Proposed Regulations on Shared Responsibility

Gregory Young DPM, Director of Strategic Initiatives

March 2013

MEDICAL MUTUAL®

CAROLINA CARE PLAN | CONSUMERS LIFE

©2013 Medical Mutual of Ohio

Legal Disclaimer

This document was created to accompany a presentation on the subject described herein. It was designed to provide accurate and authoritative information regarding the subject matter covered and is provided with the understanding that neither the presenter nor Medical Mutual of Ohio is engaged in rendering legal, accounting, or other professional advice. If such advice is required, a competent professional should be consulted. Anyone using this document in dealing with a client's specific situation should also research original sources of authority.

©2013 Medical Mutual of Ohio

Introduction

Proposed Regulations released from Department of the Treasury, "Shared Responsibility for Employers Regarding Health Coverage."

FAQs from the IRS: "Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act," Dec 28, 2012.

- Regulations review, condense and clarify previous IRS guidance and adds "transition" rules.
- The FAQ explains new provisions and existing questions.
- Rule is effective for plan years on or after Jan. 1, 2014.
- Calculation of employer status should take place in 2013.
- Due to the ACA pay-or-play requirements, IRS section 4980H added.

©2013 Medical Mutual of Ohio

Questions Employers Must Ask

To comply with IRS 4980H:

1) Who is a large employer?
   - Generally, those with 50 or more full-time or full-time equivalent employees.

2) How will employees be counted?
   - Pending final regulations, some discretion granted to employers on counting employees until the end of 2014.

3) What penalties are assessed based on coverage offered or not offered to full-time employees?
   - "Sledgehammer Penalty" - Penalty for failing to offer coverage, or minimum essential coverage (MEC) to full-time employees.
   - "Tackhammer Penalty"- Less punitive penalty, when MEC is offered, but may not be affordable or has minimum value.

©2013 Medical Mutual of Ohio

Employers Subject to “Play or Pay”

The Employer Shared Responsibility rule:

- Large employers not offering minimum essential coverage (MEC), (affordable health coverage that provides a minimum level of coverage to full-time employees), may be subject to the shared responsibility payment if at least one full-time employee receives a premium subsidy for purchasing individual coverage on an exchange. The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made.

- Employer is responsible for the mandate if they have at least 50 full-time employees (can be combination of full- and part-time).

- Employers with fewer than 50 full-time employees, or full-time employee equivalents (FTEs), are generally not responsible for the requirement.

©2013 Medical Mutual of Ohio

Employers Subject to “Pay or Play” cont.

- Employers will use number of employees in 2013 to determine their status in 2014, unless final regulations adjust.
- Includes for-profit, non-profit and government entity employers.
- The proposed regulations address rules for determining whether companies are related or have common ownership.
- Per IRS FAQs: “If the combined total meets the threshold, then each separate company is subject to the Employer Shared Responsibility provisions, even those companies that individually do not employ enough employees to meet the threshold.”

©2013 Medical Mutual of Ohio

When Does the Employer Pay?

The employer who meets the 50 full-time employee threshold must pay the penalty when they:

- Don't offer healthcare coverage to at least 95% of employees and dependents.
- Don't offer coverage which meets minimum essential coverage (MEC) guidelines.
- Offer coverage to at least 95% of their employees but at least one full-time employee qualifies for a premium subsidy for coverage on an exchange.

©2013 Medical Mutual of Ohio

Safe Harbor For the Employer

The shared responsibility penalties are calculated monthly.

- IRS realizes the problems employers may have with a monthly look at full-time status.
- Concern that monthly determinations could result in employees moving in and out of employer coverage.
- Proposed regulations reinforce the optional “look-back measurement” method that employers can use as an alternative to making a monthly determination (see IRS notice 2012-58).

©2013 Medical Mutual of Ohio

Safe Harbor For the Employer cont.

IRS notice 2012-58 is voluntary but allows:

- Initial and standard measurement ("look back") periods of three to 12 months.

- 90-day administrative period (eligibility determinations and handle enrollment).

- The stability period, which must be the greater of six months or the length of the standard measurement period. This stability period is when employees who were determined to be full-time in the look-back period are provided coverage. This guidance is to be in place through at least the end of 2014.

©2013 Medical Mutual of Ohio

Minimum Essential Coverage (MEC)

Minimum essential coverage is in place when the healthcare plan provided by an employer is defined as:

1) Affordable. Employee's share of the premium would not cost the employee more than 9.5% of their annual household income.

- Employer can use W-2 "safe harbor."
- Rate-of-pay safe harbor (per IRS Notice 2011-73).
- Self-only coverage does not exceed 9.5% of the federal poverty level ($11,170 in 2012).

2) Plan provides minimum value by covering at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan. IRS Notice 2012-31 notes three ways to determine:

- Minimum value calculator made available by the IRS.
- Array of design-based safe harbors in the form of checklists.
- If plan has nonstandard features (no minimum value calculation), actuary certifies.

©2013 Medical Mutual of Ohio

Penalty for not Offering Coverage

If a large employer doesn't offer coverage to at least 95% of its full-time employees, it owes an Employer Shared Responsibility payment.

- **The payment is equal to the number of full-time employees for the year minus 30, then multiplied by $2,000. This penalty is only applicable if at least one full-time employee receives a premium subsidy.**

For an employer that offers coverage for some months but not others, the payment is calculated separately for each month when an employee is with or without coverage.

- **The amount of the payment for the month equals the number of full-time employees for that specific month minus 30, then multiplied by 1/12 of $2,000.**

©2013 Medical Mutual of Ohio

Penalty if Offering Coverage

Employers offering coverage to at least 95% of their full-time employees in 2014, but have one or more full-time employees who receive a premium subsidy.

- The payment is computed separately for each month.
- The amount of the payment for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of $3,000.
- The amount of the payment for any month is capped at the number of the employer's full-time employees for the month minus up to 30, then multiplied by 1/12 of $2,000.
- The above cap is in place so payment for an employer that offers coverage can never exceed the payment that an employer would owe if it didn't offer coverage.

©2013 Medical Mutual of Ohio

Transition Relief

The preamble to the proposed regulations notes that an employer of non-calendar year plans might have difficulty complying with look-back period (measurement) if they want to use a longer look-back period.

Transition relief rules:

- Can be used by an employer that already offers coverage with a non-calendar (fiscal year) plan in place as of December 27,2012.
- If the plan meets minimum essential coverage (MEC) standards by the first day of the plan year starting in 2014, there would not be an assessed shared responsibility penalty for any period in 2014 before the start of a 2014-2015 plan year.
- The transition measurement period must be shorter than 12 months, but no less than six months, and begin by July 1, 2013.

©2013 Medical Mutual of Ohio

Defining Employee Status

Full-time employee defined:

- Averages at least 30 hours of service per week or has worked at least 130 hours of service during that month.
- Employee status. For example, common-law vs. independent contractors; part-time vs. full-time, etc.
- An hour of service means each hour for which an employee is paid or is entitled to payment (vacation, holiday, illness).
- Hours worked outside of the United States are not counted.
- The number of full-time equivalents (FTEs) is equal to the total hours of service in a month for employees who are NOT full-time employees divided by 120.
- Seasonal workers (less than 120 days a year) are not used in FTE calculation.
- The number of FTEs is used to determine applicable large employer status, not penalties.

©2013 Medical Mutual of Ohio

Employees Defined

The proposed regulations seek clarity on types of employees.

1) An "ongoing employee" is an employee who has been employed for at least one complete standard calculation period.

2) A new employee:

- Reasonably expected to work full-time are considered full-time.
- With variable hour and seasonal new employees, the employer uses an "initial measurement period" of between three and 12 months to determine status and use stability.
- Proposed regulations primarily use IRS 2012-58 safe harbors for determining full-time employees, but it is not required.

©2013 Medical Mutual of Ohio

Regulation Clarification

The following was clarified in the proposed regulations:

- Large employers must offer coverage to “substantially all” full-time employees and their dependent children up to age 26.
- No required coverage for employees' spouses.
- Penalties are assessed on the employer’s full-time employees.
- Commissioned employees, adjunct faculty and transportation employees (e.g., airline pilots) can use “any reasonable method to calculate until further guidance.”
- Employers can rely on the previously proposed IRS regulations until end of 2014 plan year.
- If the final regulations are more restrictive than the existing proposed regulations and guidance, the new rules will be applied at end of 2014 plan years.

©2013 Medical Mutual of Ohio

Additional Notes on Proposed Regulations

- If a new employee is "reasonably expected" to be employed on average at least 30 hours a week, coverage should begin within three months.
- Preamble states educational organizations may not treat employees who work only during the academic year as seasonal employees.
- If using IRS Notice 2012-58 for seasonal or variable employees, please see IRS FAQ for additional guidance. (www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act)
- If applicable, large employer status is made on a controlled group basis, but the assessment of any employer responsibility penalties are made on a member-by-member basis within the controlled group.
- Dependents include the employee's children under age 26 and include son, daughter, stepson, stepdaughter, adopted child, child placed for adoption and foster child.

©2013 Medical Mutual of Ohio

Proposed Regulation Notes cont.

- The regulations provide transition relief for employers that do not currently offer dependent coverage or do not cover all the defined “child categories.”
- The proposed regulations confirm that affordability for purposes of the employer penalty will be based on the cost of employee-only coverage, not the cost of family coverage.
- Expect future guidance on the current definition of affordability and the subsequent impact on the family’s access to individual premium tax credits.
- An employers’ use of the safe harbors is optional.
- The proposed regulation addresses Section 125 cafeteria plans and employees eligible to enroll in an employer’s plan, but did not do so. Employees may wish to enroll in the employer’s plan in the middle of the plan year to meet the individual mandate requirements.

©2013 Medical Mutual of Ohio

Conclusion

- Shared Employer Responsibility rules have been confusing for many as the IRS guidance has been released over the course of the last two years.
- These proposed regulations attempt to pull the various pieces of IRS guidance together, and expand upon the safe harbors and transition relief.
- The regulation reinforces the fact that the previously issued guidance, such as IRS Notice 2012-58, can still be used until the end of 2014, even if final guidance is issued and is more restrictive.
- An employer's use of the safe harbors is optional.

©2013 Medical Mutual of Ohio

Questions?

*Please note: Due to the complexity and intricacies of the IRS tax code, group specific questions/scenarios will not be addressed in this forum. We ask that you refer groups to their tax accountants for group specific situations.

©2013 Medical Mutual of Ohio