

Local Politician Healthcare

QA Guide

James R Napoli, Esq.

Paul M. Hamburger, Esq.

AHC Media LLC

Collectively Bargained Health Insurance Coverage

1. Is there a delayed effective date for collectively bargained health plans to implement the coverage mandate?
 - a. No
2. Are there special rules that apply exclusively to insured collectively bargained health plans?
 - a. Yes, two special rules apply to insured collectively bargained plans.
 - i. If changes are made to an insured collectively bargained plan that would otherwise cause a grandfathered plan to lose its grandfathered status, the insured collectively bargained plan will not lose grandfathered status, the insured collectively bargained plan will not lose grandfathered status until termination of the last collective bargaining agreement (CBA) in effect on March 23, 2010 related to the plan.
 - ii. A change in insurers during period of the CBAs related to the plan will not by itself cause a loss of grandfathered status upon expiration of the last CBA in effect on March 23, 2010 related to coverage.
3. Is there a delayed effective date under the law for changes to collectively bargained health plans necessary to implement the employer mandates?
 - a. No
4. If collectively bargained health insurance coverage is amended to apply health reform rules before the last applicable CBA terminates, is that treated as a termination of the agreement resulting in a loss of the special rules covering insured collectively bargained plans?
 - a. No, an insured collectively bargained health plan may be amended to apply the health reform mandates before expiration of the last CBA.

Employer-provided Coverage Mandate

1. Does health reform require employers to pay for health coverage to employees and their dependents?
 - a. Yes, health reform changes the voluntary and flexible nature of the nation's current employer-sponsored health coverage system. The law requires employers to offer adequate health coverage to employees and their dependents or pay a penalty. Referred to as the "pay or play" mandate.
2. When is the Pay or Plan Mandate effective?
 - a. January 1, 2014

3. What is the penalty under the pay or play mandate?
 - a. One penalty applies to certain employers that do not provide health coverage at the entire ("no-coverage penalty").
 - b. Another penalty applies to certain employers that provide inadequate health coverage (the "inadequate coverage penalty").
 - c. Who is a full-time employee for purposes of determining whether an employer is applicable employer?
 - i. A full-time employee for any month is an employer who is employed on average at least **30** (**25** has been recently discussed) of service per week.
 - d. Are part-time employees considered when determining whether an employer is applicable employer?
 - i. Yes, an employer must include in the calculation of whether it has at least **50** full-time employees for any month of the number of full-time equivalent employees, which is determined by dividing the aggregate number of hours of service of employees who are not full time employees for the month by 120.
 - ii. Seasonal workers count as employees if work more than 120 days during a calendar year.
 - e. Are related employers aggregated for determining whether an employer is an applicable employer?
 - i. Yes
 - f. When is an applicable employer subject to the no-coverage penalty?
 - i. Employer does not offer full-time employees and their dependents the opportunity to enroll in "minimum essential coverage under an eligible employer-sponsored plan" for any month.
 - ii. At least one full-time employee has been certified to the employer as having enrolled for that month in an exchange-based health plan as being eligible for "federal subsidies" for the plan.
 - Federal subsidies refers to the premium tax credit and cost sharing reduction that generally are available to individuals with household incomes between **100% and 400%** of the federal poverty line.
 - g. What is the amount of no-coverage penalty?
 - i. The monthly no-coverage penalty is determined based on the following formula: 1/12 of \$2,000 Multiplied by Number of full-time employees for the month {minus} 30.

Subsidies

1. When is an applicable employer subject to the inadequate-coverage penalty?
 - a. When one or more full-time employees who have been certified to the employer as having enrolled for the month in a federally subsidized exchange-based health plan, then the employer is subject to the inadequate-coverage penalty.
2. Who is eligible for the premium assistance credit?
 - a. Individual with household incomes between 100% and 400% of the federal poverty line, who are not otherwise eligible for minimum essential coverage.

3. How is an employee who is offered employer-sponsored health coverage eligible to receive federally subsidized coverage through an exchange-based health plan?
 - a. The general rule is that an employee who is eligible for employer-sponsored coverage is not eligible to receive a premium tax credit or cost-sharing reduction if he or she obtains health coverage through an exchange-based health plan because these subsidies are not available to individuals who have minimum essential coverage (that is, an employer-sponsored plan) available to them or the coverage is unaffordable (plan exceeds 9.5% of the employee's household income).
 - i. Coverage under an employer-sponsored plan does not provide minimum value if the employer's share of premium costs under the plan is less than 60%.
4. What is the amount of the inadequate coverage penalty?
 - a. The monthly inadequate coverage penalty is determined based on the following formula: 1/12 of \$3,000 Multiplied by Number of full-time employees receiving a premium tax credit or cost subsidy.

The aggregate amount of the inadequate-coverage penalty is capped at the amount of the no-coverage penalty that would be applicable to the employer if it did not offer any health coverage, including the 30-employee reduction.

1. Are part time employees counted for purposes of determining the amount of the no-coverage or the inadequate-coverage penalties?
 - a. No, part-time employers are not taken into account when determining the amount of the penalties.
2. Will the penalty amounts be adjusted for inflation?
 - a. Yes, for calendar years after 2014, the \$2,000 amount used in determining the no coverage penalty and the \$3,000 amount used in determining the inadequate-coverage penalty will be increased for inflation. The increase will equal the product of the relevant dollar amount (\$2,000 or \$3,000) and the premium adjustment percentage for the calendar year, rounded down to the next lowest multiple of \$10. The premium adjustment percentage for any calendar year is the percentage (if any) by which the average per capita premium for health coverage in the U.S. for the preceding calendar year (as estimated by the U.S. Department of Health and Human Services no later than October 1st so such preceding calendar year) exceeds the average per capita premium for 2013 (as determined by HHS).

	Pool/Mini Pool	Industry Standard
2004		\$6,059
2005		\$6,616
2006	4,713	7,140
2007	4,565	7,516
2008	4,302	7,970
2009	4,682	8,449
2010	5,086	9,028
2011	5,001	9,821

3. Are the penalties tax-deductible?
 - a. No

4. How does an employer pay the no-coverage or the inadequate-coverage penalties?
 - a. The penalties must be paid upon notice and demand by the IRS. The penalties are payable on an annual, monthly or other periodic basis as IRS may prescribe. IRS may issue guidance regarding the repayment of a penalty (plus interest) if the penalty is based on an employee's receipt of a federal subsidy for coverage in an exchange-based health plan and it is subsequently determined that the employee is not eligible for the subsidy.
5. Free Voucher program is offered to low and moderate income employees who under the terms of the employer-sponsored plan would be required to spend between 8% and 9.5% of their income on plan contributions.

Automatic Enrollment

1. What size of employer has to provide the automatic enrollment service?
 - a. 200 or more full-time employees
 - b. The law requires large employers to continue full-time employee's current enrollment. It appears that this means that existing employee elections must remain in place for all subsequent years unless and until the employee elects otherwise. Does not apply to dental and vision.

Individual Mandates

1. All individual will be subject to the individual mandates except individuals who, for any month are:
 - a. Religious conscience objectors
 - b. Healthcare sharing ministry
 - c. Not lawfully in U.S.
 - d. Incarcerate

Medical Loss Ratio Regulations (MLR)

1. Minimum Medical Loss Ratio: 80% for individual/small group or 85% for larger groups (50% for tax exempt; 100% for others)
2. Credibility factor will remain at 80%.
3. National Association of Insurance Commissioners' (NAIC) had excluded broker fees as an administrative expense in the MLR. At this time, an amendment to appoint a subgroup of personnel to work with the HHS Secretary to accommodate agents and brokers in the MLR, calculates into 2014.
4. Subgroup's position to exclude federal taxes (minus those on investment income) from the MLR denominator. This is still under active discussions with HHS.

Small Employer Health Insurance Expense Tax Credit

1. What is the small employer health insurance expense tax credit?
 - a. The credit is available to small employers that pay at least 50% of the cost of single coverage. The maximum credit is 35% of premiums paid by eligible small employers and 25% of premiums paid by eligible employers that are tax-exempt organizations. The actual amount of credit depends on a sliding scale based on the number of full-time equivalent employees employed by the employer and the annual average wages paid.

2. What employers are eligible for the **tax credit (credit varies by average annual wages) with a percent reduction?**
 - a. Has fewer than **25** full-time equivalent employees (FTE is 2,080 hours)
 - b. Average annual wages are less than **\$50,000** per FTE; and (total wages paid by the ESE to employees taken into account for credit purposes during the year is divided by the number of FTEs for that year. Result is rounded to nearest \$1,000.
 - c. Maintains a qualifying arrangementThe law refers to an employer meeting these eligibility requirements as an "eligible small employer" (ESE).

Establishment of State Exchanges

1. Shops must be operational by January 2014.
2. Exchanges must be operational by 2014.
3. May a state operate more than one exchange?
 - a. Yes, if each additional exchange is operated as a subsidiary of the primary exchange, and the subsidiary serves a distinct geographic area that is at least as large as a rating under the Section 2701(a) of the Public Health Service Act.
 - b. How are exchanges funded?
 - i. Initially, the reform law offers planning and establishment grants providing federal funds, in amounts established by HHS, to fund the establishment of exchanges for the first year following the law's enactment. HHS may renew a state's grant award if the state shows progress (according to benchmarks established by HHS) in establishing its exchange. Beginning Jan 1, 2015, exchanges must be self-sustaining, as all federal grants and other federal funding for exchanges must cease.
 - ii. The law enables each exchange to innovate ways to otherwise generate funding necessary to support the operations.
 - iii. Exchanges may not use funds intended for administrative and operation expenses for the exchange for "staff retreats, promotional giveaways, excessive executive compensation, or promotion of Federal or state legislative and regulatory modifications".
 - c. Will all exchanges be forced to operate according to the same rules?
 - i. No. The law has many minimum standards that exchanges must comply with, and directs HHS to establish additional standards. However, the reform law encourages states to be flexible in their operation and enforcement of exchanges.
 - d. What if a state does not establish an exchange?
 - i. If a state elects not to establish an exchange, or if a state does not show sufficient progress in establishing an exchange by Jan 2013 then HHS either directly or through a not for profit entity, must establish and operate an exchange within the nonparticipating or noncompliant state.