

HEALTH CARE REFORM UPDATE

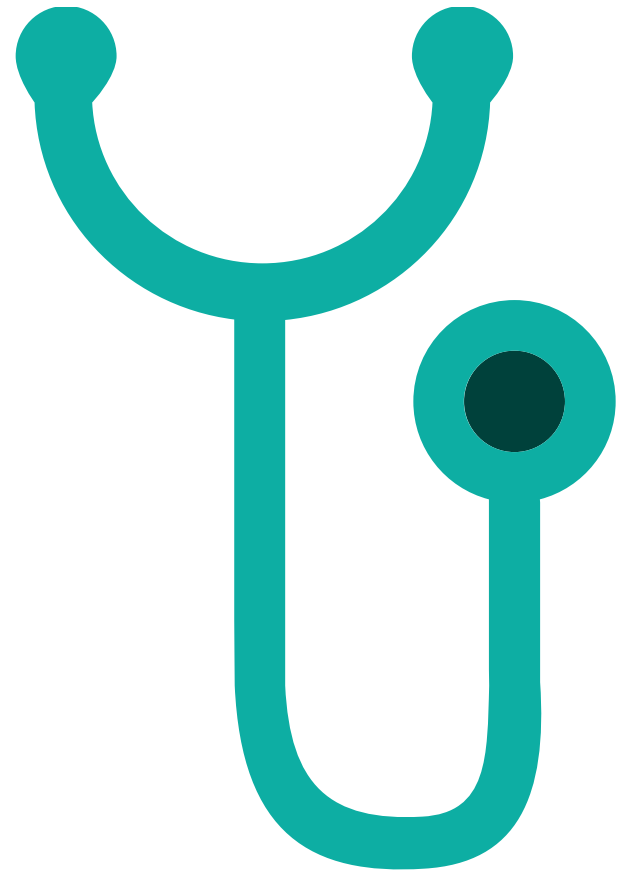
**“The Health Care Reform Train –
Don’t Be Left Standing at the Station”**
Hope is Not an Effective Planning Solution

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OVERVIEW

Today's program will touch on the follow areas:

- The Basics of the Act
- Employer Responsibilities
- Strategic Considerations
- Common Questions
- Open Discussion and Questions

HISTORY

- On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act which put in place comprehensive health care reforms to be implemented during the next four years and beyond
- One short week later, on March 30, 2010, the President signed the Health Care and Education Reconciliation Act which amended some of the provisions in the Affordable Care Act as well as released billions for student loans and financial aid to college students
- The combination of these two bills put in place Health Care Reform, which has caused much discussion on both sides of the political spectrum, eventually leading up to the big question of legality that was taken up by the United States Supreme Court
- On June 28, 2012 the Supreme Court declared the individual mandate to be a permissible exercise of Congress's taxing powers under the Constitution

CHANGES EFFECTIVE DURING 2012

- **2012 W-2 reporting - Large employers** - Form W-2 reporting of health coverage costs for certain employers – Both employee and employer portion. Mandatory for those large employers whom issued more than 250 W-2s in the immediate proceeding year. Reported on box 12 using code DD
- **SBC Completion** - Distribute the Summary of Benefits and Coverage (SBC's) to enrollees for renewals, and newly eligible employees. This four page document was due by September 2012 and employers could be assessed a penalty up to \$1,000 for each willful neglect instance.
- **MLR Reimbursements** – Insurers begin to distribute Medical Loss Ratio (MLR) Rebates to group plan participants, if applicable, whose plans did not meet certain loss ratios. Employers may use these proceeds to reduce future employee costs—a contribution holiday.

CHANGES EFFECTIVE DURING 2013

- **Health Flexible Spending Accounts (FSA's)** - The \$2,500 limit on annual salary reduction contributions to health FSAs offered under cafeteria plans.
- **Additional Medicare Tax** - The employee portion of the hospital insurance tax part of FICA, currently amounting to 1.45% of covered wages, is increased by 0.9% on wages that exceed a safe harbor threshold amount of \$200,000 for tax years beginning after 12/31/2012.
- **Notice of Exchange** - Employers are required provide ALL new hires and current employees with a written notice about the health benefit Exchange and some of the consequences if an employee decides to purchase a qualified health plan through the Exchange in lieu of employer-sponsored coverage.
- **Excise Taxes** – Self-funded plans required to pay PCORI fee and fully-insured plans see these fees built into rate increases - \$1 per covered life in year one and increasing to \$2 in year two. These fees are report with Form 720 and are due with the 2nd Qtr Excise tax filing due July 31

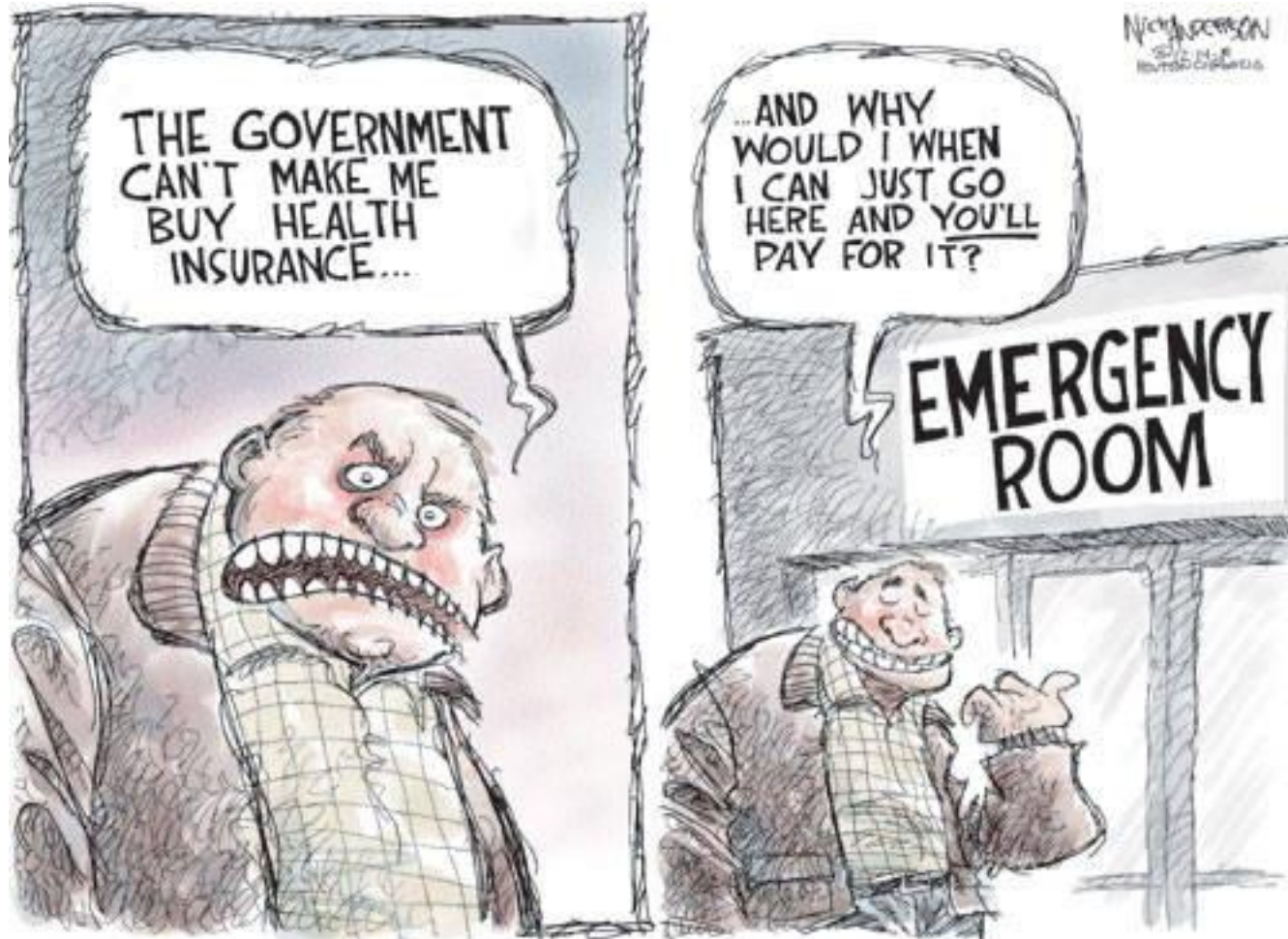
CHANGES EFFECTIVE DURING 2014

- **Automatic Enrollment Requirement** - All Employers with more than 200 Full Time employees, which offer employees enrollment in one or more health benefit plans must automatically enroll new Full Time employees in one of the plans offered. Must provide employees notice of opportunity to enroll and to opt out.
- **Waiting Periods** - A plan must not apply a waiting period to become eligible to participate in the employer sponsored group health plan that exceeds 90 days. This provision does not require offering benefits to part-time employees, however if an employee goes from part-time to full-time status, the 90 day eligibility clock begins on first day of full time employment.
- **Reinsurance Fees** - Health care insurers must pay an additional reinsurance fee in the amount of \$63 per covered individual per year. Self-insured plans will pay this fee directly and those in fully-insured plans will see this fee through increases in their premiums. This fee is set to expire in 2016 and projected to decrease to a mere \$40 per covered individual per year

ESTABLISHMENT OF THE EXCHANGES

- If a state does not establish an Exchange, then the federal government will establish a “Federally Facilitated Exchange” (FFE).
- 17 states plus the District of Columbia have established state-based exchanges
- The Exchanges will perform a variety of functions required by health care reform, including certifying QHPs, determining eligibility for enrollments in QHPs, and for insurance affordability programs (e.g., premium tax credits), and responding to customer requests for assistance.
- Insurers can only offer “Qualified Health Plans” on the FFE. Four “Metal Levels” – Bronze(60%), Silver(70%), Gold(80%), Platinum(90%)
- National average exchange prices for the lowest cost (high-deductible) Silver Level plans are approximately \$310 per month. The same plan on Michigan’s exchange is approximately \$271 per month.

INDIVIDUAL MANDATE - 2014



INDIVIDUAL MANDATE

- Those without coverage pay a tax penalty of the greater of \$695 per year up to a maximum of three times that amount (\$2,085) per family or 2.5% of household income - Some exemptions apply.
- The penalty will be phased-in according to the following schedule: \$95 in 2014, \$325 in 2015, and \$695 in 2016 for the flat fee or 1.0% of taxable income in 2014, 2.0% of taxable income in 2015, and 2.5% of taxable income in 2016.
- Beginning after 2016, the penalty will be increased annually by the cost-of-living adjustment.
- After October 1, 2013 , individuals may purchase coverage through the Health Insurance Marketplace at www.healthcare.gov.

SHOPPING ON THE EXCHANGES

Federally Facilitated Exchange Marketplace

- The marketplace offered and approved by the federal government
- Accessed through www.healthcare.gov
- Healthcare offerings will qualify for federal subsidies if income level warrant

Privately Facilitated Exchange Marketplace

- The marketplace offered by private insurance companies
- Accessed through private websites
- Healthcare offerings will NOT qualify for federal subsidies even though they may look the same
- Usually designed to work in conjunction with employer defined contribution type of plans

Small-Business Health Options Program (SHOP)

- The marketplace available to employers with 50 or fewer full-time equivalents
- Accessed through www.healthcare.gov and tied to each State's marketplace
- Employers can control the coverage they offer and how much they contribute toward each employee.
- Beginning in 2014, the Healthcare Credit is only available for those plans purchased through SHOP

CHANGES EFFECTIVE DURING 2015

- **Employer Shared Responsibility** - Certain large employers may be subject to penalty taxes for failing to offer health care coverage for all full-time employees, offering minimum essential coverage that is unaffordable, or offering minimum essential coverage under which the plan's share of the total allowed cost of benefits is less than 60%.
- **Additional Reporting** – Health insurance issuers, including self-insured employers, and all large employers will be required to file additional forms or returns to report on those individuals receiving health coverage and certain employers will have to report on the type of coverage offered.

EMPLOYER SHARED RESPONSIBILITY

All “Large” Employers with 50 or more “Full Time” or “Full Time Equivalent” Employees.

- Full Time: employees that work at least 30 hours per week
- Full Time Equivalent: number of part time employees (x) the number of hours worked during the month(/) 120.
- Does not include “Seasonal Employees” that work less than 120 days per year
- Part-time or “Variable Hour” employees must be considered at the end of each employer’s “standard measurement period.” (Typically 12 months)

EMPLOYER SHARED RESPONSIBILITY

What about Control Groups?

- One of the most frequently asked questions when dealing with multi-entity structures is “ Which employees get included into the if the client has more than one entity that employs personnel?”
- The Act refers to the definitions outlined in IRC 414 (b), (c), (m) or (o) which refer to IRC 1563(a) to define control groups. Also within these code sections, the attribution rules of IRC 318(a) apply.
- In most cases, the employees from all related companies will be pulled into the group to make the “Large Employer” determination.

EMPLOYER SHARED RESPONSIBILITY

All Large Employers must provide its Full Time/Equivalent Employees the opportunity to enroll in a “Minimum Essential Coverage” health care plan.

- **Minimum Essential Coverage “Acceptable”:**
either an “eligible employer-sponsored plan”, various forms of government sponsored health coverage or an individual market plan, which provides “essential health benefits”.
 - **Eligible Employer-Sponsored Plan:** a group health plan or group health insurance coverage offered by an employer to the employee which does not consist of “excepted benefits” (limited dental or vision and most health FSAs and HSAs)
 - **Essential Health Benefits** include: ambulatory, emergency, hospitalization care, maternity and newborn care, mental health and substance disorder, behavior health, rehabilitation services and devices, preventative and wellness and pediatric care

EMPLOYER SHARED RESPONSIBILITY

All Large Employers must make the minimum coverage “Affordable”.

- **Affordable Coverage:**

Employers required to cover enough cost of a healthcare plan so that a Full-Time employee does not pay more than 9.5% household income.

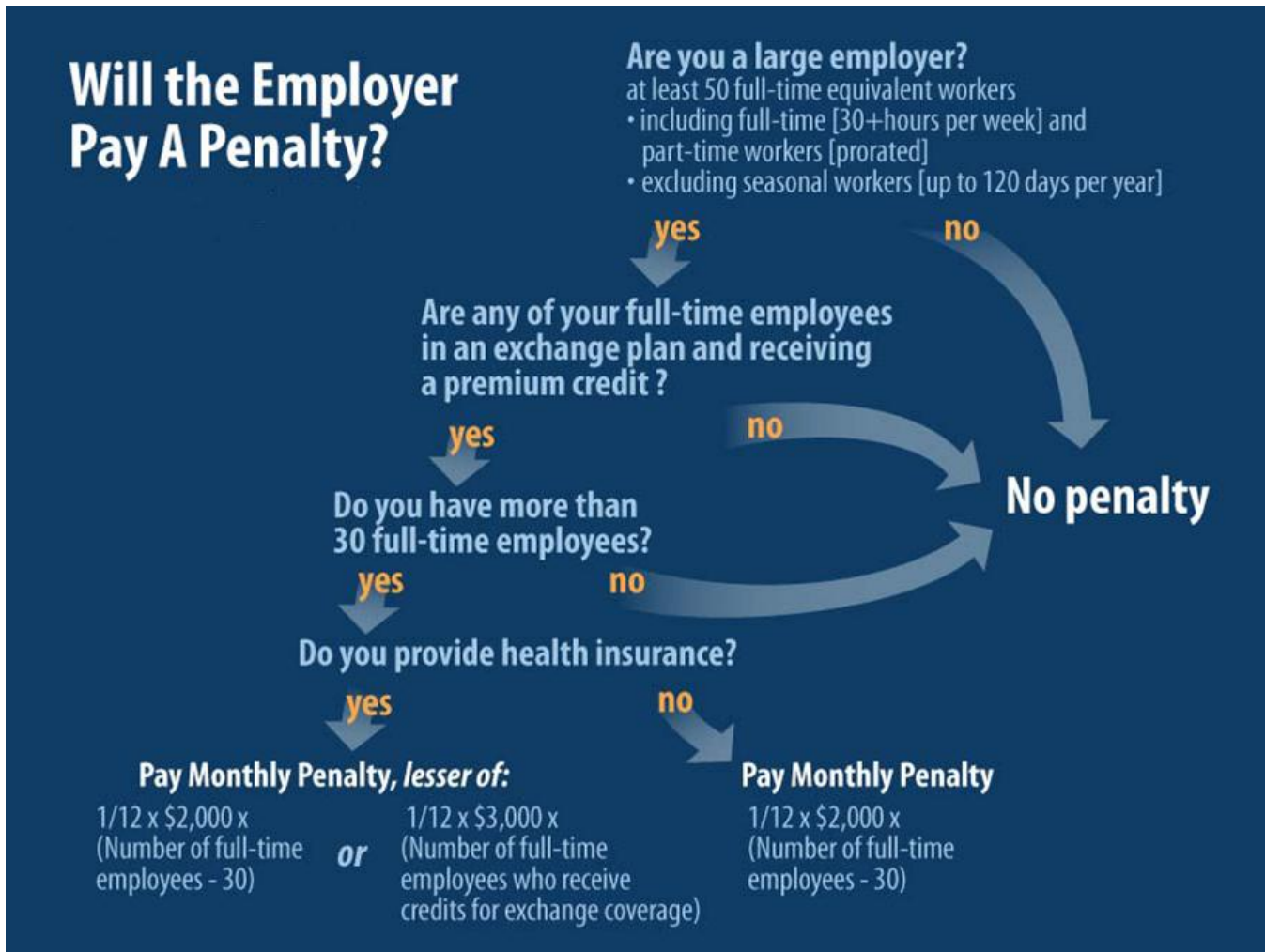
- **Single level** : Employers minimum coverage is for the single level plan which covers at least 60% of medical related expenses. (Bronze Level)
 - Premium portion - Only
 - Family plans do not have to meet the same 9.5 % threshold.
- **W-2 Safe-harbor:** Employers may not know an employees household income therefore may use the employees W-2 gross wages to determine the 9.5 % threshold

EMPLOYER SHARED RESPONSIBILITY

Enforcement and Penalties

- Large employers who fail to offer “Affordable and Acceptable Coverage” to all “Full-Time” or “Equivalent” employees **and** one employee enrolls in a state health care exchange —then employer may be subject penalty.
- Tax exempt entities still subject to employer mandates
- Every “Large Employer” gets a 30 person exemption
- Penalties are Non-Deductible and determined on a monthly basis
 - Penalty equals $1/12$ of \$2,000 x number of full time employees, minus 30, for all months with no coverage.
 - Penalty equals $1/12$ of \$3,000 for any applicable month x number of Full Time employees receiving subsidies , minus 30, or $1/12$ of \$2,000 x Full time employees for any applicable month.

PAY OR PLAY



EMPLOYER SHARED RESPONSIBILITY

Multiemployer Plans:

Multiemployer plans are established by a union to receive contributions from, and provide benefits to, the employees of multiple unrelated employers who are subject to collective bargaining with the union. The terms of these plans are often set by a board of trustees within the union by which the employer has little or no control as to the design of the plan.

The IRS has acknowledged the challenges in complying with the PPACA requirements for these type of plans, and has issued a transition rule that will exempt these qualifying employees from the penalties under IRC 4980H if the following are met:

- The Employer is required to make a contribution to a Multiemployer plan with respect to the full-time employee pursuant to a collectively bargained agreement
- Coverage under the Multiemployer plan is offered to the full-time employee
- The coverage offered is affordable and provides minimal essential coverage

ADDITIONAL REPORTING

Health Insurance Issuers and Self-funded employers:

Every person who provides minimum essential coverage to an individual will be required to file and report specific information to the IRS indicating who is covered under which policy and for how long. This information will be used by the IRS to assist in the determination for the individual mandate.

Large employers:

Every applicable large employer subject to the Pay or Play standards will be required to file and report specific information to the IRS indicating a certification that the employer offers an acceptable and affordable, the length of any waiting period, the months the plan was offered, the monthly premium for the lowest cost option for each enrollment categories under the plan, and the employers share of costs provided by the plan. In addition, employers will need to furnish a written statement to each employee detailing information required to be reported by the individual on their personal return.

STRATEGIC CONSIDERATIONS

We cannot afford these increase in health care costs. What can we do to help reduce or offset these costs?

- **Reverse Discrimination** – Employers may chose to offset some of the additional costs related to offering health insurance coverage by asking higher paid employees to pay more.
- **Defined Contribution**- Employers may decide to offer a set dollar amount to contribute to each employee. Often tied to a HRA (Health Reimbursement Account) or HSA (Health Savings Account).

REVERSE DISCRIMINATION

- For some employers that have had a significant increase in the cost of offering health insurance coverage, there may be an opportunity to pass along some of the additional costs to their more highly compensated employees
- Employers have exploited the 9.5% “Affordable” test and require ALL employees requesting health coverage to pay 9.5% of the premiums.
- Certain preferred or key employees may then be given an increase in pay to compensate those individuals for some of the additional costs they must pay for coverage .
- In most cases, the increase in premiums for offering an “Affordable” plan is offset by the savings from the employee contributions and increase paid in wages.

DEFINED CONTRIBUTION

- Some employers may opt to just offer a flat dollar amount to all employees to be used to purchase health insurance coverage
- These fixed contributions are accessed by the employees through a HRA or HSA account which requires the employees to submit qualified medical receipts before using those monies.
- Employers still must meet the 9.5% “Affordable” test and offer an “Acceptable” plan or they may be subject to penalties.
- Certain preferred or key employees may then be given an increase in pay to compensate those individuals for some of the additional costs they must pay for coverage.
- Employees will not be eligible for Federal Subsidies if they choose to go to the exchange in lieu of accepting the fixed contribution

PROPOSED REGULATIONS

On January 2, 2013, the Department of Treasury issued a set of proposed regulations that attempt to provide additional guidance with respect to the “shared responsibility” for employers regarding employee health coverage. Two important items of note are the following:

- **Break in Service Rules**

Newly defined – Variable hour employees returning to work after termination, or a continuous period with “NO” hours of service, will be considered “NEW” employees and therefore subject to a “NEW” measurement period

- 26 consecutive weeks with no hours of service
 - Cannot be receiving severance pay or some kind of deferred compensation
- A break of at least four weeks AND the break is longer than the assignment before the break
 - Example: 5 week job assignment followed by a 7 week break of service

PROPOSED REGULATIONS

- **Disaggregation**

The proposed regulations provide, that although large employer status and 30 employee exemption is determined on an aggregated basis, the determination and calculation for any assessable penalty under IRC Sec 4980H is computed and assessed separately for each applicable member of the controlled group.

- Does NOT avoid the 50 employee “Large Employer” threshold determined by aggregating controlled employees – Still subject to the employer responsibility penalties
- Could provide opportunities to create management companies that would employ “Key” employees and separate operating companies that may choose NOT to offer coverage and instead face the penalties.
- Depending on the nature and make-up of the controlled groups, MAY limit the amount of penalties assessed depending on the type and quality of employees in the operating entities

COMMON QUESTIONS

We are under the 50 FTE (Full-Time Equivalent) threshold.

- ***Can I just drop my health care coverage all together?***
 - **YES** – Employers under the 50 FTE threshold will NOT be subject to the employer responsibility penalties.
- ***What will my employees do to obtain health care coverage?***
 - **The can utilize the Health Care Marketplace** – Employees will be able to search and obtain the health care coverage of their choice on the “Exchange”. This is accessed through the internet at www.healthcare.gov . Some employees (below the 400% poverty level) may qualify for federal subsidies that will reduce the monthly cost of health care premiums.

COMMON QUESTIONS

We are under the 50 FTE (Full-Time Equivalent) threshold and have decided to drop our coverage due to the fact most of our employees will qualify for federal subsidies with the exchange.

- ***Can I give all of them some sort of tax-free amount to help with the just the cost of the premiums?***
 - **YES, BUT** – While there are ways to help your employees defray the cost of the health premiums (Defined Contribution approach), this would be deemed an employer contribution through the exchange and those employees would no longer qualify for federal subsidies..
- ***Can I just increase their wage or salary?***
 - **YES, BUT** – Many employers have said they may choose to increase certain employees wages to help off-set that lost health care benefit. While this is perfectly fine and allowable, the increased wages may reduce some eligibility for the federal subsidies.

COMMON QUESTIONS

We forgot to issue our Notice of Exchange prior to the October 1st deadline.

- ***What do I do now?***
 - **IT'S NOT TOO LATE** – While ALL employers, covered by the Fair Labor Standards Act, are required to provide a written notice to their employees about the Health Insurance Marketplace (aka the Health Care Exchange), regardless of whether employers currently offer health insurance coverage or not, the Department of Labor (DOL) has said that it will not immediately penalize those employers who have failed to do so.
 - A template of an approved Notice of Exchange is available on the Department of Labor website at <http://www.dol.gov/ebsa/healthreform/>
 - Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

THIS JUST IN.....

Late afternoon on February 10th, the Treasury Department has granted additional relief for Mid-Size Employers to comply with the Affordable Care Act



PENALTIES DELAYED FOR MID-SIZE UNTIL JANUARY 1, 2016

- In an unexpected move, Treasury provided significant relief to mid-size business, those with 50 to 99 full-time employees, for the “Pay or Play” provisions of the Affordable Care Act.
- Those employers with 100 full-time employees will still be subject to the penalty provisions beginning January 1, 2015
- To avoid the penalties for failing to offer healthcare coverage, those large employers will need to ensure 70% of those employees are covered in 2015 and then 95% in 2016 and beyond

FUTURE CONSIDERATIONS

The Harsh Reality

- Economy while recovering, can it sustain the tax increase
- Divided Congress – To Fund or Not to Fund!
- Uncertainty as to what employers will do
- Approximately half of population has consistently opposed the law since day one.
- Health care reform is still grossly underfunded, how is it going to be paid for?

THE LAST RESORT!



ADDITIONAL RESOURCES

- A few government web site links that may help give you more detailed information and also provide updates to implementation deadlines.

www.dol.gov/ebsa/healthreform/

www.healthcare.gov

QUESTIONS AND COMMENTS



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