

Last week, the Department of Treasury and White House announced via blog posts that it is issuing a one-year delay of the mandatory employer and insurer reporting requirements under the Affordable Care Act (ACA). This week, the Internal Revenue Service (IRS) issued Notice 2013-45, confirming that the employer shared responsibility penalties and reporting requirements will not apply until 2015.

The notice does not provide much more information than the original blog posts. The IRS Notice states that employers and insurers will not be required to provide reporting of coverage offered to, and elected by, employees for 2014. The Notice states that the employer shared responsibility penalties are also delayed until 2015. The employer shared responsibility penalties require applicable large employers who do not offer coverage to at least 95% of their employees working 30 or more hours per week to pay a \$2,000 penalty per employee, or \$3,000 per employee who receives a premium subsidy because the employer coverage is not affordable or does not meet minimum value.

#### Provisions that Will Still Take Effect in 2014

While the delay impacts certain reporting and penalty provisions of the law, many provisions impacting employers are scheduled to take effect on time (the first day of the plan year on or after January 1, 2014). It is important to note that this delay should not change employer strategies around the pay or play mandate, but give employers more time to put processes in place for compliance. The following is a list of the employer provisions unaffected by the delay:

- Waiting periods cannot exceed 90 days from the date of eligibility
- Pre-existing condition limitations must be removed
- Out-of-pocket maximums cannot exceed \$6,350 for individual and \$12,700 for family coverage for non-grandfathered plans
- Essential health benefits may not have annual dollar limits
- Grandfathered plans must cover dependent children to age 26 even if the child has access to his/her own employer-provided coverage
- New wellness program requirements will apply
- For non-grandfathered small insured plans, whether in or outside the exchange/marketplace, coverage must include the essential health benefits at the bronze, silver, gold or platinum level, with a deductible in most situations of not more than \$2,000 for individual and \$4,000 for family coverage
- For small insured plans, whether in or outside the exchange/marketplace, modified community rating (rating classes are limited to age, tobacco use, family size and geographic area), guaranteed issue and guaranteed renewal (with some limitations) will apply

Penalties for failure to comply with the above provisions can be as much as \$100 per person per day for non-compliance.

Employers must also comply with the following provisions:

- Reporting and payment of Patient Centered Outcomes Research Institute Fees
- Distributing any Medical Loss Ratio rebates received by the plan (few rebates are expected in Ohio, Indiana or Kentucky)
- Providing a Summary of Benefits and Coverage (SBC) as part of open enrollment (though it is unclear whether it will be necessary to report whether the plan provides minimum value or minimum essential coverage)
- Distributing the DOL notice regarding the exchange by October 1, 2013 (the content of the notice may change because of the delayed application of affordability and minimum value requirements)
- Reporting health care costs on the employee's W-2 (the exemption for employers that issued fewer than 250 W-2s in the prior year or that contribute to a multiple employer plan will continue for the 2013 W-2)
- Paying the transitional reinsurance fee, due in January 2015

#### Impact on Individual Mandate

The delay in employer mandate will not affect the individual mandate and an employee's obligation to obtain minimum essential coverage or pay a penalty. Additionally, eligible individuals will still be able to receive a premium tax credit/subsidy through the exchange. Ambiguity still exists in how the exchange will know if an employee has employer-provided affordable, minimum value coverage available to them.

#### Next Steps

The Notice encourages employers to voluntarily comply with both the information reporting and pay or play rules once regulations are issued though they will not be fully effective until 2015. HORAN will continue to provide additional updates as guidance and regulations are released. We expect to have additional information by late summer as the Notice indicates that proposed rules will be published in that timeframe.

*Please contact your HORAN account representative with any questions.*

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