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The Changing Landscape for Employer Health Plans

May 2, 2013

Agenda

- The Status of Government-Run Exchanges
- Preparing for the Employer Mandate
  - Determining if the Mandate Applies
  - Deciding to Play or Pay – And Avoiding Doing Both
  - Identifying Full-Time Employees
  - Affordable Coverage and Minimum Value
- Planning for New Assessments
  - PCORI Fees
  - Transitional Reinsurance Program Fees
  - Additional Medicare Tax
  - “Cadillac” Tax
- Evaluating Your Plan Design
  - Limitation on Waiting Periods
  - Satisfying Benefit Mandates
  - Adding Automatic Enrollment
- Next Steps for Employer-Sponsored Plans
- Questions & Answers

Learning Outcomes

Learning Outcome #1: Familiarize yourself with what a health care exchange is, their relationship to employers and their health plans, and new notices and reporting requirements.

Learning Outcome #2: Understand the employer mandate including learning how to identify your full-time employees and determine whether your plan offers affordable coverage and minimum value.

Learning Outcome #3: Develop familiarity with new assessments including the additional Medicare tax, Patient-Centered Outcomes Research Institute (PCORI) fees, transitional reinsurance program fees and “Cadillac” tax.

Learning Outcome #4: Become familiar with plan design changes such as adding automatic enrollment, satisfying benefit mandates, and structuring enhanced wellness program.

Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- Intended to be a *marketplace* for the purchase of health insurance
- Goals include:
  - Reducing administrative cost
  - Promoting competition by attracting multiple insurance carriers
  - Lowering premiums

Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- A state-based Exchange may be structured as a governmental agency or an independent non-profit entity
- If a state does not elect to operate a state-based Exchange, HHS will offer coverage within that state through a "Federal Exchange"
  - – Not clear if a Federal Exchange can deliver premium subsidies

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Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- HHS has also proposed a Federal-State partnership model where states are not prepared to have a fully-operational exchange in place by January 1, 2014
- State functions under this model include:
  - Plan management (e.g., certifying QHPs)
  - Consumer assistance
- Federal functions under this model include:
  - Eligibility determinations for enrollment and premium subsidies
  - Medicaid screening and enrollment
  - Management of website and call center

Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- Functions of an Exchange include:
  - Facilitating the purchase of health insurance
  - Determining eligibility for premium subsidies
  - Screening for Medicaid eligibility and enrolling eligible individuals in Medicaid
  - Establishing and maintaining a website and call center to field consumer questions
  - In some states, monitoring premiums to ensure premium increases on insurance sold through the Exchange are not “unreasonable”

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Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- New "insurance standards" apply to individual and small group plans sold inside AND outside of an Exchange
- Insured plans must provide "essential health benefits" and are subject to limits on cost sharing
- Premium rating rules prohibit rating based on health status
  - Rates may only vary based on age, tobacco use, coverage tier (i.e., family or individual) and rating area

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Demystifying the Health Care Exchanges

EXCHANGES AND EMPLOYER HEALTH PLANS

- Exchanges will initially service individuals and families through the individual market and small employers
- In 2017, states may elect to provide large employers access to their Exchange, but this is not required

Demystifying the Health Care Exchanges

EXCHANGES AND EMPLOYER HEALTH PLANS

- In 2014, “small employers” may access Small Business Health Option Programs (SHOP Exchanges) through which they can offer fully-insured health coverage to their employees
- Generally, to qualify as a small employer, an employer must have fewer than 100 employees (however, states can limit participation to businesses with not more than 50 employees until 2016)

Demystifying the Health Care Exchanges

EXCHANGES AND EMPLOYER HEALTH PLANS

- A SHOP Exchange allows employers to select a "level of coverage" (i.e., bronze, silver, gold, platinum) to make available to their employees
- Employers can elect how much "choice" to pass through to their employees
- SHOP Exchanges guarantee small business a choice of qualified health plans to offer employees and provide employers access to detailed pricing and quality information

Demystifying the Health Care Exchanges

EXCHANGES AND EMPLOYER HEALTH PLANS

- If a state elects to allow large employers access to its Exchange in 2017, employers will be able to purchase fully-insured products through the Exchange
- All products made available to large employers will be subject to the same insurance standards that are otherwise applicable to products sold through an Exchange

Demystifying the Health Care Exchanges

NOTICE AND REPORTING REQUIREMENTS

- Exchanges are required to notify employers if an employee qualifies for a subsidy
- This determination is generally made based on information provided to the Exchange by employees
- HHS will establish an appeals process for employers

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Demystifying the Health Care Exchanges

NOTICE AND REPORTING REQUIREMENTS

- The notice from an Exchange to an employer must include:
  - The identity of the employee
  - A determination that the employee is eligible for the subsidy
  - A statement that the employer may be liable for a “play or pay” penalty
  - Notice of the opportunity to appeal

Demystifying the Health Care Exchanges

NOTICE AND REPORTING REQUIREMENTS

- Employers will be required to report to the IRS
  - Names and dates of coverage for individuals covered by an employer plan
  - Portion of the premium paid by employer
- Large employers must report to the IRS
  - Whether employee coverage is offered
  - Length of waiting period
  - Lowest cost option
  - Plan's actuarial value
- Additional notice required to HHS

Preparing for the Employer Mandate

DETERMINING IF THE MANDATE APPLIES

- The employer mandate applies to "applicable large employers"
  - Defined as "an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year."
  - Common law test used for identifying employees

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Preparing for the Employer Mandate

DETERMINING IF THE MANDATE APPLIES

- Total number of employees for this purpose =
  - Total full-time employees for each month in the preceding calendar year; PLUS total number of FTEs for each month in the preceding calendar year; DIVIDED BY 12
  - If the result is not a whole number → round to the next lowest number
  - This calculation includes seasonal employees, but if employer can show that total employee count exceeds 50 (due to seasonal employees) no greater than 4 months during the prior year → mandate does not apply

Preparing for the Employer Mandate

DETERMINING IF THE MANDATE APPLIES

- Full-time equivalent employees
  - All employees who did not work an average of 30 hours per week during a given calendar month are included in the calculation of full-time equivalent employees for that month
  - To calculate the number of full time equivalent employees, the total hours worked by each employee who is not full time (capped at 120) are added together and DIVIDED BY 120
  - Fractions are taken into account

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Preparing for the Employer Mandate

DETERMINING IF THE MANDATE APPLIES

- Example
  - For a given month employer has:
    - 20 full-time employees who work 35 hours per week
    - 40 employees who work 90 hours during the month
  - Total full-time employees = 20
  - Total full-time equivalent employees = 30

    ((40 EE's TIMES 90 hours/month) DIVIDED BY 120)
  - Total employees = 50

    (20 full time + 30 full time equivalents)
- These calculations should be performed for each month of the year and then divided by 12 to determine if the mandate applies.

Preparing for the Employer Mandate

DECIDING TO PLAY OR PAY – AND AVOIDING DOING BOTH

- Generally effective January 1, 2014
- Transitional rule for non-calendar year plan applies to individuals who would:
  - Be eligible under the terms of the plan as of December 27, 2012; **or**
  - Not have been eligible based on eligibility requirements in place on December 27, 2012 if 1/4 of employees are covered by the non-calendar year plan or 1/3 of employees were offered coverage under the non-calendar year plan; **and**
  - Are offered affordable, minimum value coverage as of first day of the plan year beginning in 2014

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Preparing for the Employer Mandate

DECIDING TO PLAY OR PAY – AND AVOIDING DOING BOTH

- Penalty for Failure to Provide Coverage
  - If greater than 5% of "full-time" employees (or 5, if greater) are not offered coverage and even ONE "full-time" employees obtains a subsidy through an Exchange → the "no coverage" penalty is triggered
  - Penalty applies on an employer-by-employer basis

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Preparing for the Employer Mandate

DECIDING TO PLAY OR PAY – AND AVOIDING DOING BOTH

- Penalty for Failure to Provide Coverage
  - Penalty = $2,000/year * TOTAL number of "full-time" employees
    - Assessed on a monthly basis ($166.67/employee/month)
    - First 30 "full-time" employees are disregarded

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Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- Safe harbor for determining if an employee = "full-time"
  - If an employee averages 30 or more hours of service per week during a measuring period → he or she should be treated as "full-time" (i.e., offered coverage) during the subsequent stability period

Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- An "hour of service" is each hour for which an employee is paid, or entitled to payment:
  - For the performance of duties for the employer; and
  - On account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

Preparing for the Employer Mandate

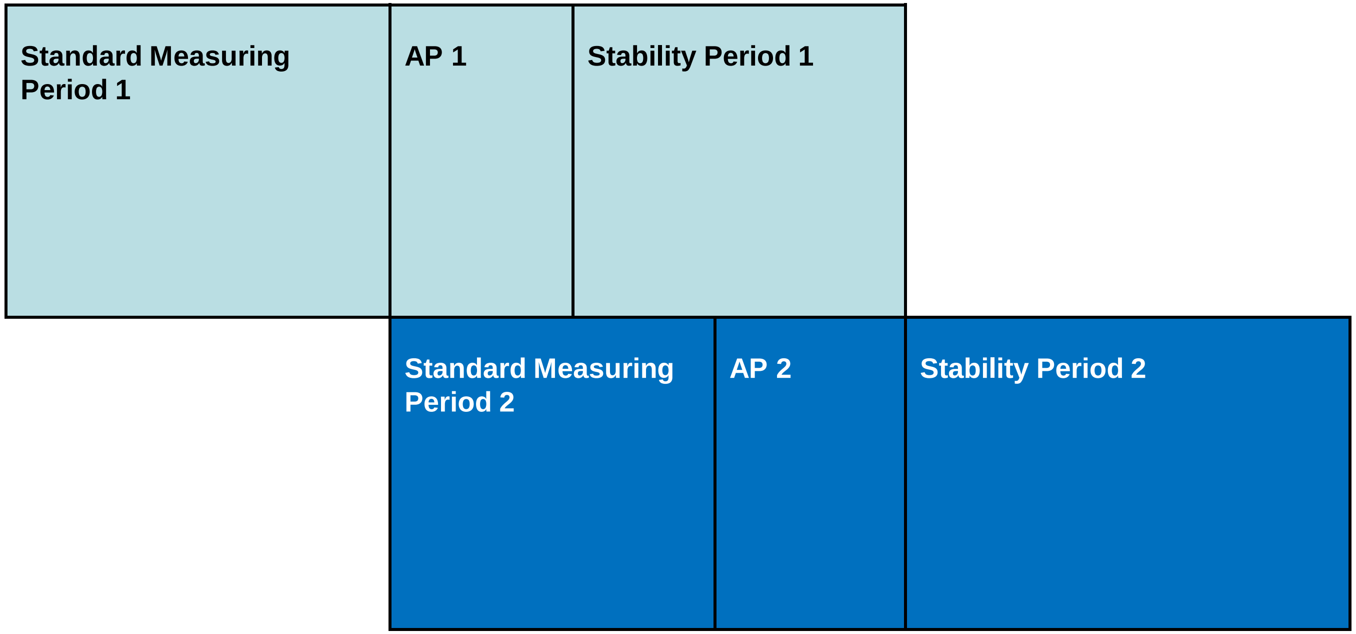
IDENTIFYING FULL-TIME EMPLOYEES

- Standard measuring period = 3-12 months
- Stability period = 6-12 months period immediately following the standard measuring period (and any applicable administrative period)
- Administrative period = up to 90 day period between a standard measuring period and a corresponding stability period

Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

Ongoing Testing of Employees



Ongoing Testing of Employees

November 1, 2012 – October 31, 2013	**First Standard Measuring Period** The hours of all internal employees will be measured for this period to determine if they are “full-time” under the new rules (i.e., average 30+ hours per week).
November 1, 2013 – December 31, 2013	**First Standard Administrative Period** During this period, the employer will review the hours during the first standard measuring period and will offer coverage to any employee identified as full-time based on hours from the first standard measuring period. This offer of coverage will extend through the entire first stability period. The employer should maintain documentation of the offer of coverage.
November 1, 2013 – October 31, 2014	**Second Standard Measuring Period**
January 1, 2014 – December 31, 2014	**First Standard Stability Period** Coverage will be maintained for all employees identified as “full-time” based on hours during the first standard measuring period (provided those employees elect coverage and pay applicable premiums).
November 1, 2014 – December 31, 2014	**Second Standard Administrative Period**
November 1, 2014 – October 31, 2015	**Third Standard Measuring Period**
January 1, 2015 – December 31, 2015	**Second Standard Stability Period**

Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- At Date of Hire
  - Any individual reasonably expected to complete at least 30 hours of service per week is automatically considered a "full-time" employee
  - All other employees = variable hour employees
  - "Seasonal employees" also = variable hour employees (even if they are initially expected to complete 30 or more hours of service per week)

Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- Special Rule for Temporary Staffing Agencies
  - A new employee can be classified as variable hour if it is expected that:
    - The employee will be offered one or more assignments with different clients generally lasting no more than 2-3 months; and
    - The clients will have different requests with respect to hours of service (some above and some below 30 hours/week); and
    - There will be gaps between assignments.
  - Comments invited on whether a safe harbor or presumption would be helpful.

Preparing for the Employer Mandate

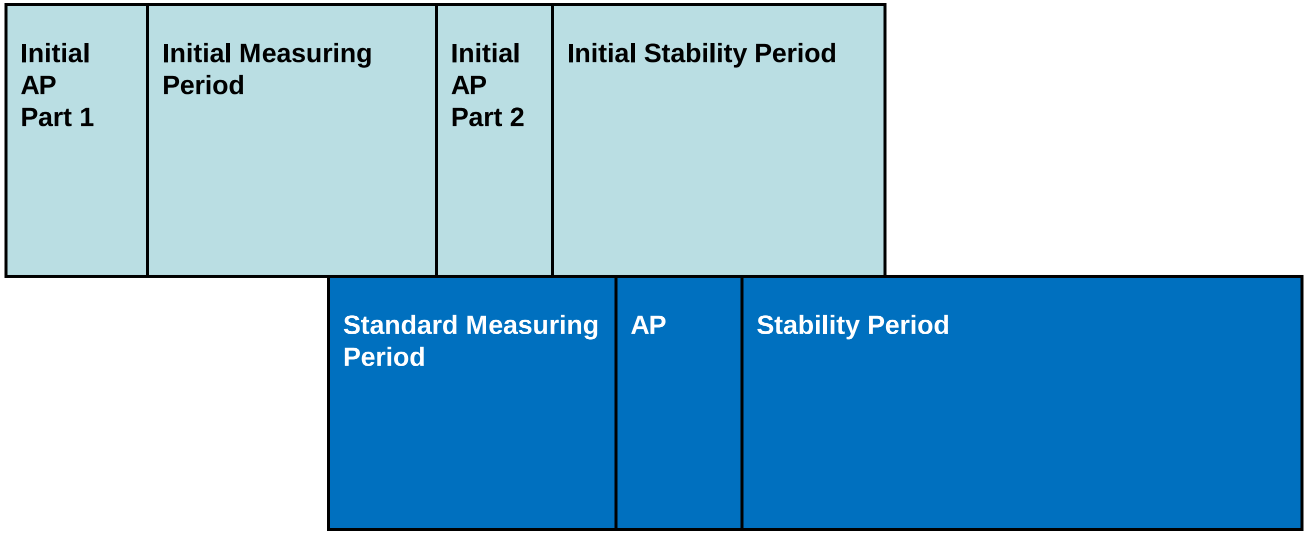
IDENTIFYING FULL-TIME EMPLOYEES

- No penalties apply during the first three calendar months of employment
- Initial measuring period = 3-12 months
  - Overlaps with first full standard measuring period after employment begins
- Initial measuring period + administrative period cannot extend beyond the last day of the first calendar month beginning on or after the one year anniversary of the employee's start date ("13-month rule")

Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

Testing for New Variable Hour Employees



Testing for New Variable Hour Internal Employees

August 15, 2014	**Date of Hire**
August 15, 2014 – August 31, 2014	**Initial Administrative Period, Part 1** The purpose of this initial administrative period, Part I, is to begin the initial measuring period on the first of the following month. Essentially, all variable hour employees hired in August will begin their initial measuring period on September 1st. This reduces the number of potential initial measuring periods from 365 to 12.
September 1, 2014 – August 31, 2015	**Initial Measuring Period**
November 1, 2014 – October 31, 2015	**Standard Measuring Period** This is the first full standard measuring period commencing after the employee is hired.
September 1, 2015 – September 30, 2015	**Initial Administrative Period, Part 2**
October 1, 2015 – September 30, 2016	**Initial Stability Period** Coverage will be maintained if the employee is identified as "full-time" based on hours during the initial measuring period (provided the employee elects coverage and pays the applicable premiums).
November 1, 2015 – December 31, 2015	**Standard Administrative Period**
November 1, 2015 – October 31, 2016	**Next Standard Measuring Period**
January 1, 2016 – December 31, 2016	**Standard Stability Period** Coverage will be maintained if the employee is identified as "full-time" based on hours during the standard measuring period (provided the employee elects coverage and pays the applicable premiums).

Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- Special Rule for “Educational Organizations”
  - An employment break = A period of at least 4 consecutive weeks (disregarding special unpaid leave) during which an employee is not credited with an hour of service
  - Either:
    - Employment breaks must be excluded from calculations of full-time status; or
    - Employees must be credited for service during the employment break at the average rate they worked during the remainder of the year.

Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- Change in Employment Status Rule
  - If a **new** variable hour or seasonal employee has a material change in employment status (and would have been considered full-time on their date of hire had they been hired into this new role)→ must be offered coverage by the earlier of:
    - The first day of the fourth month following the change, or
    - The first day of the employee's initial stability period (if full-time based on hours or service during initial measuring period)
  - Rule does not apply to ongoing employees

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Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- Special rules apply to “rehires”
- Rehires can only be classified as new employees if not credited with **<u>any</u>** hours of service for at least:
  - 26 consecutive weeks, or
  - A period of greater than 4 consecutive weeks that exceeds the number of weeks the employee previously worked for the employer
- If the “newness” standard is not met → prior status still applies

Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- No special rules for employees in "high turnover" positions
  - Concern re: possibility of manipulation

Preparing for the Employer Mandate

AFFORDABLE COVERAGE AND MINIMUM VALUE

- Penalty for Providing "Unaffordable" Coverage
  - Applies if:
    - Employee's share of the premium for lowest-cost employee-only coverage would exceed 9.5% of the employee's income, <u>or</u> an "affordable" plan does not provide "minimum value"—pay at least 60% of the allowed costs under the plan, <u>AND</u>
    - The employee receives a subsidy from an Exchange

Preparing for the Employer Mandate

AFFORDABLE COVERAGE AND MINIMUM VALUE

- Penalty for Providing "Unaffordable" Coverage
  - Penalty = $3,000/year/employee
  - Only applies to employees who actually receive subsidized coverage through an Exchange
  - Assessed on a monthly basis ($250/employee/month)

Preparing for the Employer Mandate

AFFORDABLE COVERAGE AND MINIMUM VALUE

- Safe harbors for determining if the cost of coverage exceeds 9.5% of employee's income
  - Form W-2 Compensation
  - Rate of Pay
  - Federal Poverty Limit

Planning for New Assessments

PCORI Fees

- For calendar year plans applies from 2012 through 2018
- Annual fee based on average number of covered lives
  - $1 for first year
  - $2 for subsequent years (as adjusted for inflation)
- Reported on IRS Form 720 (Quarterly Federal Excise Tax Return) and paid annually
- Generally due by July 31

Planning for New Assessments

TRANSITIONAL REINSURANCE PROGRAM FEES

- Three year fee to fund transitional reinsurance pool (2014-2016)
- Uniform contribution rate of $63/year/covered life for 2014
- Collected annually

Planning for New Assessments

ADDITIONAL MEDICARE TAX

- Effective January 1, 2013
- Additional 0.9% tax applies to wages and compensation above a threshold amount ($200,000/$250,000)
- Employer must withhold on amounts paid to an employee in excess of $200,000
- No “employer match”

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Planning for New Assessments

"CADILLAC" TAX

- First applies in 2018
- 40% non-deductible tax on "excess benefits"
- Excess benefit = benefits provided in excess of annual limit ($10,200/$27,500 for 2018)

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Evaluating Your Plan Design

LIMITATION ON WAITING PERIODS

- Effective for plan years beginning on or after January 1, 2014
- Plans may not apply a waiting period that exceeds 90 days
  - "Waiting Period" = the period of time that must pass before coverage becomes effective for an employee or dependent who is **otherwise eligible** to enroll in the plan
- Rule is not violate if an employee fails to elect coverage within 90 days

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Evaluating Your Plan Design

LIMITATION ON WAITING PERIODS

- To be "otherwise eligible" means that all other substantive eligibility criteria have been met (e.g., job classification or full-time status)
- Eligibility criteria that are not based solely on the passage of time are still permitted—so long as they are not designed to circumvent the 90-day limit on waiting periods

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Evaluating Your Plan Design

LIMITATION ON WAITING PERIODS

- Permissible eligibility restrictions
  - 13-month rule to determine if new variable hour employees meet hours threshold
  - Cumulative hours-of-services requirements of up to 1,200 hours
    - 90-day waiting period starts when 1,200 hour threshold is reached
    - 1,200 hour requirement can only be applied once to a given employee
- CAUTION—The employer mandate still applies!

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Evaluating Your Plan Design

LIMITATION ON WAITING PERIODS

- One day = One day
  - The 90-day period is calculated based on calendar days
  - Weekends and holidays are counted
  - If the 91st day falls on a weekend or holiday → plan may provide coverage sooner
- Waiting periods that will no longer work
  - Three months
  - 1st of the month or 1st payroll period following 90 days of employment

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Evaluating Your Plan Design

LIMITATION ON WAITING PERIODS

- Rule is still in proposed form—no more restrictive provision in the final rules will apply to plans before January 1, 2015
- For participants who are mid-waiting period when rule becomes effective (January 1, 2014 for calendar year plans), the restriction will apply.
  - So, if January 1, 2014 is the 92nd day of a 120 day waiting period for an employee, the employee must become eligible for coverage as of January 1, 2014

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Evaluating Your Plan Design

SATISFYING BENEFIT MANDATES

- Prohibitions on:
  - Pre-existing condition exclusions
    - Requirement to issue notices of creditable coverage is anticipated to be eliminated as of December 31, 2014
  - Lifetime and annual dollar limits on essential health benefits
  - Rescission

Evaluating Your Plan Design

SATISFYING BENEFIT MANDATES

- Limit on Out-of-Pocket Maximum
  - Applies beginning in 2014 to non-grandfathered employer-sponsored plans
  - 2014 Maximum = the 2014 out-of-pocket limit for high deductible health plans (then indexed for inflation)
    - For 2013 is $6,250 for self-only coverage and $12,500 for coverage for more than one person
- Limit on Deductibles
  - Only apply to individual and small group market

Evaluating Your Plan Design

SATISFYING BENEFIT MANDATES

- Required coverage for:
  - Children through age 26
  - If not grandfathered:
    - Preventive care (on a first-dollar basis)
    - Direct access to OB/GYN
    - Certain emergency care
    - Clinical trials for cancer and other life-threatening diseases

Evaluating Your Plan Design

ADDING AUTOMATIC ENROLLMENT

- Applies to employers with over 200 employees
- Plans will be required to automatically enroll new full-time employees and continue the enrollment of current participants
- Notice and opportunity to opt-out is required
- Effective date is unclear—waiting on guidance

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Next Steps for Employer-Sponsored Health Plans

- Analyze financial impact of employer mandate and assessments on plans
- Costs of NOT Providing Coverage
  - Non-deductible penalties
    - Based on about 500 full-time employees, the annual penalty would =

      $2,000 * (500 – 30) or $940,000/year
  - Competitive advantage
  - Employee goodwill
  - Employee productivity

Next Steps for Employer-Sponsored Health Plans

- Develop waiting period/eligibility criteria for 2014 plan year
- Build tracking systems necessary to monitor employee hours and document eligibility determinations
- Implement standardized and verifiable process for making coverage offers

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