Preparing for the Employer
Pay or Play Analysis

Thursday, January 31, 2013
2:00 pm – 3:00 pm EST
Today’s Speakers

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Welcome and Agenda

- Conner Strong & Buckelew’s eleventh installment in an ongoing series of webinars on key issues dealing with national healthcare reform
- Focus is on employer “Pay or Play” shared responsibility provisions set to take effect in 2014
- Address many important changes, additions, and clarifications to the rules
- Provide suggested approaches to the employer analysis
Health Insurance Reform Update
Healthcare Reform is Here to Stay
“I exercise to stay healthy so I can keep working to pay for health insurance until I drop dead.”
New Healthcare Delivery System
(Yes, this is really it)
Major PPACA Milestones

- **March 23, 2010:** Patient Protection and Affordable Care Act (PPACA) was signed into law - implementation of PPACA begins

- **June 28, 2012:** US Supreme Court upholds the constitutionality of the law - implementation continues

- **November 6, 2012:** President Obama is re-elected along with a divided Congress - implementation continues

- **October 1, 2013:** Exchange enrollment begins

- **January 1, 2014:** Exchanges take effect and individual and employer mandate begin
The “Bottom Line”

- Early tweaks intended to enhance coverage levels

- Most Americans must carry health insurance by 1/1/14 or pay a tax/penalty to the federal government - low income people get federal support to help pay premiums

- Employers with 50 or more FTEs have to offer benefits that meet coverage and cost levels or pay a penalty ($2,000 per FTE minus the first 30)

- “Exchanges” for individuals and for small businesses (2-99) to buy coverage on-line effective 1/1/14

- Substantial new taxes embedded in various elements of the law to pay for it
Healthcare Reform Timeline

- All group health plans must comply with certain mandates, some of which are phased in over time - start date was first plan year beginning on or after 9/23/10
  - 2011 – Age 26 and other benefit mandates take effect
  - 2011 – FSAs can no longer be used for over-the-counter medications
  - 2013 – FSA contributions limited to $2,500 per year
  - 2014 – Eliminate all remaining annual limits on coverage
  - 2014 – Eliminate pre-existing condition limitations for everyone
  - 2014 – Individual and employer mandates begin; exchanges go-live
  - 2014 – Automatic enrollment for companies with 200 or more employees
  - 2017 – States can permit larger groups on their exchanges
  - 2018 – 40% excise tax for high-cost “Cadillac” plans
Various taxes used to fund major pieces of the law:

- 2010: Tax on Innovator Drug Companies: $22.2 billion per year
- 2011: Elimination of OTC from FSA protection: $5 billion per year
- 2011: 10% tax on Indoor Tanning: $2.7 billion per year
- 2013: 2.3% Medical Device Manufacturing Tax: $20 billion per year
- 2013: Increased Medicare Payroll Tax: $86 billion per year
- 2013: Investment Income Surtax for $250,000+: $123 billion per year
- 2013: Elimination of Medicare D Tax Deduction: $4.5 billion per year
- 2014: Insurance Industry Tax: $60.1 billion per year until 2018
- 2014: Insurance Mandate on Americans/Employers: $65 billion per year
- 2018: Cadillac Tax on High Cost Plans: $32 billion per year
Many questions remain that must be resolved through rulemaking at federal level and through state legislative and regulatory action.

Backlog of regulations and guidance implementing key reform provisions – being released quickly and more to come in the short term and over time.

Somewhat uncertain political, legal, regulatory, operational environment continues - continued uncertainty around 2014 implementation timeline.

Many states resisting implementation.

Even without delays, it will still take several years for healthcare reform regulations and guidelines to be fully implemented.

Healthcare reform lawsuits will continue and continued opportunities for some re-thinking of the law in some areas.
Impact on Care Delivery and Costs

- Still uncertain how health industry will respond; impact of new taxes
- With 32 million previously uninsured people covered in 2014, expect a deluge of physician visits and long waits for primary care services
- Adverse selection due to low mandates
- “Have’s and Have Not’s”
- Employer plan cost pressures will grow
- Exchanges and Medicaid expansion will increase provider pressure to shift revenues to private payers
- Accountable Care Organizations (ACOs) will increase provider consolidation and potential contracting leverage
Individual Mandate 2014

- Mandate “tax” will likely impact 7.3 million Americans or 2% of population. Most Americans either already have insurance, are exempt under the law, would qualify for Medicaid, or would use tax credits to buy policies in the exchanges.

- In 2014, people who can afford to but do not purchase health insurance will pay a tax penalty:
  - In 2014, tax starts at $95 a year for an individual, or up to 1% of income, whichever is greater. For family, tax is capped at $285, or 1% of income.
  - By 2016, tax rises to $695 a year for an individual or 2.5% of income, whichever is greater and rises to $2,085 for family or 2.5% of income.

- IRS will collect the penalty via tax returns - in 2014, federal returns will include a new form to list source of health insurance.
The law does not require employers to offer health insurance to employees but if they don’t, they’ll pay a new tax:

- Businesses with 50 or more FTEs that do not offer coverage or that offer insurance that is too expensive or does not meet minimum federal standards may have to pay penalties

- $2,000 penalty per FTE (less first 30) for not offering benefits or not offering benefits that satisfy minimum levels

- Penalties start in 2014

- Assumes final regulations are issued

- Requires “exchanges” be available
Pay or Play Checklist and Financial Modeling
Pay or Play Checklist

- Assist plan sponsors in understanding the employer pay or play mandate rules
- Rules are complicated - lots of exceptions and transitional rules
- Follow up with your Conner Strong account team:
  - Determine the potential costs of various courses of action in response to these rules
  - Initial impact analysis
  - Assistance with project planning and strategy for 2014 compliance with the “Pay or Play” requirements
Be Prepared

- Will affect individual employers in different ways, depending on such variables as:
  - whether employee population is largely FT or PT or high or low income;
  - whether exchanges become viable sources of coverage in states where employees reside;
  - whether health benefits remain an important attraction and retention tool.

- Be prepared to change administrative and other processes to prove compliance.

- Need procedures to accommodate interactions with exchanges, prepare new employee notices, and meet government disclosure obligations.

- Begin now to plan for these new obligations and their possible impact on benefit costs, plan design, and workforce strategies.

- Expect more details before these reforms take effect in 2014 as legislative, regulatory and judicial activities continue.

- Continue to monitor healthcare reform developments.
Employers Subject to Requirements

Are you a common-law employer, including a for-profit, not-for-profit, tax exempt, private, church, or governmental (federal, state or local) employer (whether or not you offer health coverage to employees)?

Yes ☐  No ☐

➢ If you answered “NO” then STOP. You are not subject to the shared responsibility requirements.
➢ If you answered “YES” then go to the next slide

Beginning in 2014, a shared responsibility requirement will apply to all employers – whether private, governmental, for-profit, or nonprofit.
Did you average less than 50 FTEs in the preceding calendar year?

Yes ☐ No ☐

Rules apply to employers with an average of at least 50 FT equivalent employees in the preceding calendar year. In order to determine whether an employer is a large employer, both FT and PT employees are included in the calculation.

If “YES”, then STOP (not subject to the shared responsibility requirements). Note: 2014 waiting period and disclosure rules apply to all employers (small and large)

If “NO”, then go to the next slide

- **Action Step:** Determine if you are close to the 50 FTE threshold - special transition rule applies for 2014

- **Action Step:** Determine if you are a member of a controlled group of companies. If yes, the 50 FTE applies on a controlled group basis, so controlled group companies are generally combined together for purposes of determining if they are a small employer - Note that the penalty is calculated on company-by-company basis

- **Action Step:** Determine if the employer is a new employer. If yes - special transition rule applies for 2014
Seasonal Employees

**Participant Question:**

*How will seasonal employees be defined? How are seasonal employers supposed to handle health care reform?*

Special rule applies for seasonal workers when making large employer determination - makes it easier to avoid large employer status where employer’s non-seasonal workforce, including FT equivalents for PT employees, is 50 or fewer.

If the FTE count is 50 or greater and the employer included seasonal employees, then the employer can apply the special rule.

**Example:** In 2014, ABC employs 20 FTEs year-round and hires an additional 40 FT seasonal employees during November and December. It has no PT workers. Because ABC had more than 50 FTEs for only 61 days (during November and December), it can disregard the 40 seasonal employees when determining whether it meets the 50 FTE threshold. This means that ABC will be treated as having only 20 FTE employees during 2014.
If an employer is subject to the shared-responsibility provisions, seasonal employees working 30 or more hours/week will be included when determining shared-responsibility penalties.

*Seasonal workers defined:* Employees who perform services on a seasonal basis, including migrant and seasonal agricultural workers, and retail workers employed exclusively during holiday seasons.

DOL has also confirmed that “seasonal worker” is not limited to agricultural or retail workers. Employers may apply a reasonable, good faith interpretation. For example, may be reasonable for an accounting firm to determine that the additional staff hired during the months of February through April to prepare individual income tax returns are seasonal workers. However, according to the IRS, treating an educational employee who works during the active portions of the academic year as a seasonal employee would not be reasonable.
Large Employers

Did you average 50+ FTEs in the preceding calendar year?

Yes ☐  No ☐

A “large employer” is an employer with more than 50 FTEs during the preceding calendar year.

➤ If “NO”, then STOP.

➤ If “YES”, then you are subject to the penalty rules and you must go to the next slide

Only a large employer may be subject to penalties regarding employer-sponsored health insurance.

Note: 2014 waiting period and disclosure rules apply to all employers (small and large)

Action Step: Determine if you are a member of a controlled group of companies. If yes, note that each employer within a controlled group will be liable for (and assessed) employer shared responsibility payments separately
Are any of your FTEs potentially eligible for income-based assistance in the exchange (generally household incomes above 138% and below 400% of the federal poverty level)?

   Yes □  No □

- If you answered “NO” then STOP. You are not subject to a penalty (no assessable payments), even if you do not offer health coverage to FTEs. Employer pays penalty ONLY if 50+ FTEs and at least one FTE gets premium tax credit or cost sharing reduction for exchange coverage.

- If you answered “YES” you may face a penalty if at least one FTE enrolls in exchange coverage and receives financial assistance for that coverage. Go to the next slide.

Individuals with household incomes below a specified level who meet certain criteria will be eligible for federal financial assistance to make health insurance exchange coverage more affordable - Includes premium-assistance tax credits to buy exchange coverage and cost-sharing reductions to offset out-of-pocket expenses under that coverage.

Since household income will vary by family size, employees with fairly sizeable incomes may qualify for financial assistance and trigger shared-responsibility penalties for the employer - Estimates are that household income of $99,000 for a family of 4 will be below 400% of FPL in 2014.

Assistance will be provided on a sliding scale, giving more financial help to people with lower incomes.
Identify Employer’s Plan Year

Complete the remainder of this checklist only if you are a large employer and at least one of your FTEs is potentially eligible for income-based assistance.

Assuming this is the case, you may face a penalty if at least one FTE enrolls in exchange coverage and receives financial assistance for that coverage. To run the penalty calculation, you must first determine the effective date of testing which is dependent on your plan year as of 12/27/12.

The rules generally go into effect on 1/1/14. Penalty provisions are effective 1/1/14 for calendar year plans, and the first day of the plan year beginning in 2014 and ending in 2015 for non-calendar year plans.

**Action Step:** Determine plan year as of 12/27/12.

- If you offered coverage through a calendar year plan year as of 12/27/12, then the penalty provisions are effective for your plan on 1/1/14.
- If you offered coverage through a non-calendar year plan year in existence on 12/27/12, then you will not be assessed a shared responsibility penalty for any period in 2014 prior to the beginning of the 2014-2015 plan year.
Participant Question:

Our plan year begins 12/1 and we currently only offer health insurance to employees working 32+ hours per week. When will the requirement to cover employees working 30+ hours take effect? Will it be for plan years beginning after January 1, 2014? Or will it be for everyone beginning January 1, 2014?

Assuming the employer offers health coverage through a plan that operates on a 12/1 plan year (open enrollment occurred for a plan year beginning 12/1/12 and ending 11/30/13), then you will not be assessed a shared responsibility penalty for any period in 2014 prior to the beginning of the 2014-2015 plan year. This employer will not be subject to a potential payment until the first day of the plan year starting in 12/1/14.
Transition rule applies during the 2013-2014 plan year to accommodate exchange elections for non-calendar year cafeteria plans.

During the 2013-2014 plan year, employer may permit participants who pay for health coverage through a cafeteria plan to make one mid-year election change to drop coverage to enroll in exchange coverage.

Employers may also permit employees who previously declined employer coverage to enroll in that coverage through the cafeteria plan, even if they had experienced no change in status event.

**Action Step:** If election change transition rule for non-calendar year plans applies, amend your cafeteria plan.
**FTE Determination for Penalty Calculation**

*If you are a large employer and at least one of your FTEs is potentially eligible for income-based assistance in the exchange, then you may be subject to a shared responsibility penalty.*

Penalty amounts will depend on whether or not you offer health coverage to FTEs.

FTEs are generally those who work, with respect to any month, an average of at least 30 hours/week. In calculating penalties, PTEs **will not be** taken into account.

Every large employer will need to count employees and measure their hours to see if they are FT or PT.

Employers will have to collect data, including hours worked, to identify and report to the IRS on FTEs.

- **Action Step:** Begin anticipating the makeup of your workforce in ample time to plan for 2014. Start counting as soon as possible to avoid any last minute confusion over the employees’ status or the employer’s obligations.

- **Action Step:** Determine if you employ or anticipate employing variable-hour or seasonal employees. Make a decision with respect to the length of the measurement, administrative and stability periods that will be used to count FTEs.

- **Action Step:** Determine method for collecting data.
**Participant Question:**

*We need to know how to determine who is eligible for coverage.*

- Individual employers may continue to use their own (different) definitions of FTE in their business (for example, for purposes of plan eligibility).

- But because FTE definition is set forth in the statute and uses a benchmark of only 30 hours per week, employers are required to use the 30-hour maximum for purposes of determining FT status.

- Employers offering qualified coverage (no penalty) will need to cover substantially all FTEs and dependents (as defined in the statute) - employers will need to review their definitions of eligible employees and covered dependents and consider needed changes.
Participant Question:

Hours fluctuate for over 50% of staff. We need a firmer understanding of how this issue is handled under PPACA.

- Large employers need to determine which employees qualify as FTEs (employed on average at least 30 hours of service per week).

The rules differ for new employees and variable hour ongoing employees.

For variable hour employees not reasonably expected to work a FT schedule, employer can utilize an administrative scheme (measurement period, stability period) to determine whether an employee works a FT schedule.

If employer determines that variable hour ongoing employee was employed on average at least 30 hours of service/week during measurement period, then employer must treat employee as FTE during subsequent stability period, regardless of employee’s number of hours of service during stability period, so long as he/she remains an employee. Variable hour employees who have been employed for a period of time may either be treated as FTEs or, at its election, employer may use measurement/stability period to determine each ongoing employee’s FT status.
Participant Question:

I am most concerned with possible implications regarding our substitute employees and our need to track their hours or be faced with fines or providing them with coverage.

- Rule is that any new FTE (other than a seasonal employee) must be offered coverage within the initial 3 months of employment if that employee is reasonably expected at his/her start date to perform, on average, 30 or more hours of service per week.
- Rules don’t provide additional guidance on this standard, but IRS has requested comments on considerations that could help employers make this determination.
- May get more insight eventually as IRS is considering:
  - If variable hour and seasonal employee safe harbor methods should be available to determine FT status of temporary staffing employees, employees in high-turnover positions, and other categories of employees that may present special issues.
  - Issues related to teachers, other educational organization employees, or industries with comparable circumstances for purposes of penalty payments.
Participant Question:

My district hires substitute teachers both long term and short term. My understanding is that effective in January 2014, employers are to go back to their prior year payroll records to determine those employees that worked 30 hours or more a week, and then offer those employees affordable health care. My question is, what if in January 2014 those employees are no longer employed in the district, what do I do?

For variable hour employees, a “measurement period” is the look-back period over which hours are calculated to determine whether an employee has averaged at least 30 hours per week.

The “stability period” is the look-forward period for which an employee’s status (determined during the measurement period as FT or not) is locked in, regardless of the employee’s actual hours during this period. Any employee qualifying as FT during the standard measurement period must be offered coverage during a subsequent stability period (provided the employee continues to be an employee during this period).
Penalty amounts will depend on whether or not a large employer offers health coverage to FTEs. FTEs are generally those who work, with respect to any month, an average of at least 30 hours/week. In calculating penalties, PTEs will not be taken into account.

**Employer pays ONLY if 50+ FTEs AND at least one FTE gets premium tax credit or cost sharing reduction for exchange coverage.**

- **If NO COVERAGE** offered to FTEs, penalty = $2,000 per FTE minus first 30 FTEs
- **If SUBSTANDARD COVERAGE OFFERED** to FTEs, penalty = lesser of:
  - $3,000 per FTE on exchange plan receiving credits/subsidies, or
  - $2,000 per FTE minus first 30 FTEs

After 2014, the penalty amounts will increase each year based on premium increases for exchange-based coverage.
• The penalties are assessed on a monthly basis. Amount of payment for any month equals the number of FTEs for month multiplied by 1/12 of penalty amount. Payment for calendar year is the sum of monthly payments computed for each month.

• Penalty payments will be made retrospectively, so payments will generally be made in 2015 for the 2014 plan year.

➢ **Action Step:** Understand employer tax deduction. Employers paying shared responsibility penalties will not be able to deduct those payments as business expenses under Code section 162. (Employer cost of providing health insurance is still tax deductible.)

**Participant Question:**

**How are penalties assessed on very small employers?**

Very small employer are not subject to penalties. The penalty rules apply to employers with an average of at least 50 FT equivalent employees in the preceding calendar year.
**Participant Question:**

*How does healthcare reform play into companies with union employees? We do not offer the benefits, the union does.*

Certain employers contribute to a “multiemployer plan” for their union employees: A plan maintained under one or more collective bargaining agreements to which more than one employer contributes.

There is a transition rule for multiemployer plans.

**Action Step:** Determine if the employer contributes to a multiemployer plan. If yes, there is a transition rule – generally no payments with respect to a FTE if:

- Employer makes a contribution with respect to the FTE pursuant to a collective bargaining agreement/related participation agreement;
- Coverage is offered to the FTE and dependents; and
- The coverage offered is affordable and provides minimum value.

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**Calculating Penalties – Summary Explanation**
Calculating Penalties – No Coverage Offered

Assuming you are a large employer and at least one of your FTEs is potentially eligible for income-based assistance in the exchange, and **you offer no coverage to FTEs:**

- Large employer (over 50+ FTEs), doesn’t offer coverage to FTEs and their dependents, or offers coverage to less than 95% of FTEs and their dependents = face shared-responsibility penalties if at least one FTE buys exchange coverage and is eligible for income-based assistance.

- Annual penalty = $2,000 for *every* FTE, excluding first 30 FTEs. If employer is related to other employers, then the 30-employee exclusion is allocated among all related employers.

*Example.* ABC Co. has 100 FTEs, 20 of whom buy exchange coverage and are eligible for income-based assistance for all of 2014. The penalty amount would be $140,000 (100 total FTEs – 30 = 70 FTEs x $2,000). Although ABC Co. also has 45 PTEs (working an average of fewer than 30 hours/week in a given month), these PTEs are not included in the penalty calculation.
Calculating Penalties – No Coverage Offered

**Payment Computed by Month:** For employer that offers coverage for some months but not others, payment is computed separately for each month for which coverage was not offered. Amount of payment for any month equals number of FTEs employed for month (minus up to 30) multiplied by 1/12 of $2,000. Payment for calendar year is sum of monthly payments computed for each month for which coverage was not offered.

**Timing Rule:** If employer does not offer coverage to a FTE for any day of a calendar month during which employee is employed, employee will be treated as not being offered coverage for entire month. If a FTE terminates employment mid-calendar month but would have been offered coverage for entire month if he/she had remained employed for entire month, employee will be treated as having been offered coverage for entire month.

**Observation:** Until employers are educated and proficient on the levels of coverage offered under the exchanges, the costs of that coverage, and the on-time availability of the exchanges (open enrollment is set to begin in October 2013), dropping coverage may not yet be a viable option for most employers.
Assuming you are a large employer and at least one of your FTEs is potentially eligible for income-based assistance in the exchange, and you offer “qualified coverage” to FTEs.

Large employers (over 50+ FTEs) that offer “qualified” coverage to at least 95% of FTEs and their dependents will NOT face shared-responsibility penalty. Employers subject to shared responsibility requirement will NOT face a penalty if coverage they offer FTEs and their dependents falls into the following categories:

- Minimum value of coverage is at least 60% (plan pays at least 60% of total allowed benefits), and
- Coverage is affordable (plans requiring employee contributions that represent 9.5% or less of employees’ income (W-2 wages) will be considered affordable)

If employer coverage is available to an employee or family member, that person won’t qualify for federal assistance in exchange unless the coverage either fails the minimum value test or is unaffordable.

- **Action Step:** Determine if coverage offered is affordable
- **Action Step:** Determine if coverage offered provides minimum value
Offer coverage to "substantially all" FTEs

IRS will consider an employer to have offered coverage to FTEs and their dependents if employer offers coverage to at least 95% of FTEs (and for smaller employers, employer can offer coverage to all but 5 FTEs if the 5 would constitute more than 5% of FTEs).

Thus, an inadvertent failure to offer coverage to a small number of FTEs will not trigger employer shared responsibility payments.

Observation: This substantially all “de minimis” rule provides employers with a "margin for error" in applying the complex IRS rules defining FTEs for penalty purposes. Accounts for possibility of inadvertent errors.

Caution: If one of these FTEs who were not offered employer-sponsored coverage is eligible for income based assistance in the exchange, penalty may be triggered.
Controlled Group Issues

Determine if employer is a member of a controlled group of companies. If yes, determine how the substantially all rule applies for testing purposes (substantially all “de minimis” rule may apply on a company-by-company basis, rather than across controlled group.)

Example: Holding company has two subs, A and B. A has 100 FTEs and B has 100 FTEs. A offers minimum essential coverage to FTEs and B pays the penalty. A misclassifies 7 variable hour employees as not FT even though they work on average more than 30 hours/week during the measurement period. As a result, A doesn’t offer minimum essential coverage to these 7 employees as of start of next stability period and only makes an offer to 93 of its 100 FTEs. Although 7 is less than 5% of controlled group FTEs of holding company, it is greater than 5% of the 100 FTEs of A. Thus, it appears the de minimis rule does not apply to A and A could be subject to a penalty.
Offer coverage to dependent children to age 26

Requirement to offer minimum essential coverage applies to FTE’s children (within meaning of Code section 152(f)(1)) up to age 26. Thus, coverage generally will be considered offered to FTE only if it is also offered to employee’s children up to age 26.

- Employer can rely on employees’ representations of identity and ages of children.
- No requirement that employer offer coverage to employees’ spouses.
- No requirement that employer offer coverage to employees that are other than FTEs.

Observation: Makes mandatory adult child coverage to age 26 rules (employers that offered dependent coverage were required to extend coverage to children to age 26 and employer could not offer adult child coverage by choosing not to offer coverage to any children regardless of age). Now large employers are required to offer coverage to children to age 26 – at least for children of FTEs.

- **Action Step:** Review employer plan definition of covered dependent and consider needed changes.
- **Action Step:** Apply special transition rule if you do not currently offer dependent coverage. Take steps during plan year toward offering coverage to dependents and not be liable for any penalty solely on account of a failure to offer coverage to dependents for that plan year.
Calculating Penalties – Qualified Coverage Offered

- **Late or non-payment of premiums:** If employee enrolls in employer-sponsored health coverage but fails to pay employee’s share of premium on a timely basis for a given coverage period, employer is not required to provide coverage for that period and employer will be treated as having offered coverage for remainder of period.
  - Rules adopt 30-day grace period and other payment rules under COBRA (such as rules with regard to timely payments that are less, but not significantly less, than amount of employee’s share of premium.) Thus, termination of coverage due to employee’s late or non-payment of premiums will not result in liability for employer shared responsibility payments.

- **Offers of coverage:** With regard to offers of coverage, employer should comply with generally applicable substantiation and recordkeeping requirements. Employer can make an offer of coverage electronically, provided employer complies with applicable rules for electronic disclosures.
**Must offer opportunity to accept/decline**

- Employer must offer employees an effective opportunity to accept coverage and decline an offer of coverage that does not meet the minimum value or affordability requirements.
- In most cases, an employer’s usual enrollment procedures will satisfy this rule.

Observation: The purpose of this rule is to prevent an employer from making an employee ineligible for the premium tax credit by providing mandatory coverage that does not provide minimum value.
Calculating Penalties – Substandard Coverage Offered

Assuming you are a large employer and at least one of your FTEs is potentially eligible for income-based assistance in the exchange, and you offer “substandard coverage” to FTEs.

• Large employer must offer FTEs (and their dependents) opportunity to enroll in “minimum essential coverage” (or MEC) to avoid "No Coverage Offered" penalty.

• MEC includes coverage under eligible employer-sponsored group health plan, but it remains unclear what standard, if any, employer plan would have to meet to be considered MEC. IRS has indicated it will provide further guidance on definition of MEC and eligible employer-sponsored plans.

• If employer offers MEC under eligible employer-sponsored plan to FTEs (and their dependents), it will not be subject to “No Coverage Offered" penalty regardless of whether coverage it offers is affordable to these employees or provides minimum value.

Larger employers (over 50+ FTEs) that offer “substandard” MEC coverage to FTEs and their dependents may face shared-responsibility penalties if at least one FTE buys health insurance exchange coverage and is eligible for income-based assistance.
Penalty applies if employer offers health coverage to at least 95% of FTEs, but at least one FTE receives premium tax credit to help pay for coverage on exchange, which may occur because employer did not offer coverage to that employee or because coverage they offer FTEs and their dependents falls into either of the following categories:

- The minimum value of coverage is less than 60%, or
- The coverage is unaffordable (employee contribution more than 9.5% of W-2 income).

The annual penalty is the lesser of:

- $3,000 per FTE whom an exchange certifies as obtaining exchange coverage and qualifying for federal income-based assistance for that coverage, or
- $2,000 per all FTEs minus the first 30 (regardless of exchange coverage or eligibility for assistance). This cap ensures that the payment for employer that offers coverage can never exceed the payment that employer would owe if it did not offer coverage.
**Calculating Penalties – Substandard Coverage Offered**

*Example.* XYZ offers MEC to its 100 FTEs but no coverage to its 45 PTEs (those working an average of fewer than 30 hours/week in a given month). However, the MEC is unaffordable for 20 FTEs, who each buys exchange coverage and qualifies for federal income-based assistance during all of 2014.

The law provides an upper limit cap for penalties in this situation (equal to the no coverage penalty). So in this case, the maximum is calculated by multiplying $2,000 by the total number of FTEs – regardless of exchange coverage or eligibility for assistance – after subtracting 30 FTEs = $140,000 (100 total FTEs – 30 = 70 FTEs x $2,000).

Since the calculation is the lesser of the two, XYZ will face excise tax penalties of only $60,000 ($3,000 x 20 FTEs eligible for assistance). Although XYZ also has 45 PTEs (working an average of fewer than 30 hours/week in a given month), these PTEs are not included in the penalty calculation.

If only 3 FTEs buy exchange coverage with income-based assistance, penalty amount would be even less = $9,000 ($3,000 x 3 FTEs buying exchange coverage and eligible for assistance).
**Example.** LLC offers MEC to its 100 FTEs but no coverage to its 45 PTEs (those working an average of fewer than 30 hrs/week in a given month). However, the MEC is unaffordable for 85 FTEs, who each buys exchange coverage and qualifies for federal income-based assistance during all of 2014.

In this case, if the normal penalty calculation is applied, LLC’s shared-responsibility payment would be $255,000 ($3,000 x 85 FTEs eligible for assistance).

But because the penalty calculated using the cap is lower, LLC’s actual penalty will be $140,000 (100 total FTEs – 30 = 70 FTEs x $2,000). PTEs are not included in the penalty calculation.
The Impact
Impact of the Mandate

- Real impact is unknown
- Most major employers have indicated an interest in maintaining coverage come 2014
- The penalty at $2,000 is very low; “do the math”
- Things can change
- Planning, cost calculating, and readiness is key
- Employee communications
### Cover what the Government Requires

**Assumes National Cost Averages and 500 FTEs**

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<thead>
<tr>
<th>Current Benefits</th>
<th>Options</th>
<th>Offer “Minimum Required” Coverage</th>
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<tbody>
<tr>
<td>• Offer comprehensive benefit package with choice.</td>
<td>Anything in between</td>
<td><strong>Play</strong>: Offer FTEs and dependents a base plan that covers:</td>
</tr>
<tr>
<td>• Payroll deductions</td>
<td></td>
<td>▪ 60% minimum required coverage</td>
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<tr>
<td>• Number of plan choices</td>
<td></td>
<td>and</td>
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<tr>
<td>• Employees share in cost</td>
<td></td>
<td>▪ Charge no more than 9.5% of W-2 wages (for employee only coverage)</td>
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</tbody>
</table>

**Annual Plan Costs**: $11,664  
**Less EE Costs**: ($2,916)  
**Net Costs**: $8,748 x 500 = $4,374,000

<table>
<thead>
<tr>
<th>Current Benefits</th>
<th>Options</th>
<th>Offer “Minimum Required” Coverage</th>
</tr>
</thead>
</table>
| **Annual Cost to Play**: $7,000  
**Less EE Costs**: $1,749  
**Net Costs**: $5,250 x 500 = $2,625,000

**CONNER STRONG & BUCKELEW**
## Pay the Penalty

### Assume 500 FTEs

<table>
<thead>
<tr>
<th>Current Benefits</th>
<th>Options</th>
<th>Eliminate Benefits and Pay Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Offer comprehensive benefit package with choice.</td>
<td>Anything in between</td>
<td>Pay: $2,000 penalty per FTE, less first 30 FTEs</td>
</tr>
<tr>
<td>• Payroll deductions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Number of plan choices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Employees share in cost</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Annual Plan Costs:</strong> $11,664</td>
<td><strong>Penalty:</strong> $2,000 x 470</td>
<td><strong>Annual Costs to Pay:</strong> <strong>$940,000</strong></td>
</tr>
<tr>
<td><strong>Less EE Costs:</strong> ($2,916)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net Costs:</strong> $8,748</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Cost for 500 Employees:</strong> $4,374,000</td>
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</tr>
</tbody>
</table>
## If “Yes” - Next Generation Benefits

<table>
<thead>
<tr>
<th>Issue 1</th>
<th>• Establish an absolute commitment to health, wellness and productivity in the workplace with C-suite “buy-in”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue 2</td>
<td>• Determine the right plan design strategy: defined benefit or defined contribution</td>
</tr>
<tr>
<td>Issue 3</td>
<td>• Share the strategy with management around cost and quality</td>
</tr>
<tr>
<td>Issue 4</td>
<td>• Communicate and engage (internally with employees and management team) and “expect” support</td>
</tr>
<tr>
<td>Issue 5</td>
<td>• Measure and benchmark</td>
</tr>
</tbody>
</table>
Key Questions to Consider?

1. Are benefits a differentiating value proposition?
   - Do employees / recruits “expect” comprehensive benefits?
   - Do employees / recruits “value” the benefit package?

2. Are you committed to providing a competitive benefit package?
   If yes,
   - What level of plan design?
   - What level of cost sharing (payroll deductions, etc.)?
   - What plan design and cost sharing is sustainable?
   - Will you play (60% minimum value, 9.5% of W-2 income)?
   - Will you pay ($2,000 per FTE)?
To be implemented in 2018:

- 40% excise tax on “Cadillac” benefit plans (value, or premium equivalents of $10,200 / $27,500 per year)
- Tax applies to amount of the premium in excess of the threshold, so the first $27,500/family and $10,200/individual is exempt from tax
- Tax is imposed on employer

- Some plans will qualify for higher thresholds (certain high risk occupations, retirees, etc.)

- Project the COBRA premiums for your health plans in 2018 and beyond
  - Dental and vision is excluded
  - Other coverage is aggregated including PPO, HMO, HDHP, HSA, FSA, HRA, etc.
“ACO” concept may help stimulate changes in way providers are paid from a fee for service to episode of care model

Maximum reward for participation in certain health-contingent wellness programs starting in 2014 goes from 20% to 30% of total cost of coverage in employer-sponsored plans

For programs designed to prevent or reduce tobacco use, wellness limit is 50% of the cost of coverage

Absence of any provisions to deal with rising costs and chronic illnesses will likely mean employers will have to stay engaged to avoid reductions in productivity and unrealistic cost challenges
What to Do Next?

- Establish a healthcare reform task force to ensure compliance and evaluate 2014 pay or play issue
- Develop communication strategy for employees and stakeholders
- Evaluate level of benefits provided – offer a lower-cost plan (like a CDHP) as core benefit and offer option to pay more for richer coverage
- Consider a private exchange
- Consider health management/wellness programs for long-term savings
- Rethink where and how care is delivered - consider ACOs, telemedicine, surgical centers of excellence, medical home, etc.
- Watch for and anticipate changes
- Have flexible decision making process
Agency Healthcare Reform Sites:

Health and Human Services (HHS):  
http://healthcare.gov/

Department of Labor (DOL):  
http://www.dol.gov/ebsa/healthreform/

Internal Revenue Service (IRS):  
Help from Conner Strong & Buckelew

Conner Strong & Buckelew
Healthcare Reform website page at:

http://www.connerstrong.com/healthcare_reform

» News updates
» Online library of client updates and alerts
» Summary of major provisions of the new law
» Detailed Year-by-Year timeline of changes
» Outline of all aspects of the new law

Check back for updates, news and analysis, and updated tools to help you navigate this complex process

Call Conner Strong & Buckelew at 877-861-3220
Other Resources from Conner Strong

Periodic Webinars
- Web-based presentations on health care legislation, regulations and innovative ideas

Email Alerts and Updates
- High level, quickly produced articles about emerging issues intended to alert clients to legislative and regulatory developments
- Historic library available on line

Perspectives
- Thought pieces intended to identify trends and issues, helping clients anticipate challenges
Thank you for your participation!