ACA COMPLIANCE CHECKLIST FOR 2015

Evaluate Grandfathered Status of Group Health Plan

A grandfathered plan is one in existence as of March 23, 2010 that has covered at least one person continuously from that day forward. Grandfathered plans ***do not have to comply with certain ACA rules***.

Review your plan's grandfathered status:

☐ If you have a grandfathered plan, determine whether it will maintain its grandfathered status for the 2015 plan year. Grandfathered plans are exempt from some of the ACA's mandates. A grandfathered plan's status will affect its compliance obligations from year to year.

☐ If your plan will lose its grandfathered status for 2015, confirm that the plan has all of the additional patient rights and benefits required by the ACA for non-grandfathered plans. This includes, for example, coverage of preventive care without cost-sharing requirements.

☐ If your plan will keep grandfathered status, continue to provide the Notice of Grandfathered Status in any plan materials provided to participants and beneficiaries that describe the benefits provided under the plan (such as the plan's summary plan description and open enrollment materials).

Cost-sharing Limits

Certain requirements apply on a plan year basis, meaning the changes take effect when a group health plan begins a new plan year. As a result, compliance deadlines may vary.

Check your plan's cost-sharing limits:

☐ Review your plan's out-of-pocket maximum to make sure it complies with the ACA's limits for the 2015 plan year ($6,600 for self-only coverage and $13,200 for family coverage).

☐ If you have a health savings account (HSA)-compatible high-deductible health plan (HDHP), keep in mind that your plan's out-of-pocket maximum must be lower than the ACA's limit. For 2015, the out-of-pocket maximum limit for HDHPs is **$6,450** for self-only coverage and **$12,900** for family coverage.

☐ If your plan uses multiple service providers to administer benefits, confirm that the plan will coordinate all claims for Essential Health Benefits (EHB) across the plan's service providers, or will divide the out-of-pocket maximum across the categories of benefits, with a combined limit that does not exceed the maximum for 2015.

☐ Be aware that the ACA's annual deductible limit no longer applies to small insured health plans.

Analyze Tax-Favored Benefit Arrangements

Employers who maintain cafeteria plans, HRA's and health FSAs should confirm that these arrangements comply with several ACA changes that took effect in 2014.

For Cafeteria plans in general:

☐ Determine whether you will allow employees to make additional mid-year changes in salary reduction elections in the event of an employee's enrollment in Health Insurance Marketplace coverage.

☐ Confirm that section 125 Cafeteria plan documents were amended to comply with the prohibition on providing a qualified health plan offered through the Health Insurance Marketplace as a benefit under an employer sponsored cafeteria plan.

Key points regarding Health Reimbursement Arrangements (HRA's):

☐ Confirm that the HRA is 'integrated' with other group health plan coverage in order to satisfy the preventative services requirements not subject to co-pays and co-insurance and the annual dollar limit prohibition.

☐ Confirm that the HRA is not being used to reimburse an employee's individual insurance policy premiums.

Update your health FSA's contribution limit:

☐ Work with your advisors to monitor IRS guidance on the health FSA limit for 2015.

☐ Confirm that your health FSA will not allow employees to make pre-tax contributions in excess of $2,550 for 2015. Also, communicate the 2015 health FSA limit to employees as part of the open enrollment process.

Is Your Group Plan Self-funded?

The Transitional Reinsurance Program collects contributions from employers sponsoring certain self-insured plans that provide major medical coverage. Employers with self-insured plans may utilize a third party administrator or administrative-services-only contractor for transfer of the contributions. (Note: For 2015 and 2016, a self-insured plan that does not use a third party administrator to perform its claims processing, claims adjudication, and enrollment functions generally does not have to pay these fees.)

Determine whether your health plan is subject to reinsurance fees:

☐ Taking into account the new exception for self-insured, self-administered health plans, review the health coverage you provide to your employees to determine the plan(s) subject to the reinsurance fees for 2015.

Employer Shared Responsibility Penalty Rules

Beginning in 2015, certain large employers will be subject to the ACA employer shared responsibility ("pay or play") requirements. Due to the complexity of the law in this area, employers are strongly advised to work with knowledgeable employment law counsel to ensure full compliance.

Determine your Applicable Large Employer (ALE) status for 2015:

☐ To count your employees, determine whether you will use the entire 2014 calendar year or the special transition rule that allows you to use any period of at least six consecutive calendar months during 2014.

☐ Calculate the number of full-time employees for each calendar month in the counting period. A full-time employee is an employee who is employed on average for at least 30 hours of service per week.

☐ Calculate the number of FTEs for each calendar month in the counting period by calculating the aggregate number of hours of service (but not more than 120 hours of service for any employee) for all employees who were not full-time employees for that month and dividing the total hours of service by 120.

☐ Add the number of full-time employees and FTEs (including fractions) calculated above for each month in the counting period.

☐ Add up the monthly numbers from the preceding step and divide the sum by the number of months in the counting period. Disregard fractions.

☐ If your result is 50 or more, you are likely an ALE for 2015.

☐ Keep in mind that there is a special exception for employers with seasonal workers. If your workforce exceeds 50 full-time employees (including FTEs) for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that time were seasonal workers, the employer does not qualify as an ALE.

One-year Delay for Medium-sized ALEs (50 – 99 FTEs)

Large employers with **50 to 99 full-time employees** (including FTEs) that certify they meet certain eligibility criteria related to workforce size, maintenance of workforce and aggregate hours of service, and maintenance of previously offered health coverage, will not have to comply with "pay or play" until 2016.

Determine whether you qualify for the one-year delay for medium-sized ALEs:

☐ Review whether you have fewer than 100 full-time employees (including FTEs) for 2014 and meet the other requirements for the one-year delay.

☐ Work with your advisors to monitor IRS information on the certification process for medium-sized ALEs.

☐ Keep in mind that ALEs eligible for the one-year delay must still report under Section 6056 for 2015.

Transition Relief for Non-calendar Year Plans

Large employers that **maintained non-calendar year plans** as of December 27, 2012, that were not modified thereafter to begin at a later date, may be able to begin compliance at the start of their plan years in 2015.

If you have a non-calendar year plan:

☐ Determine whether you qualify for the transition relief that allows you to delay complying with the pay or play rules until the start of your 2015 plan year.

☐ Confirm whether all full-time employees are covered by the transition relief. The following question will help you determine which employees are covered by the transition relief. Were all of the FTE's (as defined by the ACA regulations) who are eligible for coverage on the first day of the 2015 plan year offered affordable coverage that provides minimum value?

Overall Health Plan Coverage Review

Determine whether group health plan coverage will be offered to full-time employees, using the measurement methods and rules for calculating hours of service described in the final regulations. For employers offering coverage, the cost of the group health plan should be both **affordable**, and provides **minimum value**.

Review your health plan design:

☐ Use the monthly measurement method or the look-back measurement method to confirm that health plan coverage will be offered to all full-time employees (and dependent children). If you have employees with varying hours, the look-back measurement method may be the best fit for you. To use the look-back measurement method, you will need to select your measurement, administrative and stability periods. Please review the *definition of a full-time employee* below.

☐ Review the cost of your health plan coverage to determine whether it's affordable for your employees by using one or more of the affordability safe harbors. An *explanation of affordability* is included below.

☐ Determine whether the plan provides minimum value by using one of the four available methods (minimum value calculator, safe harbor checklists, actuarial certification or metal (Bronze, Silver, Gold, Platinum) level). An *explanation of minimum value* is included below.

Explanation of Affordability

Coverage is affordable if the employee portion of the premium for the lowest cost, self-only coverage that provides minimum value does not exceed 9.5% of an employee's W-2 wages, or rate-of-pay income, or the federal poverty level for a single individual. The cost of family coverage is not taken into account. The employer may use the 9.5% of employee W-2 wages as a safe-harbor calculation method with the understanding that qualified retirement plan and 401K deductions are included in the gross amount and that the employee has had at least one prior W-2 as a reference.

Explanation of Minimum Value

A plan generally provides minimum value if it pays for at least 60% of covered health care expenses. All of the major healthcare insurers have restructured their plan offerings to comply with this regulation.

Full-time Employee Definition

A full-time employee under the ACA regulations is an employee who is employed on average at least 30 hours of service per week with respect to any month. Specifically, the regulations define an hour of service to mean each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, disability, jury duty, military duty, or leave of absence.

Compliance with Coverage Reporting Requirements

Information reporting is used to determine compliance with the ACA individual responsibility and "pay or play" provisions. While the information reporting requirements are first effective for coverage offered (or not offered) in 2015, the initial deadlines for reporting entities are in 2016.

If you do not already have a third party payroll service provider, determine whether to hire a third party payroll provider to fulfill reporting responsibilities (reporting entities will still be liable for the failure to report information and furnish employee statements). In general, payroll service providers have restructured their reporting systems to comply with ACA regulations. This includes reporting the cost of health coverage provided to each employee annually on Form W-2, which must be furnished to employees by January 31st each year.

There are two types of reporting entities and each have applicable reporting requirements:

- "Section 6055" Reporting Entities. Self-insuring employers that provide minimum essential health coverage are required to report information on this coverage to the IRS and to covered individuals under section 6055 of the Internal Revenue Code.
- "Section 6056" Reporting Entities. Employers with 50 or more full-time employees (including FTEs) are required to report information to the IRS and to their employees about their compliance with "pay or play" under Internal Revenue Code section 6056—even those that qualified for 2015 transition relief from the "pay or play" provisions.

If the reporting entity plans to furnish employee statements electronically in 2016, ensure that affirmative consent is obtained from employees prior to furnishing (section 6056 reporting entities must also ensure that certain notice, hardware, and software requirements are met).

Forms 1094-B and 1095-B, along with Instructions, are available for section 6055 reporting entities.

Forms 1094-C and 1095-C, along with Instructions, are available for section 6056 reporting entities (or employers that are subject to both reporting provisions).

Compliance deadlines for information reporting for calendar year 2015 are as follows.

Section 6055 Deadlines:

- First information returns must be filed no later than February 29, 2016 (or March 31, 2016, if filed electronically).
- First employee statements must be furnished on or before January 31, 2016.

Section 6056 Deadlines:

- First information returns must be filed no later than February 29, 2016 (or March 31, 2016, if filed electronically).
- First employee statements must be furnished on or before January 31, 2016

Prepare for Health Plan Reporting:

☐ Determine what type of entity you are and which reporting requirements apply to you and your health plans.

☐ Start analyzing the information you will need for reporting and coordinate internal and external resources to help track the required data.

☐ Determine the need for a third party payroll service provider to ensure accurate compliance reporting and compliance deadlines are met.

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