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**—Offer 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](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. 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