Health care reform update

Look to the Trust for updates impacting you

The AWC Trust, legal counsel and consultants will monitor rulemaking to assess impact to our benefit plan design. As always, we’ll keep you up to date on impacts to Trust health plans. Expect updates in your monthly communication, *For Your Health.*

“Full-time employees” definition & pay or play penalties

In 2014, PPACA will require large employers (those with 50 or more full time employees) to pay penalties if

1. They do not offer health coverage to their “full-time” employees; or
2. If the coverage is unaffordable or does not provide minimum essential coverage. This provision has been dubbed the “pay-or-play” penalty.

Full time employee definition

Definition of “full-time” employee has garnered great concern by local government, as PPACA suggests it is “an employee who is employed on average at least 30 hours of service per week.” The AWC and other municipal leagues across the nation voiced their concerns through the National League of Cities; specifically, the application of this PPACA provision to seasonal workers or employees with variable hours, proclaiming significant impact to local budgets and community resources.

IRS Notice 2012-58 issued on August 31, provides administrative guidance and offers employers examples of acceptable safe harbor measures which can be used to define a full-time employee. Note, these examples are not the only possible method that will be acceptable under PPACA, however they should serve as useful examples for employers to use in determining an employee’s work status.

We encourage employers to review these examples, and contact your employer’s health plan with any questions.

Under the Notice, there are three important defined terms:

1. **Measurement period:** a period of time from 3-12 months which an employer may use to determine whether an employee is full-time.
2. **Stability period:** a period of time after the measurement period, lasting from 6-12 months, during which the employer must offer health coverage to employees who qualified as full-time during the measurement period if the employer wishes to avoid the possibility of an assessable payment.

- For employers using measurement periods of 3-6 months, the stability period must be at least six months long
- For employers using measurement periods of 6-12 months, the stability period must be at least as long in duration as the measurement period
- To avoid the possibility of financial penalties, coverage must be offered for the entire stability period to employees qualifying as full-time during the previous measurement period, even if the employee’s hours do not average 30 hours per week in a given month during the stability period

3. **Administrative period:** a waiting period between end of the measurement period and the beginning of the stability period, not to exceed 90 days, during which the employer need not offer health coverage.

**New full-time employees**

If an employee is reasonably expected to work full-time as of the employee’s date of hire, the employee will be considered full-time for purposes of PPACA, and the employer must offer the required coverage to the employee in accordance with their employer policy (or within 90 days if the employer has a probationary waiting period) to avoid the possibility of financial penalties.

The Notice indicates that additional guidance will be issued on the rules which apply when a part-time employee is hired into a full-time position.

**Variable and seasonal employees**

For variable hour and seasonal employees (in other words, situations in which the employer is not able to determine whether the employee will be working full-time at the date of hire), the employer may institute an "**initial measurement period**" during which the hours of the employee will be measured to determine if they average at least 30 hours per week.
This initial measurement period must be between three and twelve months. If the employee is determined to have worked the requisite 30-hours a week on average during the initial measurement period, the employer must then offer health coverage to the employee during the following “stability period.” For employers with initial measurement periods between 3 and 6 months, the stability period must be at least 6 months. For employers using initial measurement periods of 6 months or more, the stability period must be at least as long as the initial measurement period.

The health coverage and the stability period must begin before the end of a 90-day “administrative period.”

Examples
- A new variable hour employee is hired on January 1
- The employer has a 3-month initial measurement period, which for this employee would be January 1 to March 31, and a 90-day administrative period
- The employee works on average 30 hours or more per week from January 1 to March 31
- In order to avoid the possibility of financial penalties, the employee must be offered health coverage on or before July 1 (after the end of the administrative period), and the coverage must be offered for a stability period of at least six months (until December 31 of the same year)

Under a separate rule, the combined limit of the initial measurement period and the administrative period cannot together extend beyond the last day of the first calendar month of the first anniversary of the employee’s start date.
- A new variable hour employee is hired on January 15, 2014
- The employer has a 12-month initial measurement period
- The employee works on average 30 hours or more per week from January 15, 2014 to January 15, 2015
- In order to avoid the possibility of financial penalties, the employee must be offered coverage effective as of February 1, 2015

Ongoing measurement of all employees
For all ongoing employees (whether or not seasonal/variable), an employer may select a standard measurement period to determine whether an employee is full-time. A standard measurement period is a set period of time each year, from one date in the calendar year to another, and between 3 and 12 months, as chosen by the employer, during which the employer determines whether all employees are full-time. For example, a standard measurement period could be from January 1 to October 31 of the same year, or could be from June 1 of one year to May 31 of the following year.

An employee is considered to be an “ongoing employee” if the employee has been employed for at least one standard measurement period. If the employee is determined to be full-time during the standard measurement period, the employer must provide health coverage during the next stability period.

Employers may set different standard measurement periods and stability periods for different sets of employees, such as:
- collectively bargained employees and non-collectively bargained employees;
- hourly and salaried employees;
- employees of different entities; and
- employees located in different States.

Safe harbor for determining whether health coverage is affordable
In this Notice, the agencies approve a safe-harbor, which was proposed in earlier guidance, for determining whether health coverage offered by an employer is “affordable” to the employee under PPACA. Health coverage will be considered affordable to the employee if the employee payment for employee coverage does not exceed 9.5% of the amount reported as wages for the employee in Box 1 of the employee’s Form W-2.

90-day waiting period
The majority of Washington cities and towns insure employees the first of the month following date of hire, so AWC is not too concerned with the maximum 90-day waiting period mandate. However, jurisdictions with benefit effective dates greater than 90 days after date of hire will need to reduce their policies to no more than 90 days.
Automatic enrollment requirements further delayed
For employers with more than 200 employees, PPACA required that new full-time employees be automatically enrolled in the health plan; however, an effective date was not stipulated. The recent FAQ announced that these regulations will NOT be ready to take effect by 2014.

Summary of Benefits & Coverage (SBC)
A separate FAQ was issued by the feds addressing delivery, compliance, and enforcement of the Summary of Benefits & Coverage. The AWC Trust and Regence BlueShield complied early with the intent of this directive, but all plans will be required to comply after September 23, 2012. For employers of the AWC Trust, you can expect new SBC’s (in addition to the benefit booklets) to be delivered prior to January 1, 2013.

On behalf of our member employers, the AWC Trust will assist you in regulatory compliance with the following SBC delivery mandates:
- New enrollment packet & open enrollment – SBC’s will be provided to each employer in paper and electronic for distribution to employees.
- Upon request – In addition to employer packet, the AWC Trust will provide electronically on AWC Trust employee website with WebMD for easy access.
- COBRA beneficiaries – The AWC Trust will mail the SBC’s to COBRA beneficiaries along with rate renewal information in November 2012.

Governor signs health care exchange bill
On March 23, the Governor signed ESHB 2319, implementing the health benefit exchange of the Affordable Care Act. Much of the new law delegates authority to the Health Care Exchange Board to further define exchange structure and rules. Much more to come in 2012 and early 2013 on the exchange. We will keep you posted on any updates.

Still unanswered – market rules
One lingering question is the “market rules” or how health plans operate outside of the exchange; specifically, Section 6 of the law indicating all health plans, other than catastrophic, must meet the requirements of the “metal tiers” of the Affordable Care Act. In response to expressed concerns of the insurance industry, the Governor stated in her veto message:

“Section 6 imposes market rules essential to help health plans sold in the exchange remain affordable by protecting them against adverse selection, with great care taken not to inappropriately burden the general insurance market. Concern that this section would apply to other than individual or small group plans is misplaced. Such a reading is unsupported by the legislative history and makes no sense in light of the statutory purpose and the corresponding provisions of the federal Affordable Care Act.”

Governor’s full veto message.

More information on SBC’s.

Interested in reading the complete FAQs?
FAQ.