



The Affordable Care Act: Compliance, Including Recordkeeping

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Agenda

- **Current Employee Benefits Landscape**
- **ACA Compliance “To Do” List:**
 - Historical ACA - 2010 – 2014 ACA Provisions
 - Employer Shared Responsibility or “Play or Pay” Requirement
 - IRS Reporting Requirements – Section 6056
 - ERISA and Section 125 Plan Documentation
- **What’s Upcoming in the ACA Space?**
- **Summary - Four Reasons to Move Benefits Compliance Up Your “To Do” List**
- **Questions?**

It's 2015, do you know what that means?

It means the beginning of ACA "play or pay", IRS reporting, and those other provisions that won't go away.

*Over the next hour I will do my best to make things sweet,
not sour*

But my message is clear: if you want to enjoy your 2015 holidays, please start preparing for IRS reporting now, not the end of the year!

Current Employee Benefits Landscape



Current Employee Benefits Landscape

Legislative
Guidance /
Interpretation

Carrier Decisions /
Actions

HCR Provisions –
Effective Dates
(2015 - 2018)

Elections
(Congress and
Presidential)



Legal Challenges

***Implement the Known Today
Be Prepared for It to Change Tomorrow***

PLEASE NOTE:

The information contained in the presentation includes emerging healthcare news from a limited perspective and does not encompass all views. The information was assembled from a wide range of sources selected on the basis of their potential impact on employers and/or their employee benefit plans. The information in this presentation may not pertain specifically to your plan. No legal or tax advice is provided in this presentation.

ACA Compliance “To Do” List



Historical ACA (2010 – 2014)



What's Important to Remember from 2010 – 2014?

Key ACA Provision	"To Do" List
Grandfathered Plans	Ensure proper notification being distributed
Annual Maximums for Essential Health Benefits (applies to all non-GF plans)	2015 OOP Max: \$6,600 EE Only and \$13,200 Family 2014 "More than One Service Provider" transitional rule no longer applies
Pre-Existing Condition Exclusions (Extinct for all)	No need for HIPAA Certificate of Creditable Coverage anymore

What's Important to Remember from 2010 – 2014?

Key ACA Provision	"To Do" List
Exchange Notice	Must provide to new hires within 14 days of hire date
Reporting Health Care Costs on Form W-2	Ensure this is occurring for applicable employers (250+ Form W-2s)
MLR Rebates	Continue to manage Dental MLR in CA (AB 1962) - New for 2015
New Qualifying Events	Employers may permit employees to drop medical coverage under a cafeteria plan during the middle of the plan year if: The employee is in a plan that uses the look-back measurement method and was working 30+ hours per week, but dropped his/her hours to a level which would normally cause the loss of eligibility under the plan (but for the fact that the employee is in a "stability period") The employee is in a non-calendar year plan and wants to drop coverage to enroll in a plan through the health insurance Exchange If interested, amendment due by end of 2015 plan year

What's Important to Remember from 2010 – 2014?

Key ACA Provision	"To Do" List
PCORI Fee (self-insured plans only)	<p>Due by 7/31/15 for plan year ending in 2014</p> <p>Plan year ended before 10/1/14 - \$2 per covered life Plan year ended after 10/1/14 - \$2.08 per covered life</p>
Transitional Reinsurance Fee (self-insured plans only)	<p>First installment due 1/15/15</p> <p>1st installment - \$52.50 per covered life 2nd installment (4th Q 2015) - \$10.50 per covered life</p>
Health FSA	<p>Must qualify as "excepted benefit"</p> <p>2015 Maximum: \$2,550 (Plan amendment required)</p>
Waiting Period	<p>May not exceed 90 calendar days (Orientation period option)</p> <p>CA 60 day waiting period no longer applies (SB 1034)</p>
"Minimum Value Plans" (w/o hospitalization and/or physician services)	<p>Pre-11/4/14 plans grandfathered for one year only</p> <p>Regulations expected in early 2015</p>

ACA Employer Shared Responsibility or “Play or Pay”

“To Do” List



What is ACA Employer Shared Responsibility or “Play or Pay”

- The Affordable Care Act requires applicable large employers **to offer** affordable, minimum value health coverage to their full-time employees (and dependent children) or pay a penalty.
- Beginning in 2015, applicable large employers will face penalties if one or more of their full-time employees obtains a premium tax credit or cost-sharing reduction through an Exchange.
 - An individual may be eligible for a premium tax credit or cost-sharing reduction either because the employer:
 - **does not offer coverage or**
 - **offers coverage that is either not “affordable” or does not provide “minimum value.”**

“To-Do” List

- **Determine if you are an ALE (50+ FT and FTEs in preceding calendar year)**
 - Take advantage of 6 consecutive month transition opportunity
 - Determine if eligible for 2015 “play or pay” delay (50 – 99 FT and FTEs) to start compliance in 2016
 - Must pass test
- **Determine your “play or pay” effective date**
 - January 1, 2015 unless meet non-calendar year test
 - Non-calendar year tests are challenging
- **Determine if you meet 70% (2015) offer of coverage requirement to FT employees (95% starting in 2016)**
 - Subject to \$2,000 Section 4980H(a) penalty even if you are off by 1%
 - Even if you meet the 70% or 95% percent threshold, you still face the potential for the \$3,000 Section 4980H(b) penalty for every FTE who isn’t offered coverage (*i.e.*, the 30/5 percent safe harbor employees) if that employee receives an exchange subsidy for insurance he/she purchases through the Exchange

"To-Do" List

- **Determine your health insurance plan/s minimum value (Satisfy 60% rule)**
 - Fully-insured plans >> Carrier will meet this value
 - Self-insured plans >> Check CMS calculator or with actuary
- **Determine which affordability safe harbor to use (Satisfy 9.5% rule) and apply to all employees**
 - W-2
 - Rate of Pay
 - Federal Poverty Level
- **Determine if health insurance coverage is being offered to dependent children**
- **If applicable, be cognizant of the "play or pay" rules associated with "controlled group" situations**

"To-Do" List

- **Determine your look-back measurement periods**
 - Initial and Standard – Measurement, Administrative, and Stability Periods
 - Determine whether you are going to take advantage of 6 month Standard Measurement Period with 12 month Standard Stability Period transitional relief for 2015
- **Understand status change rules (PT to FT and vice versa) and transferring between method rules (monthly measurement period to look-back and vice versa – if applicable)**
- **Understand breaks-in-service and special unpaid leave of absence rules and apply appropriately to look-back measurement period tracking**
 - Break-in-Service = 13 weeks
 - Very complicated area of the law
 - Benefits eligibility and coverage for FT employees that work sporadically
 - Benefits affordability when employee is on leave of absence
 - Etc.
 - Special unpaid leave of absence = FMLA, USERRA, and Jury Duty
 - Ensure leave of absences are being tracked accurately

“To-Do” List

- **Track hours for every type of employee (FT, PT, Seasonal, Variable Hour)**
 - Support available through vendor tracking tools
 - Some using payroll vendor >> but are they capturing enough information to accurately track?
 - Important to check!
- **Document every “play or pay” decision made**
 - Especially any transitional relief you take advantage of

IRS Reporting Requirements – Section 6056

"To Do" List

The image displays a stack of IRS Form 1095-C (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns) for the year 2014. The forms are marked as 'VOID' and 'CORRECTED'. A large watermark across the forms reads 'DRAFT AS OF JULY 21, 2014 DO NOT FILE'. The forms show various fields for employer information, employee information, and health coverage details. The top form is Form 1095-B (Responsible Individual), Form 1094-C (Applicable Large Employer), and Form 1095-C (Employee). The bottom form is Form 1095-C (Applicable Large Employer Member (Employee)).

Why are there IRS Reporting Requirements (Section 6056)?

- IRS will use the information provided on the information return to administer the “play or pay” rules in Section 4980H
- IRS and employees of an ALE will use the information provided as part of the determination of whether an employee is eligible for the premium tax credit under the ACA

IRS Reporting – Sections 6055 and 6056 Summary

TYPE OF REPORTING	AFFECTED EMPLOYERS	EFFECTIVE DATE
Code Section 6055 Reporting of health coverage by health insurance issuers and sponsors of self-insured plans	Any size employers with self-insured health plans	
Code Section 6056 Applicable large employer (ALE) health coverage reporting	Applicable large employers (those with at least 50 full-time employees, including full-time equivalents, in the preceding year)	First returns will be due in early 2016 for coverage provided in 2015

What Does This New Reporting Requirement Mean Today?

Still in Infancy Stages

IRS recently published draft forms, draft instructions, and Q&As

We don't have final forms and instructions yet

BUT

Recommend Start Preparing NOW

Data for IRS forms will consist of 2015 calendar year data, starting with January 2015

Form distribution starts in January 2016 (Employee Statements)

These are IRS tax forms requiring a significant amount of employee benefits data never attested to the federal government before that will serve as the basis for a number of key legal requirements (following "play or pay" provision, individual tax credit eligibility, etc.) with a penalty component

What are the Section 6056 Reporting Requirements?

- **Two Key Requirements**

- **1 - File with IRS**

- If fully-insured ALE, file:
 - Form 1094-C (transmittal) AND
 - Form 1095-C (employee statement, for each full-time employee) – Parts I and II (Carrier will provide Part III information)
 - If self-insured ALE, file:
 - Form 1094-C (transmittal) AND
 - Form 1095-C (employee statement, for each full-time employee plus any employee who enrolls in coverage, regardless of the full-time status of that employee) – Parts I, II **and III**

- Electronic filing is required by ALEs who file at least 250 Forms 1095-C

- Must be filed with IRS by:

- **On or before February 28 (March 31 if filed electronically)** of the year immediately following the calendar year for which the offer of coverage information is reported
 - For 2016 Reporting (of 2015 data)
 - Filed no later than February 29, 2016 (Feb. 28, 2016 is a Sunday) OR March 31, 2016, if filed electronically
 - Applies to both calendar year and non-calendar year plans

What are the Section 6056 Reporting Requirements?

- **Two Key Requirements**

- 2 – Provide Statement to Full-Time Employees**

- If fully-insured or self-insured:
 - Form 1095-C (or a substitute statement) OR a simplified statement if qualify for alternative reporting method
 - Distribution process to employees:
 - May be provided electronically to employees if notice, **affirmative consent**, and hardware and software requirements are met (** Similar to the consent process in place for electronic furnishing of Forms W-2)
 - May be mailed with the Form W-2 to the last known address
 - Must be provided to employee by:
 - **On or before January 31** of the year immediately following the calendar year to which the information relates
 - For 2016:
 - Furnished to employees no later than February 1, 2016 (January 31, 2016 is a Sunday)
 - Applies to both calendar year and **non-calendar year plans**

What are the Section 6056 Reporting Requirements?

- **Information to be Reported:**

- **General Method (“Default”)**

- **Alternative Reporting Methods (Optional if Qualify)**

- Opportunity to provide less-detailed information than the General Method
 - Value Add >> Minimize administrative burden **BUT** do they really?
 - Three Types:
 - Reporting Based on Certification of Qualifying Offers – General
 - Reporting Based on Certification of Qualifying Offers – 2015 Only
 - 98% Offers

What are the Section 6056 Reporting Requirements?

- **General Method:**

- **Form 1094-C Transmittal Form**

- The ALE's name, address and employer identification number (EIN);
 - The name and telephone number of the **ALE's contact person**;
 - A certification as to whether the ALE offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan, by calendar month;
 - Number of full-time employees for each month (**excluding those in a Limited Non-Assessment Period**)
 - Limited Non-Assessment Periods include:
 - First Year as an ALE Period,
 - Waiting Period Under the Monthly Measurement Period,
 - Waiting Period Under the Look-Back Measurement Period,
 - Initial Measurement Period and Associated Administrative Period Under the Look-Back Measurement Period,
 - Period Following Change-In-Status that Occurs During Initial Measurement Period Under the Look-Back Measurement Method,
 - First Calendar Month of Employment
 - If eligible for 98% Offer Alternative Method, **this information is not required**
 - Total number of employees (full-time and non-full-time) for each month
 - Section 4980H Transition Relief Indicator (50-99 relief or 100 or more relief)

What are the Section 6056 Reporting Requirements?

- **General Method:**

- **Form 1094-C Transmittal Form**

- Section 4980H Transition Relief Indicator (50-99 relief (Code A) or 100 or more relief (Code B))
 - 50 – 99 Employees Transitional Relief
 - 70% Offer of Coverage Transitional Relief
 - No Dependent Coverage Transitional Relief
 - Non-Calendar Year Plan Transitional Relief
 - January 2015 Transitional Relief

What are the Section 6056 Reporting Requirements?

- **General Method:**

- **Form 1095-C Employee Statement** – Complete a form for each FT employee

- **For Fully-Insured and Self-Insured ALEs (Complete Parts I and II)**

- The telephone number of the ALE's contact person,
 - The name, address and SSN of each full-time employee during the calendar year,
 - Offer of coverage made to the employee (indicator code) during each calendar month,
 - Codes 1A – 1I
 - Each full-time employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month,
 - Applicable Section 4980H safe harbor code for each month (indicator codes – type of coverage provided to employee and dependents or no coverage provided)
 - Codes 2A – 2I

- For Self-Insured ALEs Only (Complete Part III as well)**

- Name, SSN, DOB (if SSN not available) of all covered individuals (including non-full-time)
 - Coverage provided during each calendar month

What are the Section 6056 Reporting Penalties?

- **IRS Reporting Penalties:**

- IRS will not impose penalties on ALEs that report incorrect or incomplete information that can show that they have made **good faith efforts** to comply with the information reporting requirements

- No relief is provided in the case of ALEs that:
 - Cannot show a good faith effort to comply with the information reporting requirements;

OR

 - Fail to timely file an information return or furnish a statement

“To-Do” List

- **Determine the specific IRS reporting requirements that apply to your organization (if any), including whether any Section 6056 alternative methods apply**
- **Review the draft filing forms, instructions, and Q&As issued by the IRS that apply to your organization**
- **Review your internal systems and vendor relationships to ensure that the necessary data elements are able to be captured accurately**
 - Reporting may require the use of several recordkeeping systems, such as payroll and HRIS, and may require data aggregation across systems
- **Work with your payroll/tax/finance departments and outside vendors to establish procedures for filing returns with the IRS and furnishing statements to employees**
- **Determine if you have the necessary administrative support to collect the necessary data and prepare the reports**

"To-Do" List

- **Implement IRS "good faith" procedures as applicable**

Example:

Collection of Social Security Numbers (as necessary)

- Initial solicitation >> Made at the time the relationship is established
- 1st annual solicitation >> Required by Dec. 31 of the year in which the relationship begins (Jan. 31 of the following year if the relationship begins in December)
- 2nd solicitation >> Required by Dec. 31 of the following year

- If a SSN is still not provided, you do not need to continue to solicit for a SSN and may use DOB

- **Complete the January 2015 data sections of your applicable IRS reporting forms in February 2015**

- This will provide a first-hand look at what is necessary so you can continue to put the pieces of the data collection puzzle together now (data, resources, action plan, etc.)

- **Continue to await the final IRS reporting forms and instructions. Then make modifications as appropriate**

- **If applicable, be cognizant of the IRS reporting rules associated with "controlled group" situations**

Resources – Sections 6055 and 6056

Draft Form 1094-B: Transmittal of Health Coverage Information Returns

<http://www.irs.gov/pub/irs-dft/f1094b--dft.pdf>

Draft Form 1095-B: Health Coverage

<http://www.irs.gov/pub/irs-dft/f1095b--dft.pdf>

Draft Form 1094-C: Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return

<http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf>

Draft Form 1095-C: Employer-Provided Health Insurance Offer and Coverage

<http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf>

Draft Instructions for Forms 1094-B and 1095-B

<http://www.irs.gov/pub/irs-dft/i109495b--dft.pdf>

Draft Instructions for Forms 1094-C and 1095-C

<http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf>

Q&As on Section 6055

<http://www.irs.gov/uac/Questions-and-Answers-on-Information-Reporting-by-Health-Coverage-Providers-Section-6055>

Q&As on Section 6056

<http://www.irs.gov/uac/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056>

Summary – Section 6056

	Section 6056 Reporting
Purpose	“Play or Pay” Rules and Premium Tax Credit Eligibility
Recipient	FT Employee
Filer	ALE (insured or self-insured)
Forms	Fully-Insured ALE: 1094-C and 1095-C (Part I and II) Self-Insured ALE: 1094-C and 1095-C (Parts I, II, and III)
Deadline	Employee Statement: 1/31 IRS Return: 2/28 or 3/31 (if electronic)

Keeping It Real

"Play or Pay" IRS Reporting



Keeping It Real

- **Critical to get employee benefits eligibility right or else it will stand out like a sore thumb on IRS reporting forms**
- **Employee benefits education and communication are critical to minimize “employee angst”**
 - Plans offered to employees may be markedly different than what they were offered in the past (indemnity plan v. current plan (deductibles, more limited coverage/network))
 - Some employees may be receiving benefits for the first time ever
 - Some employees may lose subsidy as a result of having to be offered coverage by employer
- **“Play or Pay” tracking and IRS reporting vendor solutions are only as good as the information you provide to them**
 - Review vendor file specs first so you can get a good idea of the amount of internal legwork will be necessary to get them what they need
 - Good chance you may not even be tracking the information requested in your current payroll or HRIS system

ERISA and Section 125 Plan Documentation Requirements



Why is it Important to Develop or Update This Documentation Now?

1 – Law Requires It and Its “Low-Hanging” Compliance Fruit

2 – Fiduciary Responsibility under ERISA

3 – More Meaningful Than Ever Before, especially given Individual Mandate and ACA Amendments

Benefits eligibility language, FSA amendments, ACA amendments, etc.

4 – Outdated Information Could Be Blatantly Wrong and Hurt You

Pre-existing condition exclusion language

ERISA Plan Documentation Requirements

If you offer an ERISA Plan*:

Must Have the Following Documents:

- 1 – ERISA Wrap Plan Document
- 2 – ERISA Wrap Plan Summary Plan Description

* Does not matter if you are less than 100 employees; Exclusions are generally only for church and government plans

ERISA Plan Documentation Requirements

What is an ERISA Wrap Plan Document and Summary Plan Description?

ERISA Wrap Plan Document = ERISA Plan Document Language + Carrier Plan Information

ERISA Wrap SPD = ERISA Summary Plan Description Language + Carrier Plan Information

What will the Health Insurance Carriers Often Provide?

Fully-Insured Plans =

Yes = Carrier Plan Information (Often an Evidence of Coverage)

No = ERISA Wrap Plan Document Language; Generally no ERISA Summary Plan Description Language

Self-Insured Plans =

Maybe = Carrier Plan Information (Often an Evidence of Coverage)

No = ERISA Wrap Plan Document Language; Generally no ERISA Summary Plan Description Language

Who Can Assist with Completing the Required ERISA Documentation?

Health Insurance Carriers (as outlined on previous slide)

Legal Counsel (ERISA Wrap Plan Document Language and ERISA Summary Plan Description Language)

Section 125 Plan Documentation Requirements

If you offer a Section 125 Plan:

Must Have the Following Documents:

1 – Section 125 Plan Document

2 – Section 125 Plan Summary Plan Description

** Most commonly pre-tax premium plan (POP) and/or flexible spending accounts

Who Can Assist with Completing the Required Section 125 Documentation?

Flexible Spending Account Vendors

Legal Counsel

What's Upcoming in the ACA Space?



"Get ready! The next wave of legislation is rolling in."

What's Important to Know in the ACA Space Moving Forward

- **Letters from the Exchange and IRS - Employees who have attested they are eligible for a subsidy (Appeals process)**
 - Another reason to keep documentation
- **Republican-Controlled Congress and 2016 Presidential Election**
- **U.S. Supreme Court – Federal / State Subsidy Issue**
 - Expected ruling in June 2015
- **Cadillac Tax**
 - Project now so you have time to make appropriate plan and plan design changes
- **Still Awaiting:**
 - Non-Discrimination for Fully-Insured Plans
 - Automatic Enrollment
 - HIPAA HPID and Certification (12/31/15 deadline)

Summary

Four Reasons to Move Benefits Compliance Up Your "To-Do" List



Importance of Complying Now (More Than Ever Before)

Four reasons why employee benefits compliance should move to the top of your “to-do” list:

1) There are Now Many Laws Regulating Employee Benefit Programs (Some with Recent or Upcoming Effective Dates)

Many laws = Significant exposure and penalties for non-compliance

2) Huge Government Magnifying Glass Over Your Employee Benefit Program

Greater attestation of information to federal government than ever before (Form W-2 reporting, IRS reporting, Fee payments, etc.)

If you get “play or pay” wrong, it will be reflected in IRS reporting

Audits increasing in general (especially HIPAA audits)

3) Increased Risk of Employee Complaints to DOL, IRS, etc.

Hearing different information from all angles – Internet, News, Relatives, Neighbors

Individual Mandate requirement hanging over their heads

4) If Auditors Arrive and See “Low-Hanging Fruit” Non-Compliance, Good Chance They Will Keep Digging

Recommend proactively addressing these benefits compliance requirements:

Plan Documentation (ERISA, Section 125, ACA)

HIPAA Privacy and Security Policies and Procedures and Training

Non-Discrimination Testing (Section 125, Section 105(h), etc.)



Thank you!
Any Questions?

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