# AAPA Seminar - April 9, 2014

## Affordable Care Act: Final Regulations for Healthcare Reform

**HUB International Gulf South**

Kevin Gardner, Senior Vice President

# Three Approaches

- Employer responsibility mandate
- Individual responsibility mandate
- The “Exchange” (“Marketplace”)

# The 3 Questions Every Employer Must Begin With:

- How many full time Employees do I have (average FTE's per month)?
- Am I an Applicable Large Employer (ALE)? How Large?
- Have I the processes and record-keeping in place to PROVE MY STATUS?

Section 26 USC 4980h Compliance;
The "employer mandate"

# Who is benefit eligible (Full Time) and When?
(IRS Bulletins 2012-58/59, PHSA 2708)

- **Any employee** who averaged 30 *hours of service* per week or 130 hours per month.
- **No eligible employee may be required to wait more than 90 days until coverage becomes effective.**
- Coverage not required for Seasonal Workers who are engaged for less than 6 months per year.

# The Employer Responsibility Requirement
(Section 4980H)

- Applies to all "Applicable Large Employers" (ALE) (including controlled or affiliated service groups)
- **3 options**:

1. **AVOID FINES-**-Must offer **"affordable", "minimum value"** health coverage to 70% in 2015 of all eligible employees. Must offer coverage to children under age 26 (but not spouse and subsidy not required).

1. **RISK *SOME* FINES—**Offer coverage that fails one of the tests in #1 above. Employer is fined $250 per month per employee who "leaks" to the Exchange. Max fine is total fine computed under "3" below.

1. **PAY THE FINES –O**ffer no coverage at all, employer must pay $2,000 per year per uncovered employee minus first 30 lives.

# If the Answer is 0 to 49.99 FTE's….

- No obligations to provide affordable coverage
- No obligations to provide valuable coverage
- No federal obligations to offer coverage…state law applies
- No danger of fines under 4980H
- ***You must still be able to demonstrate your Non-ALE status.***

# If the Answer is 50 to 99.99 FTE's

- Administration is delaying your enforcement until **1/1/16 : IF**
  - You didn't get to 99 by reducing your workforce except for bona fide business reasons; AND.
  - You keep in place any coverage offered on 2/9/2014; AND
  - You pay at least 95% of the premium contribution you were paying on 2/9/2014.
- On 1/1/16 you must comply in full with 26 USC 4980h sections a) and b) and offer to 95% of your full time workforce and dependants. (not spouses)
- Non-compliance means fines.
- You must track membership beginning 1/1/14.

# If the Answer is 100+ FTE's

- You must offer to 70% of full timers in 2015.
- **You must offer to 95% of full timers in 2016.**
- At that point, you must comply in full with 26 USC 4980h sections a) and b) and offer to dependents (not spouses).
- If you lay off people to get below 100, IRS will demand proof of bona fide business reasons.
- Non-compliance means fines.
- You must track membership at all times beginning **now**.

# Affordable Coverage

- Employee's required contribution for self-only coverage does not exceed 9.5 percent of the employee's household income for the taxable year

- Employers can demonstrate affordability standard three ways:  Form W-2, Rate of Pay or Federal Poverty Line

# Minimum Value (MV)

- Minimum Value means a plan's share of total allowed costs of benefits provided under plan must be 60% or greater

- Employers can satisfy the MV standard by applying the following methodologies:
  1. MV Calculator, which is available at http://cciio.cms.gov/resources/regulations/index.html/#pm
  2. Any safe harbor established by HHS and the IRS;
  3. Certification by an actuary; or
  4. Any plan in the small group market that meets any of the "metal levels" of coverage on the Marketplace.

# 2014 Changes

- 90 Day Waiting  Period Limitation
- No Preexisting Condition Exclusions
- No Annual Dollar Limits
- Full Time is Defined as 30 Hours or More Per Week
- Deductibles, Coinsurance and Copays Must Accrue to Out of Pocket Maximum

# PPACA Compliance
# Grandfathered Plan Status Refresher

- Grandfathered plan status – “if you like what you have you can keep it” …within certain limits

- Maintenance of grandfathered plan status avoids requirements to:
  - Cover costs related to participation in clinical trials
  - Provide first dollar preventive care coverage subject to the US Preventive Care Task Force’s Schedules A & B
  - Allow emergency services without a pre-authorization and with out of network benefits the same as in network
  - Offer an expanded claims appeals process (most administrators complying for all plans)

- Current cost for a plan to lose grandfathered status (factor for increase claims due to additional coverage required) is approximately 3-4%

# PPACA Compliance
# Grandfathered Plan Status Refresher (cont.)

- To retain grandfathered plan status,
  - Employee/Employer contribution split cannot change by more than 5%
  - Cannot significantly cut or reduce benefits
  - Cannot raise coinsurance to members
  - Cannot raise co-payment (no more than the greater of $5 or percent equal to medical inflation + 15%)
  - Cannot raise deductible (can only raise by percent equal to medical inflation + 15%)
  - Cannot add or tighten an annual limit on what insurer pays
  - Cannot avoid ungrandfathering by splitting up company – controlled group
  - Language required in employee materials noting the plan believes it is grandfathered

# Grandfathering: Why Keep It?

- Not subject to Rate Compression or New Federal Underwriting Laws
- Not subject to 3:1 age rating
- Can keep existing rate/benefit plans
- Not required to add ANY new coverage for USPTF Schedule B tests, immunizations, or screenings, or treatments.
- Enjoy limited protections from experimental medicine costs and clinical trial expenses.

# Taxes

- Cadillac (perpetual)
  - **40% excise tax** on rich coverage in 2018
  - Plans with a value over $10,200 single and $27,500 family
  - Some plans already at these valuation thresholds due to unavoidable issues -- union contracts, geography
  - Estimate: 60% of plans will pay tax soon after effective
- Comparative Effectiveness Research fees (6 years)
  - $1/$2 paid using IRS Form 720
- Reinsurance fees for 2014 (3 years)
  - 2014: $63 per covered life regardless of plan funding
  - 2015 $44 per covered life
- Health Insurance Industry Fee (**Insured** plans only)
  - Law imposes a tax on insurers
  - From 1.5 – 2.5% of premium ($22,000 per 100 covered lives)
  - Increasing to **3-4%**

# MLR Restrictions and Rebates

- All companies must operate three separate pools of business by state.
- Each pool must hit targeted Medical Loss Ratio or higher
- If Medical expenses don't reach threshold, excess profits must be converted to cash and rebated to pool
- Pools:
  - Individual—80%
  - Group <100--80%
  - Group >100--85%

# Wellness Incentive Final Rule

- The Affordable Care Act increased permissible wellness incentives from 20% to 30% of the cost of coverage (50% in the event of a smoking cessation program)
- On June 3, 2013, the Agencies published their final rule on wellness incentives, describing two types of wellness programs
  - Participatory wellness incentives
  - Health contingent wellness incentives

# Why Wellness?

- **ROI facts**
  - Comprehensive programs can realize a return of 1:1 year one, 2:1 year two and 3:1 year three.
  - Worker's Comp: The duration of obese workers' comp claimants is more than 5x the duration of non-obese claimants.
  - Heart Disease: **69%** of people who have a first heart attack, **77%** of people who have a first stroke, and **74%** of people with chronic heart failure have high blood pressure.[3] High blood pressure is also a major risk factor for kidney disease.
  - Tobacco: Tobacco users consume about 25 percent more healthcare services than non-tobacco users
  - Diabetics: People with diagnosed diabetes incur average medical expenditures of about $13,700 per year, of which about $7,900 is attributed to diabetes. People with diagnosed diabetes, on average, have medical expenditures approximately 2.3 times higher than what expenditures would be in the absence of diabetes.

# Why Wellness? (cont.)

- **Keys to success**
  - Agree to develop a long term strategy and investing in your people
  - Ownership & senior management must take lead
  - Get first line and supervisors onboard next
  - Must make it simple, easily accessible and cost neutral for employees
  - Must tie in to a meaningful financial incentive to motivate change
  - Embed in your core values, philosophy and communications
  - Must appoint or secure a champion to drive strategy long-term