7 Things Small Businesses Need To Know About Health Care Reform

Make sure your business meets the requirements of the Affordable Care Act on schedule

Arise HEALTH PLAN

Controversial health care reform law takes health insurance in a new direction

Regardless of which side of the issue you are on, there is no argument that the Affordable Care Act (ACA), passed in March of 2010 and upheld by the Supreme Court of the United States in June of 2012, is changing the way health insurance is handled. **This guide is intended for informational purposes only and should not be considered legal advice.** For detailed information and guidance related to the Affordable Care Act, please talk to your health insurance agent/broker. In the emerging health care reform era, your agent is likely to become an even more important resource. You can also refer to www.healthcare.gov, your attorney, or your tax accountant.

1. Is providing health insurance for employees a choice?

Technically, the Affordable Care Act (ACA) does not mandate that any employer must provide coverage. Instead, it includes monetary penalties for large employers that do not offer adequate health insurance for their employees. This is strong encouragement for large companies to offer health insurance coverage, but businesses can choose to pay the penalty taxes and forego offering coverage to their workers.

For businesses with less than 50 full-time equivalent (FTE) employees, offering health insurance to employees is optional—there are no penalties. But companies with 50 or more FTE employees may be penalized if they do not offer coverage or if they offer coverage that doesn't meet the ACA's requirements.

Penalty tax for large employers not offering coverage [1]

Beginning in 2014, companies with 50 or more FTE employees, considered "large employers*," may pay a penalty tax for any month the employers fail to offer their full-time employees (and their dependents) health insurance coverage. If a large employer does not offer insurance that meets the ACA's "minimum essential coverage*" requirements and a single worker turns to the government for a health care tax credit or subsidy on a qualified health plan through an insurance exchange, then that business may have to pay a different penalty (see section 2: There are requirements for businesses that offer insurance).

The penalty tax for a large employer not offering coverage increases according to the size of the company's staff. For each additional full-time worker—not FTE—past the first 30, the annual penalty tax increases by $2,000. Note that when calculating the penalty tax, part-time employees are not counted toward the number of full-time workers; only actual full-time workers, not FTEs, are counted. Also, businesses employing seasonal workers may be exempt if certain conditions are met.

So if a company has 50 full-time employees, the annual penalty for not providing coverage totals $40,000—20 full-time employees (the first 30 aren't counted) at $2,000 each. The total is then divided by 12 and the company is penalized monthly. In this example, the company would have to pay $3,333.33 each month until qualifying health insurance was made available to the full-time workers.

If that same company instead had 25 full-time employees and 60 part-time workers, for a total of 55 FTE employees, then no penalty is assessed because 30 full-time workers are needed for a penalty to be issued.

*See glossary on page 10.

Full-time worker vs. full-time equivalent (FTE) worker

A "full-time worker," as defined by the Affordable Care Act (ACA), is a person who works 30 hours per week or more. See United States Code Section 4980H(c)(4).

A "full-time equivalent worker" represents a ratio, not a person. The ACA updated United States Code Section 4980H to require that employers add up the hours worked by part-time employees in any given month and divide the total by 120 to get the num ber of FTE employees. This number is only used to determine if an employer is a "large employer" under ACA. For clarification on this, see the IRS bulletin.

2. There are requirements for businesses that offer insurance

Beginning in 2014, businesses that provide health insurance coverage must meet certain requirements for coverage and price, called "minimum essential and affordable coverage*." [1] If an employee is offered an employer-sponsored plan that meets these requirements, then that employee is, generally, ineligible for a premium tax credit and cost-sharing reduction for health insurance purchased through an exchange.

Insurance plans must cover at least 60% of health care expenses. The insurance itself has to cost employees less than 9.5% of their salaries for self-only coverage. If coverage does not meet those conditions, employees can seek an affordability waiver from the insurance exchange. If the employees receive an affordability waiver, the business could be hit with an annual penalty tax of $3,000 per employee.

For example, let's say there's an employer that offers health coverage for 100 full-time employees. Of those employees, 20 of them receive a tax credit for enrolling in a different health plan through an exchange. The employer then owes a penalty tax of $3,000 for each of those 20 employees, for a total of $60,000. The penalty tax is capped at the amount that would have been assessed if the employer hadn't offered insurance at all, which in this case would be $140,000 ($2,000 x 70 full-time employees). Because the penalty tax of $60,000 is less than the maximum amount, the employer must pay the $60,000 penalty tax.

*See glossary on page 10.

Potential annual penalties (see sections 1 and 2)[1]

Not a large employer: less than 50 FTE employees	**Large employer: 50 or more FTE employees**			
	Does NOT offer coverage		**Offers coverage**	
	No full-time employees receive credits for exchange coverage	One or more full-time employees receive credits for exchange coverage	No full-time employees receive credits for exchange coverage	One or more full-time employees receive credit for exchange coverage
No penalty	No penalty	Number of full-time employees minus 30 multiplied by $2,000 (Penalty is $0 if employer has 30 or fewer full-time employees)	No penalty	Lesser of: Number of full-time employees minus 30 multiplied by $2,000 OR Number of full-time employees who receive credits for exchange coverage multiplied by $3,000 (Penalty is $0 if employer has 30 or fewer full-time employees because penalty is based on the lesser of the two calculations)

Source: Congressional Research Service's "Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA)," June 2, 2010.

3. Tax credits help smaller businesses

Some small businesses are eligible for the existing health care tax credit, which is remaining in effect and is independent of the Affordable Care Act. It rewards companies that provide health insurance if they cover at least 50% of the premium cost, have less than 25 full-time equivalent (FTE) workers, and pay average salaries of less than $50,000.[2]

For nonprofit organizations, the credit reduces income and Medicare taxes that employers are required to withhold from employees' wages and the employer share of Medicare tax on employees' wages.

For-profit businesses can use the credit as a general business credit to reduce their tax liability.

Credits until 2013

Until 2013, the credit will cover up to 35% of a qualified for-profit employer's contributions to health insurance, depending on the size of the firm and the average salaries paid. The credit covers up to 25% of contributions for nonprofit employers, again depending on the number of employees and their wages.

Credits beginning in 2014

The tax credits increase in 2014, with for-profit employer credits jumping to a maximum of 50% of the employer's contribution toward premiums and nonprofit employer credits moving up to as much as 35%. However, the requirements are different from those of previous years. The premium contributions must be made for employees who enroll in a qualified health plan through the Small Business Health Options Program (SHOP), which is only available through an exchange. These credits will be available for two years.

Who gets the maximum credit?

Small employers can claim the full credit amount if they have 10 or fewer FTE employees and if the employees' average taxable wages are $25,000 or less. As wages and the number of employees increase, the credit decreases.

4. Exchanges will offer another way to shop for health insurance

Beginning in 2014, solo entrepreneurs and small businesses can shop for health plans through insurance exchanges* in each state.[3] One-person businesses can save using an exchange for individuals. Companies with up to 50 employees (in some cases, up to 100 employees, if state law allows) may be able to make use of a Small Business Health Options Program (SHOP). Both options are intended to increase the size of the insured pool to spread out risk and keep costs low.

Exchanges are designed to simplify shopping for and buying insurance. They will offer consumers information on the quality of health plans. They won't sell plans that fail to meet minimum quality standards and benefit packages set by the federal government.

They'll group health plans into tiers—bronze, silver, gold, and platinum—based on how much of the cost customers take on. The Affordable Care Act (ACA) also requires insurers to justify annual price increases to the exchange board.

If businesses do not offer health insurance to their employees, they will be required to inform their workers about the exchange in their state and how to use it.

ACA ordered states to create exchanges, which may be set up as state agencies, independent governmental entities or nonprofits. Some states have begun to establish exchanges, many have not. If states do not set them up, the federal government will.

*See glossary on page 10.

Exchange plans[4]

Plan category	Benefits
Bronze	Minimum creditable coverage. Provides essential health benefits. Covers 60% of costs with an out-of-pocket limit equal to the HSA law limit ($6,250 for individuals, $12,500 for families in 2013).
Silver	Provides essential health benefits. Covers 70% of costs with an out-of-pocket limit equal to the HSA law limit.
Gold	Provides essential health benefits. Covers 80% of costs with an out-of-pocket limit equal to the HSA law limit.
Platinum	Provides essential health benefits. Covers 90% of costs with an out-of-pocket limit equal to the HSA law limit.
Catastrophic	Restricted to individual market only. Available to those up to age 30 or who are exempt from the mandate to purchase coverage. Provides catastrophic coverage with the coverage level set at the current HSA law levels, except that preventive benefits and coverage for three primary care visits are exempt from the deductible.

5. Medical loss ratio may mean rebates to employers

One provision of the Affordable Care Act (ACA) that affects insurance companies may help reduce health care costs for businesses. Under ACA, insurers are required to spend 80% of individual and small group premiums and 85% of large group premiums on medical care and quality improvement activities—not administrative costs.[5] These percentages are referred to as the "medical loss ratio*."

Since Jan. 1, 2011, health insurance companies have been required to comply with medical loss ratio standards and must provide rebates to policyholders under certain circumstances.

As an example, if an insurer spends less than 80% of a premium on medical care for an individual plan, the insurer is required to refund the difference to the person or company paying the premium. If your business pays 70% of the cost for each employee's health insurance coverage, then your business gets 70% of the refund. The remaining 30% of the refund goes to your employees—and, depending on how your insurance company issues the refund, you may be responsible for making sure your workers get their share.

*See glossary on page 10.

6. Employers will be required to provide a summary of benefits and coverage to each employee

Part of the Affordable Care Act (ACA) includes standardizing summary of benefits and coverage (SBC) information to make it easier for people to compare health plans. Starting in September of 2012 or soon after, health insurance issuers and group health plans will be required to provide workers with an easy-to-understand summary about a health plan's benefits and coverage.[6] This information will be provided when workers enroll in or renew a health plan, whenever the plan changes, or whenever an employee requests the information.

If your business offers health insurance to your workers, you will have to ensure they are provided with the appropriate documentation in writing and free of charge. This may include such things as SBC documents and a glossary of terms commonly used in health insurance. Your insurance company will provide you with this information; it will be your responsibility to pass it along to your employees.

Insurance issuers and businesses offering health insurance that willfully fail to provide the required SBC information may be fined up to $1,000 for each such failure by the state.[7] The secretary of the U.S. Department of Health and Human Services also has the option to weigh in. If the secretary decides the state isn't doing enough to enforce the law, the secretary can impose additional fines of up to $100 per day, per individual affected.

7. Is your business in compliance?

Many businesses have taken an active role in complying with the requirements of the Affordable Care Act (ACA) throughout 2011 and 2012. Many others have not, instead taking a wait-and-see approach as the legality of certain provisions was in question.

If your business is in the latter group, you need to start thinking about how your company is going to meet the 2012 requirements, as well as the approaching 2013 and 2014 requirements.

Businesses need to make sure they are issuing summary of benefits and coverage (SBC) documents after September of 2012.[6]

Another reporting requirement already in effect is gathering information on the aggregate cost of employer-sponsored coverage, which must be reported on employees' W-2 documents in 2013 for tax years beginning on or after Jan. 1, 2012.[8]

Employers should also ensure that their Employee Retirement and Income Security Act (ERISA) plan documents are all in order. For 2013, contributions to flexible spending arrangement (FSA) accounts will be limited to $2,500.[9]

Prepare to pay or play

Business owners should be thinking about whether they will "pay or play" moving forward. The results of weighing the costs of penalty taxes vs. health insurance premiums will be different for every business. In addition to the obvious financial cost, business owners will also likely consider what's "right" for their employees. Here are some general guidelines, again, based on the Affordable Care Act (ACA):

The results of weighing the costs of penalty taxes vs. health insurance premiums will be different for every business.

If your business has 50 or more full-time employees, you may either have to pay the penalty tax or offer health insurance that meets the minimum essential coverage and affordability requirements of ACA.

If your business has less than 50 full-time employees, give some thought to whether or not the tax credits offered by ACA make it feasible to offer health insurance to your workers or if purchasing a policy through the Small Business Health Options Program (SHOP) on the exchange would benefit your business.

If you decide to not provide coverage for your workers, you must direct them toward the appropriate health insurance exchange. According to ACA, employees should receive written notice informing them of the existence of the exchange, along with a description of the services provided and the manner in which they can contact the exchange for assistance.

Glossary of terms

Affordable coverage:
Health insurance that costs less than 9.5% of an employee's salary for self-only coverage as required by the Affordable Care Act (ACA).[1]

Insurance exchange:
Exchanges are new organizations that will be set up to create a more organized and competitive market for buying health insurance. They will offer a choice of different health plans, certifying plans that participate and providing information to help consumers better understand their options.

Large employer:
An applicable large employer is defined under ACA as an employer who employed an average of at least 50 "full-time employees" on business days during the preceding calendar year. A "full-time employee" for any month is an employee who is employed for an average of at least 30 hours per week.

Medical loss ratio:
A basic financial measurement used in the Affordable Care Act (ACA) to encourage health plans to provide value to enrollees. If an insurer uses 80 cents out of every premium dollar to pay its customers' medical claims and activities that improve the quality of care, the company has a medical loss ratio of 80%. A medical loss ratio of 80% indicates that the insurer is using the remaining 20 cents of each premium dollar to pay overhead expenses, such as marketing, profits, salaries, administrative costs, and agent commissions. ACA sets minimum medical loss ratios for different markets, as do some state laws.

Minimum essential coverage:
Section 5000A(f) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Affordable Care Act, defines minimum essential coverage to include "coverage under an eligible employer-sponsored plan", which is defined as a governmental plan under section 2791(d)(8) of the Public Health Service Act, a self-insured plan, or any other plan or coverage offered in the small or large group market in a State. In addition, Department of the Treasury regulations under section 5000A are expected to provide that an employer-sponsored plan will not fail to be minimum essential coverage solely because it is a plan to reimburse employees for medical care for which reimbursement is not provided under a policy of accident and health insurance (a self-insured plan). (See Internal Revenue Code Section 36B Proposed Regulations).[10]

Sources:

[1] Chaikind, H. and Peterson, C. (June 2, 2010). Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA). Congressional Research Service. Retrieved from http://www.ncsl.org/documents/health/EmployerPenalties.pdf

[2] Chaikind, H. and Peterson, C. (Apr. 5, 2010). Summary of Small Business Health Insurance Tax Credit Under PPACA. Congressional Research Service. Retrieved from http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=f9753955-14c3-44f6-b7b1-26d17e663c66

[3] Pagliery, J. (June 28, 2012). Health reform upheld: What companies need to know. Retrieved from http://money.cnn.com

[4] Community Catalyst & Georgetown University Health Policy Institute (2011). Health Insurance 101. Retrieved from http://101.communitycatalyst.org/aca_provisions/coverage_tiers

[5] Medical Loss Ratio: Getting Your Money's Worth on Health Insurance (Nov. 22, 2010). Retrieved from http://www.healthcare.gov

[6] Providing Clear and Consistent Information to Consumers About Their Health Insurance Coverage (Feb. 16, 2012). Retrieved from http://www.healthcare.gov

[7] Summary of Benefits and Coverage and Uniform Glossary; Final Rule (Feb. 14, 2012). Federal Register Volume 77, Number 30. Retrieved from http://www.regulations.gov/#!documentDetail;D=HHS_FRDOC_0001-0442

[8] Interim Relief with Respect to Form W-2 Reporting of the Cost of Coverage of Group Health Insurance Under § 6051(a)(14) (Nov. 1, 2010). IRS Notice 2010-69. Retrieved from http://www.irs.gov/irb/2010-44_IRB/ar13.html

[9] The Patient Protection and Affordable Care Act Summary. Michael Best & Friedrich LLP. Retrieved from http://www.michaelbest.com

[10] Verification of Access to Employer-Sponsored Coverage Bulletin Center for Consumer Information and Insurance Oversight (Apr. 26, 2012). Retrieved from http://cciio.cms.gov/resources/files/exc-verification-guidance-vach.pdf

Are you ready for health care reform?

Is your business ready for the coming changes in how health care is handled? Here's a quick checklist to help you prepare.

- If your business has less than 50 full-time employees, are you prepared to inform your workers about health care exchanges?
- If your business has 50 or more full-time employees, do you have an affordable health plan lined up that meets the minimum coverage requirements? If not, have you budgeted for the penalty you may have to pay?
- Does your small business qualify for tax credits to help you cover the cost of health insurance for your workers?

Find out about these issues and more inside!

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