- The employer has a calendar year plan; its first stability period is January 1, 2015 to December 31, 2015
- The first measurement period begins December 1, 2013 and ends November 30, 2014 (i.e. 12 months long); the administrative period is the month of December 2014
- Andrew, the new employee, begins working for the employer on June 14, 2014
- Andrew is NOT an employee on December 1, 2013, so he is NOT an ongoing employee for purposes of the measurement period that begins on that date

# Identifying Full-Time Employees

Example of **look-back** measurement period and stability period for ongoing employee (continued)

- The employer's next stability period is January 1, 2016 to December 31, 2016
- Measurement period for that stability period begins December 1, 2014 and ends November 30, 2015 (i.e. 12 months long); the administrative period is the month of December 2015
- Andrew is an employee on December 1, 2014, so he is an ongoing employee for purposes of the measurement period that begins on that date
- For the 12 month measurement period that ends on November 30, 2015, Andrew has at least 1,560 hours of service; Andrew is therefore treated as a full-time employee for the stability period that takes place from January 1, 2016 to December 31, 2016
- Andrew is working 15 hours per week in January 2016; he is still considered a "full-time employee" through the end of the stability period on December 31, 2016

# Identifying Full-Time Employees

## Special Considerations

- Within each category of employee (ongoing or new), and within each sub-category of new employee (full-time, variable hour or seasonal), the employer has the option of adopting a different uniform standard for determining “full-time employee” status under the following classifications:
  - Collectively bargained and non-collectively bargained employees
  - Salaried and hourly employees
  - Employees of different entities
- Unclear if the use of different options for different categories of employees must be formally adopted by the employer

# Identifying Full-Time Employees

## Special Considerations (continued)

- A “full-time employee” is no longer full-time, if he/she has zero hours of service in a calendar month, even if the stability period has not yet expired
- An employee who has zero hours of service for ~~26~~ **13** consecutive weeks (**26 consecutive weeks for an educational organization**) is treated as a new employee if he/she returns to work for the employer, even if the stability period has not yet expired
- If the employer is an educational organization, and the employee is absent on an employment break, then up to 501 hours of the employment break must not be factored into the employee’s **look-back** measurement period



Questions?