

PPACA – Overview and Update



School Law Seminar – NASB
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Patient Protection and Affordable Care Act (PPACA)



- This session is about the steps necessary to prepare for the implementation of the Affordable Care Act for the 2014-2015 fiscal year during the 2013-2014 fiscal year, including:
 - Required government notices about health insurance exchanges;
 - The management of employee hours of employment to determine those that are to be deemed “full-time” PPACA employees during the “look-back period” adopted by the school district; and,
 - available information about the current position of the Educators Health Alliance plan offerings and implementation of underwriting rules that will affect the cost of group health insurance for both certificated and educational support staff.

PPACA – January 1, 2015



- The IRS recently announced delay in the information reporting requirements under PPACA, the IRS released the “Transition Relief for 2014 Under §§ 6055 (§ 6055 Information Reporting), 6056 (§ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions)” memorandum.
- The memorandum confirms the recently announced delay in
 - (1) the information reporting requirements applicable to insurers, self-insuring employers, and certain other providers of minimum essential coverage,
 - (2) the information reporting requirements applicable to applicable large employers, and
 - (3) the employer shared responsibility provisions under § 4980H, e.g. the penalty provisions.

PPACA – January 1, 2015



- As stated in the memo, “[t]his transition relief through 2014 for § 6055 Information Reporting, § 6056 Information Reporting, and the Employer Shared Responsibility Provisions has no effect on the effective date or application of other Affordable Care Act provisions.”
- Our advice would remain to continue to prepare for an effective date for PPACA of September 1, 2014, and be working on using a 2013-2014 “look-back” period.

Notice of Exchange



- On May 8, 2013, the Department of Labor (DOL) issued Technical Release 2013-02, providing guidance on the model Patient Protection and Affordable Care Act (PPACA) Notice of Exchange and the associated employer compliance obligations, as well as the DOL's updated model COBRA election notice, which has been revised to address changes under PPACA.

Notice of Exchange

- **Notice Of Exchange**

- What is the Notice of Exchange? PPACA Section 1512 establishes an employer notice requirement to inform employees of the health insurance Exchanges that will be established in 2014. The notice must inform employees of:

- The existence of the Exchange;
- A description of the services provided by the Exchange;
- How to contact the Exchange to request assistance.
- The employee's potential eligibility for subsidized coverage on the Exchange if the employer-sponsored group health plan does not provide "minimum value" (i.e., the plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs)
- The fact that the employee may lose the employer contribution (if any) towards health coverage if the employee chooses to instead purchase individual coverage on the Exchange (policies on the Exchange are referred to as "qualified health plans" or "QHPs").



Notice of Exchange

- **Which Employers Are Subject to This of Exchange Requirement?**
 - The Act structured the Notice of Exchange requirement as an amendment to the Fair Labor Standards Act (FLSA). Accordingly, employers that are subject to the FLSA are required to provide the notice.
 - In general, the FLSA applies to employers with at least \$500,000 in annual dollar volume of business.



Notice of Exchange

- To Whom Must Employers Distribute the Notice of Exchange?
 - Employers must provide the notice to all employees, regardless of whether the employee is an eligible employee for purposes of the employer's group health plan, a participant, part-time, full-time, etc.
 - There is no requirement to provide the notice to spouses, dependents, retirees, or any other individuals who are not employees.




Notice of Exchange

- How Can Employers Distribute the Notice of Exchange?
 - The notice may be provided by first-class mail.
 - Alternatively, the notice may be provided electronically only if pursuant to the requirements of the DOL's electronic disclosure safe harbor.
 - This safe harbor generally requires that employees have work-related computer access that is integral to their job duties. All other employees must affirmatively consent to electronic disclosures to satisfy this safe harbor.



Notice of Exchange

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- When is the Deadline for Distribution of the Notice of Exchange to Employees?
 - Current Employees : Employers must provide the notice by October 1, 2013, for all current employees and new employees hired before that date.
 - New Employees: Beginning October 1, 2013, employers must provide the notice to each new employee within 14 days of the employee's start date.
 - The notice must be provided automatically and free of charge. The DOL has stated that the deadline to provide the Notice of Exchange is designed to coordinate with the October 1, 2013, open enrollment season for 2014 Exchange coverage.

Notice of Exchange

- **Why Does the Model Notice Refer to Exchanges as "Marketplaces?"**
 - PPACA refers to the new centralized state or federally operated markets for QHPs that will open in 2014 as "Exchanges." Earlier this year, the Department of Health and Human Services (HHS) and other departments began rebranding the Exchanges in press materials and official websites as "Health Insurance Marketplaces" to make the concept more understandable.



Notice of Exchange



- **What Does the Model Notice of Exchange Say and How Do I Access It?**
The DOL actually issued two model notices,
 - one for employers that sponsor a group health plan for employees, and
 - one for employers that do not. Employers are not required to use these model notices.
- **Any alternative notice the employer chooses to distribute must meet the content requirements described above.**

Notice of Exchange

- **How Long Can Employers Rely on This Guidance and These Model Notices?**
 - Under PPACA, these notices were supposed to be provided by March 1, 2013. This effective date was delayed until late summer or fall of 2013 in FAQ XI. The DOL issued Technical Release 2013-02 and the model notices in advance of that date in response to requests from employers for it to issue its model notice sooner. Employers can rely on this guidance and use the model notices at least until October 1, 2013, and they will remain in effect until the DOL promulgates regulations or other guidance.



Model COBRA Notice

- **Model COBRA Notice:**

- The DOL also revised the model COBRA election notice, noting that **individuals eligible for COBRA also may want to consider and compare health coverage available through the Marketplace.**
- The revised COBRA election notice informs qualified beneficiaries that other coverage options are available through the Marketplace, and that **being eligible for COBRA does not impact an individual's eligibility for a tax credit through the Marketplace.**
- It also removes the paragraph about preventing a gap in creditable coverage, since plans will not be permitted to impose preexisting condition limitations beginning January 1, 2014. (Plans already are prohibited from applying preexisting condition exclusions on children under age 19.)



Model COBRA Notice

- **Model COBRA Notice:**

- As with the earlier COBRA model notice, **use of the revised model**, appropriately completed, will be considered by the DOL to be **good faith compliance with the election notice requirements of COBRA**.
- Neither Technical Release 2013-02 nor the revised model COBRA election notice state when the DOL intends for employers to begin using the new model.
 - We suggest that employers wait to use this revised model election notice until the first plan year beginning on or after January 1, 2014, when PPACA prohibits group health plans from imposing any pre-existing condition exclusions on all covered individuals.
 - Prior to that date, the new model notice's revised discussion of pre-existing condition exclusion provisions, as well as the sections referring to the availability of alternative Exchange coverage, may be misleading to potential COBRA qualified beneficiaries.




Progress Made To-Date



- **Teachers –PPACA Full-Time Employees!:**
 - Schools began working with PPACA as early as May 2012.
 - Through negotiations of 2013-2014 contracts resolved issues for some schools that do not directly provide health insurance for employees, particularly teachers:
 - “Flat Salary” schools;
 - “Cafeteria Plan” schools.
 - Plans are in place to address these issues for remaining schools during the negotiation of agreements for the 2014-2015 contract year.

Pre-2013-2014 To Do's

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- **Educational Support Personnel (ESP's) – PPACA Full-Time Employees (FTE)?**
 - Need to make this determination during the pre-September 1, 2014 “look-back” period.
 - Pre-2013-2014 fiscal years steps to FTE process (see time-line if provided through PGH&G).
 - Establish “look-back”, “administrative” and “stability” periods for 2014-2015.
 - Adopt PPACA policy to address FTE's and “look-back” etc. periods, and possibly level of health benefits to be provided for 2014-2015 fiscal year.
 - Determine ESP positions that will be PPACA FTE's – Differentiate by adopted Job Descriptions (para's).

Acceptable /Minimum Value Health Care



- The PPACA's primary purpose is to provide all Americans with adequate (acceptable and affordable) health insurance coverage:
 - The School District will need to ensure that the coverage offered provides minimum (adequate) value.
 - The “adequate” standard is described as health insurance coverage plan that pays for 60% or more of covered health care expenses.
 - EHA will inform member schools whether the insurance coverage provides minimum value. (See 2013-2014 Bronze Level “like” plan with \$4,000 deductible).

Acceptable /Minimum Value Health Care



- **Affordable Coverage:** The health insurance plan offered by the School District must be affordable.
- The test for affordability evaluates whether the employee's required contribution with respect to the plan exceeds 9.5% of the employee's household income.
- The employee's required contribution means the portion of the annual premium which would be paid by the individual, without regard to whether paid through salary reduction or otherwise, for self-only coverage.

Acceptable /Minimum Value Health Care



- Household income is measured by the modified adjusted gross income of employee and any members of the household who are required to file an income tax return.
- However, since an employee's household income is likely unknown to the employer, the IRS has suggested the use of a safe harbor for determining whether coverage is affordable.
 - Line 1 of the W-2 Form (**Problem, excludes Section 125 and 403(b) contributions**), or,
 - Rate of Pay (**Best - Hourly Rate x 130 hour per month = Rate of Pay Per Month x .095 = Employee's Affordability Level Contribution**).

Affordable Health Care



- The employer could make the calculation based on budgeted income and contributions at the beginning of the year.
 - For example, for 2014, the School District would determine whether it met the proposed affordability safe harbor for 2014 by looking at each employee's anticipated "Rate of Pay" wages for 2014 and comparing 9.5% of that amount to the employee's 2013-2014 employee contribution toward health insurance.

Full-Time Employee under PPACA



- **Refresher = “Full-Time Employee” (FTE):**
 - For purposes of the “minimum value/affordable requirements of PPACA is
 - An employee who averages at least 30 hours of service per week, or under proposed guidance, 130 hours of service in a calendar month.

Look-Back/Stability Period



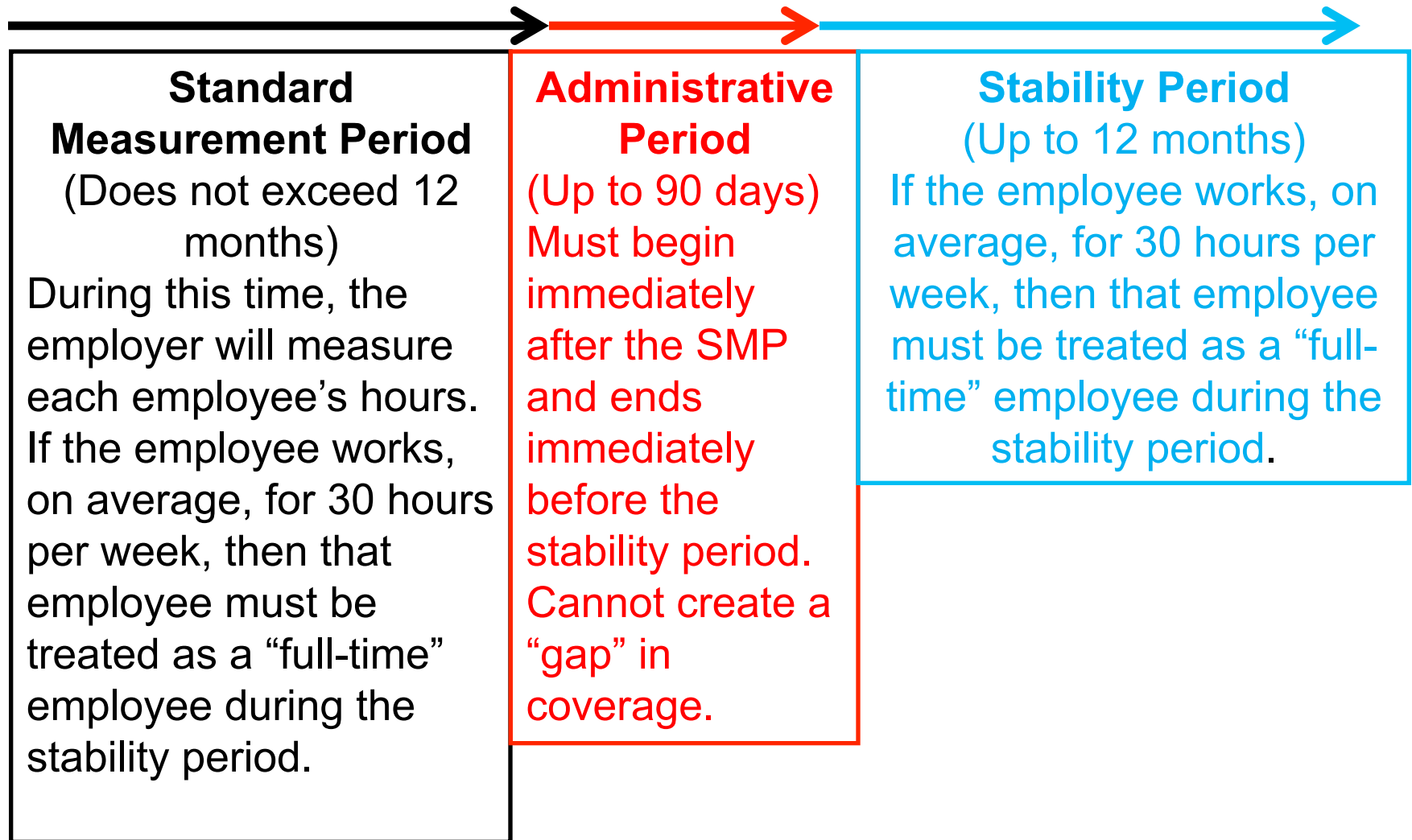
- How do you know an employee's status – month-to-month?
- The “Look-Back/Stability Period” (Look-Back) safe harbor instructs employers on how to determine which employees are “full-time employees” under that Act and, therefore, must be provided “affordable” health insurance coverage that provides “minimum value” by the employer.

Look-Back/Stability Period



- The Look-Back safe harbor allows an employer to determine each ongoing employee's full-time status (or not) by looking back at a defined period of not less than 3 but not more than 12 consecutive calendar months as chosen by the employer.
- Under the “look-back” test, any employee who works, on average, 30 hours per week, 130 hours per month and 1,560 hours per calendar year qualifies as a full-time employee. [Prop. Reg. 54.4980H-3(c)(1)(i)].

- **Look Back – Administrative - Stability Period**



August 1, 2013 – July 31, 2014/**August 1, 2014 – August 31, 2014**/September 1, 2014 – August 31, 2015

Look-Back/Stability Period



- The Look-Back safe harbor allows an employer to **determine each ongoing employee's full-time status** (or not) by looking back at a defined period of not less than 3 but not more than 12 consecutive calendar months as chosen by the employer.
- Under the “look-back” test, any employee who works, on average, 30 hours per week, 130 hours per month and 1,560 hours per calendar year qualifies as a full-time employee. [Prop. Reg. 54.4980H-3(c)(1)(i)].

Look-Back/Stability Period



- Generally: Generally, the “look-back” safe-harbor provisions require the employer to select a period of between three and twelve consecutive months (referred to herein as the “look-back period”).
 - Calculate Hours: Employers are required to calculate the number of hours by either:
 - (1) calculating the actual number of hours (may need to have people paid on a stipend (coaches) keep track of their time);
 - (2) crediting an employee with 8-hours of work for each day that the employee works for at least one hour that day (even if the employee did not actually work for 8 hours that day); or
 - (3) crediting the employee with 40-hours of work for each work week.
- We presume that most schools will use the actual number of hours that each employee worked.

Look-Back/Stability Period



- Counting Paid Holidays:
- The PPACA Proposed Regs. provide:
 - An employee's hours of service includes "each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer."
 - Employers need only count hours worked and hours for which payment is made or due from vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence."
 - The proposed regulations instruct employers to count an employee's hours by using "actual hours of service from records of hours worked and hours for which payment is made or due."
 - As such, employers are only required to credit employees during paid leave."

Look-Back/Stability Period



- **Example:**

- If your school district provides some paid holidays to classified personnel (paras or food service folks in particular), those hours would count in the calculation of their full-time PPACA status, e.g. if you have 175 working days + 4 paid holidays (for example - Labor Day, Thanksgiving Day and the day following, and Good Friday) your total PPACA paid days would be 179; assuming the employee works 6.5 hours per day, and you have a 41 week school term the employee would not be a PPACA full-time employees ($179 \times 6.5 = 1,163.5$ hours $\div 41 = 28.37$). Conversely, if the employee works 7 hours per day, the added 4 days would change an employee's status (e.g. $179 \times 7 = 1,253 \div 41 = 30.56 =$ full-time PPACA status, instead of $175 \times 7 = 1,225 \div 41 = 29.87 =$ not full-time PPACA status).

EHA Plans & Options?



- **Educators Health Alliance – 2014-2015 offered health plans to be determined – hopefully by October or November 2013.**
- **NEW – High Deductible “Bronze-Level like plan.”**
 - **EHA states:**
 - “On April 29, 2013 the EHA Board approved a new plan design that will be available to large and small EHA employers to offer as the benefit plan to any existing or new EHA subgroup.
 - This new plan option will be available with an effective date of September 1, 2013. The new plan will have a \$4,000 deductible and will cover 70% of expenses until the out of pocket deductible and member coinsurance of \$6,350 is met, and then the plan will cover 100% of expenses thereafter for employee only coverage, with tiers covering dependents generally twice these amounts.
 - The plan will be priced 25% below the cost of the current EHA \$750 deductible plan.” [\$4633]

Affordability Line

- Salary > **Affordability Line**:
 - Based upon 2013-2014 EHA rates for Employee level health insurance coverage (without dental) the “Affordability Line” would be as follows:


Deductible	Annual Health Premium	÷ 9.5% Max. Employee Contribution	X 100 to annualize	Affordability Line Salary
\$500	\$6,515.28	÷ 9.5	100	\$68,581.89
\$750	\$6,177.60	÷ 9.5	100	\$65,027.37
\$1,650	\$5,212.20	÷ 9.5	100	\$54,865.26
\$4,000	\$4,633.00	÷ 9.5	100	\$48,768.42

Affordability – Shared Responsibility

- **9.5% of Salary/Employer Contribution:**
 - Again, based upon 2013-2014 EHA rates for Employee level health insurance a shared responsibility example would be as follows:

Hourly Rate	Rate of Pay “Safe Harbor” Hours	PPACA Month Rate of Pay	÷ 9.5% Max. Employee Contribution	Employee Maximum PPACA Contribution	Monthly Rate for EHA “Bronze – Like Coverage for 2013-2014	Employer Contribution
\$12.00 per hour	X 130 hours	\$1,560	x 9.5	\$148.20	\$386.08	\$238.13

EHA Plans & Options?

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- **NEW – High Deductible “Bronze-Level like plan.”**
 - Unknown factors:
 - Query #1:
 - Will the \$4000 deductible “Bronze Level-like plan” be the only coverage available to the group to which it is applied, OR,
 - Will the employees have the option of electing the lower deductible plans (\$500, \$750, etc)?
 - Query #2:
 - Will School District’s need to create separate ESP groups?
 - If so, will EHA underwriting rules #1 and #2 apply to these ESP groups?

EHA Plans & Options?

- **NEW – High Deductible “Bronze-Level like plan.”**

- Unknown factors:

- Query #3:

- Will EHA now enforce underwriting rule #3, requiring employers (school districts) to contribute at least 50% of the premium cost of “self-only” (Employee) level coverage?
- If so, will that 50% requirement be calculated on the \$4000 deductible “Bronze Level-like plan”, or based upon the coverage level elected by the employee (if available to the employee)?

- Query #4:

- Will “insurance only” districts lose the 5% discount for 100% participation of teacher’s in underwriting rule #4 if the School District does not create a separate ESP group?



IRS Disclosure

- IRS Circular 230 Disclosure: The Internal Revenue Service requires us to inform you that any federal tax advice contained in this communication (including attachments or enclosures) should not be used or referred to in promoting, marketing or recommending of any entity, investment, plan or arrangement, and such advice is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding penalties under the Internal Revenue Code.*

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