



New Orleans Business to Business Forum on Healthcare Solutions



Louisiana



GREATER NEW ORLEANS
INC
REGIONAL ECONOMIC DEVELOPMENT



Association Health Plans & Short Term Limited Duration Plans

Presented to you by: Wes Miller

Director, Healthcare Policy



New Orleans Business to Business
Forum on Healthcare Solutions

AGENDA

- Presidential Executive Order
- Association Health Plans
 - Overview
 - Lawsuit
 - Likely Impacts – Short-term/Long-term
- Short Term Limited Duration Plans
 - Final Regulation
 - Likely Impacts – Short-term/Long-term



PRESIDENTIAL EXECUTIVE ORDER

- Released October 12, 2017, the Executive Order 13813 covered:
 - Association Health Plans
 - Banding small groups together to self-insure or become a large group.
 - Specifically to review the definition of commonality-of-interest requirements – to include geography or industry.
 - Short Term Limited Duration Plans (STLD)
 - Expand the availability of STLDs while maintaining their exemptions under the Affordable Care Act
 - Specifically looks at length of coverage and renewability
 - Health Reimbursement Arrangement
 - Expand the availability of HRAs to more Americans
 - Specifically expand employers' ability to offer HRAs to their employees and allowing HRAs to be used in Conjunction with non-group coverage.



OVERVIEW OF ASSOCIATION HEALTH PLANS

- Since October 2017, Executive Order Department of Labor (DOL) has been busy.
 - Issued a Proposed AHP regulation in January 2018
 - Regulation broadened the criteria under ERISA Section 3, in which employers can band together and maintain a single employee welfare benefit plan
 - Comment Period Closed in March 2018
 - Received over 900 comments
 - Issued Final Rule in June 2018 with staggered effective dates
 - September 1, 2018, for fully insured AHPs
 - January 1, 2019, for existing self-insured AHPs
 - April 1, 2019, for new self-insured AHPs

OVERVIEW OF ASSOCIATION HEALTH PLANS

- Creates a more flexible pathway to qualify as and AHP
 - AHPs can now have its primary purpose to provide health insurance benefits, but must continue to also have another purpose. (i.e. lobbying, education, public relations, etc.)
 - AHPs may now include employers from the same industry, line of business, profession OR be located within the same geographic region – not to exceed a single state or metropolitan area.
 - Employers must control the functions and activities of the association
- Now allows AHPs to include self employed members.
- Includes non-discrimination language
 - Cannot discriminate based on health status:
 - Entry into the Association
 - Eligibility for the health plan
 - Benefits covered
 - Premiums charged
 - Rule notes that age and gender are NOT health factors
 - AHPs are permitted to limit enrollment to open enrollment periods or establish special enrollment periods.
- Clarifies that AHPs are subject to some ACA protections such as wellness benefits, annual out-of-pocket limits, annual and lifetime limits and Summary of Benefits and Coverage.

ASSOCIATION HEALTH PLAN LAWSUIT

- DOL anticipated challenges to the final rule, so they included a severability clause. This clause clarifies that if any parts of the rule are struck, the remaining rule lives on.
- 12 States filed suit on July 26, 2018, in the DC District Court of Appeals asking for Injunctive Relief.
- They argue that the Final Rule's changes broadening the availability of AHPs violates the consumer protections included in the ACA.
- Uses a similar method that has taken down some DOL rules in the past – Hyper technical challenge DOL's authority under the Administrative Procedures Act. Challenging that they went through all the right processes and have the right justifications.
- Anticipate it may be tied up in litigation for a while.



LIKELY IMPACTS ON GROUP MARKET

- In the near future, it is business as usual.
- Lawsuit likely to drive speed to market.
- Potential Further Segmentation of the ACA group commercial market – likely to happen in 2020 and beyond.
- More clarity will be provided as employers begin to implement these new programs.
- Depending on how strict DOL will be with AHPs, they could snowball very quickly.



SHORT TERM LIMITED DURATION PLANS

Final Rule Includes:

- 364 days duration
- Renewable for up to 36 months
- Exempt from ACA requirements
- Not considered Minimum Essential Coverage
- Can be underwritten
- Must include a pharmacy benefit.
- Must include disclosure in important Plan materials.

LIKELY IMPACTS ON INDIVIDUAL MARKET

- For the ACA subsidized market, it will have minimum impact.
- In 2019, insurers will begin offering these plans alongside their ACA products as an alternative for non-subsidized members.
- Likely to deteriorate the ACA market even further
 - Drive up the average age of enrollee.
 - Increase the cost of coverage.
- Headed towards a dual individual market as issuers figure out what STLD offerings work well.



QUESTIONS?

Wesley Miller, CHC
Director, Health Policy
Blue Cross and Blue Shield of Louisiana
(225) 298-7965 – Office
Wesley.Miller@bcbsla.com - Email





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GREATER NEW ORLEANS
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Employer Mandates, IRS Letters 226J, and BIG FINES!


Presented to you by: Michael Bertaut

Healthcare Economist



New Orleans Business to Business
Forum on Healthcare Solutions

ACA's Employer Responsibility Requirement

- Imposed reporting and coverage requirements on employers beginning in 2015.
 - “Pay or Play” feature enforcement was delayed by technical issues.
 - Issues are resolved; machine letters of potential fines began issuing in November 2017 and continue today.
- 

226Js released for 2015, 2016 soon

- The IRS started sending 226J proposed fine notices to employers in November 2017 for 2015 behavior.
- Real response time is less than 30 days.
- Average is six figures; notice assumes worst case scenario fines. Total \$9 billion for 2015.
- Employers must act QUICKLY to avoid fines.
- Carrier will typically NOT have the data they require.

RECEIVED
NOV 18 2017

Department of Treasury
Internal Revenue Service
Group 2219
7300 Turfway Road, Suite 410
Florence, KY 41042

Tax year:
2015
Letter date:
11/8/2017
Employer ID number:
[REDACTED]
Contact name:
[REDACTED]
Contact ID number:
[REDACTED]
Contact telephone number:
[REDACTED]
Contact e-fax number:
[REDACTED]
Response date:
12/13/2017

Dear Employer,

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP \$1,111,111

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

Absolute Trigger: Any employee getting \$1 of Advanced Tax Credits from an Exchange.

Important Triggers of the 226J Employer Shared Responsibility Payment Notice

- An employee bought coverage on the Exchange and received an Advanced Tax Credit.
- That employee identified YOUR company as his/her employer.
- **That employee was not identified as covered on a 1094/1095c for the months they received the ATC.**

Counting Part 2: ALE Count -4980h

How many average FTEs do I have?

Month	Full Time (30 hour)	Part Time Hours	/120 FTE	Total FTE	AVERAGE
Jan 2014	22	3300	27.50	49.50	
Feb 2014	23	2800	23.33	46.33	
Mar 2014	23	3250	27.08	50.08	
Apr 2014	23	3450	28.75	51.75	
May 2014	24	3105	25.88	49.88	
June 2014	22	3271	27.26	49.26	
July 2014	23	3655	30.46	53.46	
Aug 2014	24	3705	30.88	54.88	
Sept 2014	25	3000	25.00	50.00	
Oct 2014	26	3800	31.67	57.67	
Controlled, affiliated and associated groups must be combined for this computation.				59.92	
				65.42	53.18

Notice must be accurate to the hundredth of a FTE.

A bona fide count is **at least** six rolling months out of 12.

Snapshots are not valid measures of size.

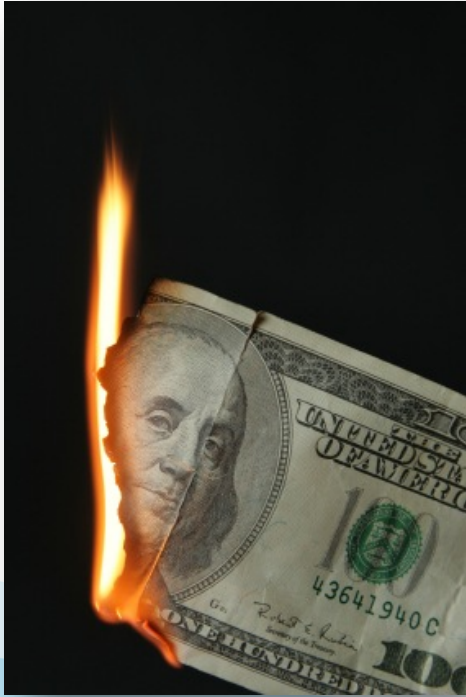
If your answer is 0 to 49.99 FTEs...

- No obligation to provide **affordable** coverage.
- No obligation to provide **valuable** coverage.
- No **federal** obligations to offer coverage. **State** law may apply.
- Properly documented, **no danger of fines** under 4980H.
- **You must still demonstrate your Non-ALE status. You must still count!**



Dance!

ESRP Computations for ALEs



26 U.S. 4980h Section a) – *Big Hammer*

- In 2016 and beyond – fail to offer coverage to at least 95% of all full-time employees (70% in 2015).
- One employee goes to Exchange, gets ATC.
- ESRP is (full-time employee count – 30) x (\$2,250 each year). Typical on 226Js!

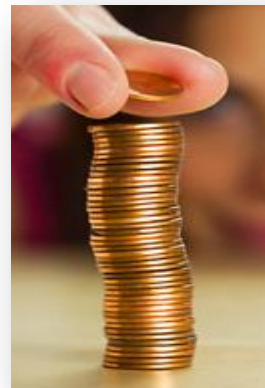
26 U.S. 4980h Section b) – *Little Hammer*

- In 2016 – fail to offer affordable, 60% AV coverage to employee/dependents.
- For each employee that refuses the offer and draws a tax credit from healthcare.gov, a fine will apply.
- Fine is (full-time employees drawing ATC) x (\$3250 each year).

What Does *Affordable* mean?

Final Safe Harbors

- **Federal Poverty Line:**
 - 100% of FPL x 9.5% = affordable premium of all employees
 - Calculate up to six months in advance
 - **2014 – \$11,670 x 9.5% = \$1,108.65/year (\$92.38/month)**
- **Rate of Pay**
 - Hourly rate x 130 x 12 months x 9.5%
 - **\$10/hour x 130 x 12 x 9.5% = \$1,482/year (\$123.50/month)**
 - Cannot be used for “tipped” employees
- **9.5% of Employee Box 1 W-2 income** in premiums for employee-only coverage.
 - Determined at end of calendar year, on employee-by-employee basis, on this year’s wages
 - Partial-year adjustments allowed for new employees who work part of a year
 - **At \$20,800/year (\$10/hr full-time) = \$1,976/year (\$164.67/month)**



Who is an employee under 4980H?



- Any common law employee, **except:**
 - Lease Employees - Section 414(n)(2)
 - Sole Proprietor
 - Partner in a Partnership
 - 2% S-Corporation Shareholder
 - Section 3508 Worker (real estate agents, certain other direct sales relationships)

Note: **H-2A** and **H-2B** workers are **employees** under this standard unless they seasonal.

1094/1095Cs

- **Critical Issues:**

- Make sure check box certifying MEC was offered.
- Make sure written waivers in hand for “refused offer” folk on filings.
- Vendor/Payroll records need to be accurate and complete. Carriers typically will not have data required.

Form 14764 allows you to *agree* or *disagree* with proposed ESRP

Also allows you to authorize another agent to represent you on this issue to the IRS.

Check and sign here if you are ready to send them a BIG CHECK.

Or here if you are disputing the notice.

Critical: IRS must receive response or request for extension within 30 days of issue of 226J.

Primary telephone number		Best time to call
Secondary telephone number		Best time to call
Indicate Your Agreement or Disagreement		
Agreement with proposed assessment		
<input type="checkbox"/> I consent to the assessment and collection of the proposed assessment of the ESRP in the a		
Signature		
Print name and title of the person who signed above		
Partial/Total disagreement with proposed assessment		
<input type="checkbox"/> I disagree with part or all of the proposed assessment of the ESRP		
Indicate Your Payment Option (check all that apply)		
<input type="checkbox"/> Full payment using EFTPS on		
<input type="checkbox"/> Partial payment using EFTPS on		
<input type="checkbox"/> Enclosed full payment of \$		
<input type="checkbox"/> Enclosed partial payment of \$		
<input type="checkbox"/> No payment		
<ul style="list-style-type: none">• Write your employer ID number ([NN-NNNNNN]), the tax year [(2015)] and ESRP on your pay• Make your check or money order payable to the United States Treasury.		
Authorization (optional)		
If you would like to authorize someone, in addition to you, to contact the IRS concerning this propo person's information, your signature, and the date.		
The authority granted is limited as indicated by the statement above the signature line. The contact agreements, or otherwise represent you before the IRS. If you want to have a designee with expan Publication 947, Practice Before the IRS and Power of Attorney.		
Full name of authorized person		

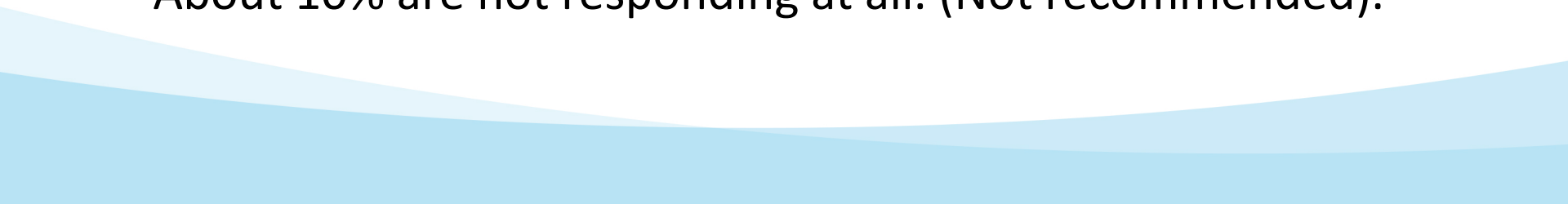
Uses the same Indicator codes found on the 1095C.

See next slide for reference.

Form 14765 (April 2017)		Department of the Treasury - Internal Revenue Service Employee Premium Tax Credit (PTC) Listing													
Any month not highlighted is a month the employee did not receive a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an assessable employee for that month.															
Employer name										Employer ID number			Tax year		
Employee Name <small>(last, first)</small>	SSN <small>(last 4 digits)</small>	All 12 months Indicator Codes <small>(Form 1095-C, lines 14 and 16 combined)</small>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
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Catalog Number 68863V www.irs.gov

Observations So Far

- Proposed payments are **huge**.
 - About 80% of our clients can satisfy IRS burden of proof and pay no fine (227-K).
 - About 10% paid because they had no documentation.
 - About 10% are not responding at all. (Not recommended).
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Latest Data on Employer Compliance

bit.ly/1PrjqFF

