

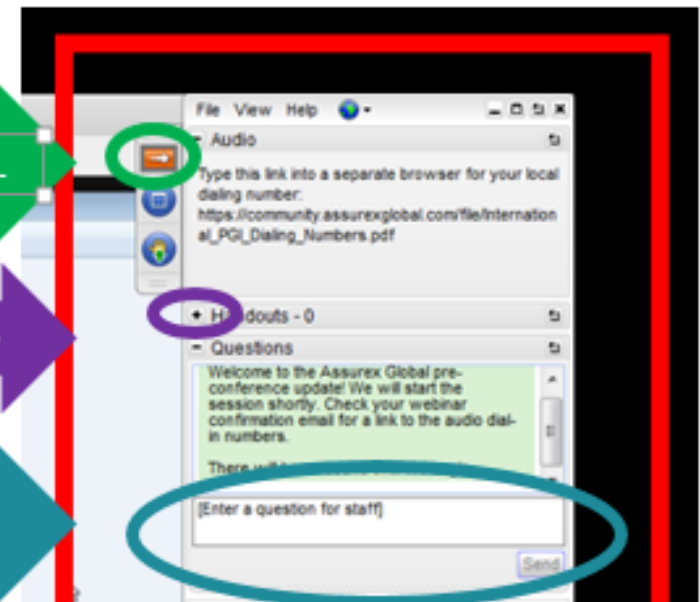
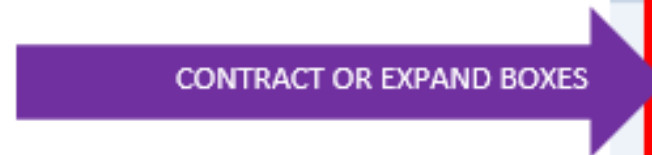
December 17, 2015

2015 Wrap-Up and a Look Forward to 2016

Presented by Benefit Comply

2015 Wrap-Up and a Look Forward to 2016

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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- Woodruff-Sawyer & Co.
- Wortham Insurance & Risk Management

Agenda

- Look back on 2015
- 2016 compliance issues
- Outstanding compliance issues that could see developments in 2016

Review of Significant 2015 Developments

2015 Review

- **Supreme Court Subsidy Case – King v. Burwell**
 - Challenge to ACA subsidies in states using federal marketplace Healthcare.gov
 - In a 6-3 decision, the SCOTUS ruled that subsidies can be provided to individuals who purchase health insurance plans in states that use the federal marketplace
 - Employer impact of the decision
 - No change in employer responsibility or reporting requirements for now
- **Repeal of ACA Automatic Enrollment Requirement**
 - ACA originally required employers with 200 or more employees to develop an automatic enrollment system similar to 401(k) plans
 - Requirement was delayed in 2010 by the DOL
 - Requirement was repealed in November as part of the “Bipartisan Budget Act of 2015” – employers will no longer be required to develop an automatic enrollment system

2015 Review

- **Same Sex Marriage - Obergefell v. Hodges**
 - In a 5-4 decision Supreme Court ruled that the Fourteenth Amendment requires all jurisdictions in all fifty states to:
 - License a marriage of a same sex couple
 - Recognize a same sex marriage lawfully licensed and performed in another state
 - Impact on Employee Benefits
 - Simplified administration of benefit plans – employers able to treat all marriages the same
- **EEOC and Wellness Plans**
 - EEOC finally weighs in on wellness plans and the ACA
 - Proposed regulations issued
- **HIPAA Breaches**
 - Major data breaches at health insurance companies reinforce need for good HIPAA privacy and security policies and procedures

2015 Review

- Employer Payment of Individual Health Insurance
 - Background
 - The DOL, IRS, & HHS have previously released informal guidance limiting the employer's ability to pay for individual health insurance premiums for employees, but prior guidance was somewhat unclear and left room for some alternative interpretations
 - IRS Notice 2015-17 effectively puts an end to that practice
 - Payment of individual health insurance premiums by an employer constitutes a group health plan made up of individual health insurance policies which violates a number of ACA group market reform provisions
 - There is no way for the employer to provide a method to pay for the individual health insurance policies tax-free
 - Even employer payment of individual policies on an after-tax basis violates ACA group insurance requirements
 - An employer that offers such an arrangement is subject to a fine of up to \$100 per employee per day.

2016 Issues

Public (State or Federal) Marketplace

- Current Open Enrollment Period
 - Next open enrollment Nov 1, 2015 – Jan 31, 2016
- Special Enrollment Periods
 - Special events that would allow a mid-year enrollment include:
 - Losing other minimum essential coverage
 - Gaining or becoming a dependent through marriage, birth, adoption, or placement for adoption
 - Becoming newly eligible/ineligible for the premium tax credit or experiencing a change in eligibility for cost-sharing reductions
 - Gaining status as a citizen, national, or lawfully present individual in the U.S (not previously lawfully present)
 - Experiencing an error in enrollment
 - New QHPs offered through the marketplace becoming available as a result of a permanent move

Evolution of Small Group Definition

- **ACA Impact on Small Group Plans**
 - The ACA made significant changes to the benefits, underwriting and rating rules that apply to the small group health insurance market
 - Prior to the ACA, small group health insurance was principally regulated by state insurance law
 - Changes imposed by the ACA included among other things:
 - Modified community rating which prohibited group rating based on health history
 - No gender based rates
 - Age rating with limits on difference between young and old
 - Requirements for small group health plans to cover essential health benefits
 - These rules apply to all small group health plans, not just those sold through a state or federal Marketplace
 - ACA also expanded the definition of a “small employer” to employers with less than 100 full-time equivalents (FTEs) beginning in 2016...However...

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Evolution of Small Group Definition

- PACE Act

- The PACE Act defines a small employer as not more than 50 employees
 - Act gives states the option to define the small group market differently
 - Most states will return to a small group definition of 50 employees
- In determining small group status carriers are supposed to consider all employees in a aggregated group of employers based on IRS Code §414 controlled group and affiliated service group rules
 - Carriers will start asking about controlled group status
 - May be a problem for small employers who are part of a larger aggregated group of employers

- Important Note

- This change does not effect the ACA rules determining if an employer is an “applicable large employer” (ALE) for purposes of the §4980H employer shared responsibility rules (often called the play or pay rules)
 - An ALE is an employer with 50 or more FTEs, and this ALE definition will not be effected by state small group definition changes

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2016 ACA Fees

- PCORI Fee
 - All self-funded plans must pay PCORI fee no later than July 31, 2016
 - Use IRS excise tax Form 720 (720X to make corrections)
 - Applies to HRAs integrated with a fully-insured health plan
 - PCORI fee effective until 2019
 - 2016 fee = \$2.17 per participant for plan years ending after 09/30/15
 - Plan year 1/1/15 - 12/31/15 will pay \$2.17
 - Plan year 8/1/14 - 07/31/15 will pay \$2.08
- 2016 Reinsurance Contribution
 - One more year (2016) of reinsurance contributions
 - 2016 Reporting
 - Employers who sponsor self-funded plans that provide minimum value must report membership to CMS by 11/15/2016
 - 2016 reinsurance contribution = \$27 per covered life (it was \$44 in 2015)

Individual Mandate

- Background - Penalty applies if an individual, spouse, or dependent does not have minimum essential coverage
 - Payment is the greater of "flat dollar amount" or "percentage of income amount"
 - Payment is capped at the national average of the annual cost of a bronze level health insurance plan for the applicable family size
- Annual Flat Dollar Amount
 - \$325 for 2015, \$695 in 2016 and thereafter
 - The amount for individuals age 18 or younger is half of the applicable amount
- Percentage of Income Amount
 - Determined by first subtracting the taxpayer's exemption and standard deductions from the taxpayer's household income
 - 2% of household income for 2015, 2.5% thereafter
- Impact on Employers
 - Larger penalty may drive employees who have waived coverage in the past to enroll in employer plan or through the Marketplace

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Employer Shared Responsibility Rules

- §4980H Review
 - ALEs must offer coverage to “substantially all” full-time employees and their dependent children that provides minimum value and is affordable
 - 4980H(a) Penalty/Payment
 - If employer does not offer minimum essential coverage (MEC) to at least 95% (70% in 2015 only) of full-time employees & at least one full-time employee purchases subsidized individual coverage through a public Marketplace
 - \$173.33/mo. (\$2080/yr) times number of full-time employees not counting first 30 (not counting first 80 in 2015 only)
 - 4980H(b) Penalty/Payment
 - Applies if employer offers coverage to substantially all full-time employees and their dependent children but coverage is not offered to some full-time employees or coverage is “unaffordable” or not “minimum value”
 - \$260/mo. (\$3120/yr) for each full-time employee who purchases subsidized individual coverage through a public Marketplace

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Employer Shared Responsibility Rules

- Transition Rules Ending in 2016
 - Employers with 50-99 FTEs not subject to Play or Pay Rules in 2015
 - The employer had 50-99 FTEs during 2014
 - The relief applies to all of 2015 plus any calendar months of 2016 that fall within the 2015 plan year
 - These employers must still do ACA employer reporting
 - Employer must certify eligibility for this transition relief on Form 1094-C
 - 4980H(a) Substantially All Rule
 - ALE must offer coverage to “substantially all” full-time employees to avoid 4980H(a) liability
 - 70% in 2015 plan years
 - 95% in 2016 plan years
 - 4980H(a) Penalty Calculation
 - Employers who fail to offer coverage to substantially all full-time employees pay \$173.33/mo. times total number of full time employees not counting the first 80 in 2015, but goes down to the first 30 in 2016

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Marketplace/Exchange Employer Notices

- ACA Marketplace/Exchange to Employers
 - ACA requires state and federal marketplaces/exchanges to notify employers when it is aware that an employee is receiving a tax-credit when purchasing individual health insurance
 - Some states have already begun to send these notices in 2015
 - HHS announced that Federally Facilitated Marketplaces (FFMs) will begin sending notices in 2016
 - FFM will only send notices when employee provides employer information when applying for coverage
 - Employer right to appeal
 - Employers have a right, but are not required, to appeal when they feel an employee should not be receiving a subsidy

Employer Reporting

- Employer Reporting of Plan and Coverage Information Will Provide the IRS with the Information Necessary to Administer and Regulate:
 - Individual compliance with the requirement to have minimum essential coverage (“individual mandate”)
 - Individual eligibility for a premium tax credit/subsidy for coverage through a public Marketplace
 - Employer compliance with the requirement to offer coverage to full-time employees and their dependent children under the employer shared responsibility rules (Section 4980H)

Background

- All ALEs (50 or more FTEs)
 - Must report plan and offer of coverage information (§6056)
 - Employers with 50-99 FTEs satisfying the transition relief to delay 4980H compliance until 2016 must still report for 2015
- Employers offering self-funded plans (large and small)
 - Must report participant coverage information for any individual covered by the self-funded plan (§6055)
 - Recent Update - Final instructions and IRS notice make clear reporting is not required for a self-funded health reimbursement account (HRA) that is integrated with a health plan already subject to the reporting

Report on Who? And Form Details

- Who?
 - ALE reporting required on any employee who is full-time for at least 1 month during the year
 - Full-time as defined by Section 4980H using the monthly measurement method or the look-back measurement method
 - Self-funded plan must also report on anyone (even part-time or non-employees) covered by the plan
- What Forms?
 - Form 1094 (B&C versions) Employer Summary & Transmittal Form
 - Used to report employer summary information to the IRS
 - Think of it as a cover sheet for the individual employee statements
 - Form 1095 (B&C versions) Employee Statement
 - Used to report employee-specific and covered individual information

**Transmittal of Employer-Provided Health Insurance Offer and
Coverage Information Returns**

► Information about Form 1094-C and its separate instructions is at www.irs.gov/form1094c

CORRECTED

Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town	13 State or province	14 Country and ZIP or foreign postal code	
15 Name of person to contact		16 Contact telephone number	

For Official Use Only



17 Reserved

18 Total number of Forms 1095-C submitted with this transmittal ►

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions

Part II ALE Member Information

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member ►

21 Is ALE Member a member of an Aggregated ALE Group? Yes No

If "No," do not complete Part IV.

22 Certifications of Eligibility (select all that apply):

A. Qualifying Offer Method
 B. Qualifying Offer Method Transition Relief
 C. Section 4980H Transition Relief
 D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

► _____ Signature
► _____ Title
► _____ Date

Line 22 Certifications of Eligibility

- Box A - Qualifying Offer Method
- Box B - Qualifying Offer Method Transition Relief
- Box C – Section 4980H Transition Relief
- Box D – 98% Offer Method

Box A - Qualifying Offer Method

- “Qualifying Offer” Definition
 - A minimum value plan offered at an employee cost for employee-only coverage not exceeding \$93.18/month for 2015 (9.5 percent of the mainland single federal poverty line [FPL]), and at least minimum essential coverage offer to spouses and dependents
 - Offer was for all months during the year in which the employee was a full-time employee and the employer was subject to shared responsibility rules

Note - Employers are not required to make a qualifying offer – it simply changes the reporting process

Box A - Qualifying Offer Method

- “Qualifying Offer” Benefits to the Employer
 - No need to complete cost of plan on line 15 of Form 1095-C
 - Use Code 1A for those offered coverage with a qualifying offer
 - Employer may provide a simplified statement to any employee who received a qualifying offer all year instead of copy of Form 1095
 - Important Note - Employer still has to provide a Form 1095 to the IRS
 - Self-funded employers cannot use the simplified statement for anyone who has elected coverage
 - Advantage for employers is that the employee statement must be delivered by Jan. 31, but Form 1095 does not need to be sent to the IRS until Feb. 28 or March 31, if filing electronically
 - Employer can also request a 30-day extension to file Form 1095 with the IRS, but employee statement must still be delivered by Jan. 31

Box B – Qualifying Offer Method Transition Relief

- Qualifying offer made for one or more months of 2015 to at least 95% of full-time employees
- Benefits to employer
 - May use simplified statement for all employees including those not receiving the offer all 12 months instead of copy Form 1095
 - Employer still has to provide Form 1095 to the IRS
 - Self-funded employers cannot use the simplified statement for anyone who has elected coverage on the plan
 - Advantage for employers is that the employee statement must be delivered by Jan. 31, but Form 1095 does not need to be sent to the IRS until Feb. 28 or March 31, if filing electronically
 - Employer can also request a 30-day extension to file Form 1095 with the IRS, but employee statement must still be delivered by Jan. 31

Box B - Qualifying Offer Method Transition Relief

- **Simplified Statement**

- Self-funded plans cannot use simplified statement for anyone who has elected coverage
- Contents of simplified statement
 - Employer name, address, and EIN;
 - Contact name and telephone number for providing information about the offer of coverage and information on Form 1095-C
 - A statement for individuals receiving a qualifying offer all 12 months indicating that the employee (and spouse/dependents, if any) has received a qualifying offer and are not eligible for a premium tax credit
 - For employers that use the 2015 transition relief, include a statement that explains possible eligibility for premium subsidy for employees who did not receive a qualifying offer all 12 months
 - A statement directing the employee to Pub. 974 (“Premium Tax Credit [PTC]”) for more information on eligibility for the premium tax credit

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Box C – 4980H Transition Relief

- Check this box if the employer is eligible for section 4980H Transition Relief under either:
 - 2015 Section 4980H Transition Relief for ALEs with 50-99 Full-Time Equivalent (FTE) Employees
 - 2015 Transition Relief for Calculation of Assessable Payments Under Section 4980H(a) for ALEs with 100 or More FTEs
 - 2015 4980H(a) payment applies only after first 80 full time employees (will be after first 30 beginning in 2016)
 - Employer would only use this if they fail to offer coverage to 70% of their full-time employees in 2015

Box D - 98% Offer Method

- For all months of the calendar year, employer offered affordable, minimum value coverage to at least 98% of its full-time employees and offered at least minimum essential coverage to the employees' dependents
 - Affordability can be based on any of the affordability safe harbors
 - Benefits to employer:
 - Employer does not have to provide number of full-time employees by month in column (b) of Form 1094-C
 - So long as the employer files a Form 1095-C for each full-time employee, the employer is not required to identify which employees are full-time or part-time
 - Must provide a Form 1095-C for any employees taken into consideration in establishing the 98%

§4980H Reconciliation

- §4980H Reconciliation
 - In 2016 the IRS will have collected the following data:
 - 1094/1095 employer reporting data
 - Individual tax data showing income
 - Data from public Marketplaces on who has received ACA subsidies when purchasing individual health insurance
 - Late in 2016 (or maybe early 2017) IRS will begin to assess §4980H payment on employers
 - The data will not be perfect (errors in 1095 reporting, individual tax errors, etc.)

§4980H Reconciliation

- How Will the IRS Administer the Shared Responsibility Rules and Apply Penalties?
 - Shared responsibility reconciliation - Just because an employee received a subsidy does not mean the employer is actually liable for a shared responsibility payment
 - Employee may have incorrectly reported employer plan information when applying for individual health insurance
 - Employers may be able to take advantage of IRS employer safe harbor rules and not be liable for a shared responsibility payment even for a full-time employee who qualifies for a subsidy

Outstanding Issues That Could Be Addressed in 2016

Outstanding Compliance Issues

- **Cadillac Tax**
 - Significant legislative activity – could there be a delay, amendment, or repeal?
 - Absent change to the law, IRS is expected to issue formal guidance in 2016
 - Calculating applicable plan cost
 - Benefit types to be included in tax calculation
 - Applicable cost adjustments
 - Administrative and reporting process
- **Supreme Court to Hear ACA Contraceptive Case**
 - Churches are already generally exempt from requirement
 - Case will decide if religiously affiliated organizations such as universities, hospitals and charities can be exempt from rules

Outstanding Compliance Issues

- **Opt-Out Incentives**

- IRS clarification needed on how opt-out incentives effect a plan affordability for §4980H and employer reporting purposes
- Background
 - Guidance indicates that for purposes of the individual mandate, cash in lieu of benefits or opt-out incentives will be taken into account in determining whether coverage is affordable
 - However IRS has not provided any guidance to date on how to consider these for purposes of affordability for subsidy eligibility, employer penalty purposes or employer reporting

Outstanding Compliance Issues

- Fully-Insured Nondiscrimination Rules
 - IRS has delayed enforcement until plan years beginning “sometime after” guidance is issued
 - Rules will be “similar” to current §105(h) rules which already apply to self-funded plans
 - Health plans may not discriminate in favor of highly compensated individuals
 - Under §105(h) benefits don’t always have to be identical among sub-groups of employees - safe harbor tests allow for “some discrimination”
 - Outstanding Questions
 - Will the fully-insured rules work the same way as §105(h)??
 - When will the rules be effective?

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