

# Your New Year's Resolutions Should Include Affordable Care Act Compliance

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Since its enactment more than four years ago, the Affordable Care Act (ACA) has made several significant changes to health care. Provisions implemented in 2014 included state and federal exchanges, health insurance premium subsidies, the health insurance tax, and Medicaid expansion.

In the New Year, additional reforms take effect, though the ACA will face new challenges in a Republican-controlled Congress and continued court challenges. The political and legal uncertainty surrounding the ACA should not deter businesses and individuals from ensuring compliance with the upcoming requirements. Some of the most significant upcoming requirements and options under the ACA include the following:

## **Employer Mandate**

Already delayed multiple times, the “employer mandate”—a critical part of the law’s success—takes effect in 2015. Under this mandate, large employers that do not offer ACA-compliant insurance coverage to fulltime employees may be subject to penalties under section 4980H of the Internal Revenue Code (IRC). As a result, large employers will be forced to make a choice: either “play” by offering health coverage, or potentially “pay” a penalty to the Internal Revenue Service (IRS) for failing to offer the coverage. The ACA calls this “play or pay” scheme “shared responsibility.”

Although the ACA defines a large employer as one with 50 or more fulltime employees, the employer mandate will be implemented in phases. It takes effect for employers with 100 or more fulltime employees on January 1, 2015 and will apply to employers with 50-99 fulltime employees beginning January 1, 2016.

Specifically, under the ACA, an applicable large employer must offer health coverage to its fulltime employees and certain of their dependents. The coverage must: (1) provide “minimum essential coverage”; (2) be “affordable”; and (3) satisfy a minimum value requirement. “Minimum essential coverage” is basic medical coverage—most plans will satisfy this requirement. Coverage is considered “affordable” if the employee’s share of the annual premium for the lowest-priced self-only plan is no greater than 9.5 percent of the employee’s annual household income.<sup>[i]</sup> The offered coverage must also meet a minimum value requirement, that is, the plan’s share of the total allowed costs of benefits provided under the plan is at least 60 percent of those costs.<sup>[ii]</sup>

If a large employer does not offer minimum essential coverage to at least 70 percent of its fulltime employees in 2015, and if any fulltime employee receives subsidized coverage through a public marketplace, then the employer will owe a penalty of \$2,000 per year for each fulltime employee in excess of 80 employees<sup>[iii]</sup>, indexed to inflation.<sup>[iv]</sup> Additionally, if a large employer does not offer affordable, minimum value coverage to its fulltime employees, the employer will owe a penalty of the lesser of \$2,000 for each fulltime employee in excess of 80 (30 after 2015) or \$3,000 per year for each fulltime employee who receives subsidized coverage through a public marketplace.<sup>[v]</sup>

## **Individual Mandate**

The individual mandate requires an individual and any dependents of that individual to have health insurance in 2014 and beyond, or pay a penalty. An individual may obtain the required health insurance in myriad ways through an employer sponsored plan, Medicare or Medicaid, or an individual plan purchased on the open market, or through an exchange run by the state or federal government.

Failure to obtain the required health insurance in 2015 will be more costly; the penalty will be the higher of either: 1) 2

percent of yearly household income; or 2) \$325 per person for the year.[vi] The penalty is prorated, so that an individual who is not covered for only a single month would pay 1/12th of the tax that would be due for the full year. A taxpayer will be required to report liability for the penalty on the taxpayer's federal income tax return for the taxable year that includes the month in which the individual or his or her dependents lacked coverage (e.g., a calendar-year taxpayer would report liability for March 2015 on his or her 2015 income tax return filed in 2016).

### **Reporting Requirements**

The ACA requires employers and/or health insurance issuers to report to the IRS information about employer-sponsored health coverage. These reporting requirements were delayed until the 2015 tax year to coincide with the initial rollout of the employer mandate.[vii]

Specifically, Section 6055 of the IRC, as added by the ACA, requires any entity, including self-insured employers, that provides minimum essential coverage to an individual during a calendar year to file an information return (Form 1095-B) and transmittal (Form 1094-B) with the IRS and a statement to the insured person. The IRS will use this information to determine under which months, if any, individuals were covered by minimum essential coverage for purposes of administering the individual shared responsibility provisions of the ACA.

Section 6056 requires applicable large employers to file an information return (Form 1095-C) and transmittal (Form 1094-C) with the IRS and a statement to the insured person regarding employer-offered health care coverage. To streamline the reporting process, self-insured employers that are also subject to section 6056 may use the Form 1095-C to satisfy the return and transmittal requirements. The IRS will use the information reported by employers pursuant to section 6056 to administer the section 4980H penalties and the premium tax credit program.

Both of these reporting requirements take effect in 2015. The first returns will be due in 2016 for health plan coverage provided in 2015. The Section 6055 and 6056 returns must be filed with the IRS by February 28 (or March 31, if filed electronically) of the year after the calendar year to which the returns relate. Written statements must be provided to employees no later than January 31 of the year following the calendar year in which coverage was provided.

### **Enrollment**

The 2015 open enrollment period for those individuals who are eligible to enroll in a qualified 2015 health plan (via the marketplace) began on November 15, 2014 and will conclude on February 15, 2015. This enrollment period is 50 percent shorter than it in 2014.

### **Congress**

In the midterm election, the Republican Party won control of the U.S. Senate and supplemented its House votes. It also won control of 29 state legislatures and saw victories in key state gubernatorial races, including traditionally "blue" states Illinois, Maryland, and Massachusetts. The recent elections have led to speculation regarding the ACA's future.

Some predict a complete repeal of the ACA. However, it is unlikely there are enough votes to override an almost certain presidential veto to any attempt at full repeal. Piecemeal changes to the ACA are much more likely.

The most likely targets are the medical devices sales tax and a definitional change for "full time employees". Opponents of the medical device sales tax argue that it discourages medical innovation. The definition of fulltime employees could be changed from 30 hours to 40 hours per week.

Whether the ACA will be repealed, scaled back, or merely tweaked remains uncertain. However, some changes seem likely.

### **Supreme Court Case: King v. Burwell**

The U.S. Supreme Court agreed to hear a significant challenge to the government's implementation of the ACA. On November 7, the Supreme Court granted a writ of certiorari to review a Fourth Circuit decision upholding an IRS regulation permitting the government to subsidize health insurance on federally created exchanges, as well as health insurance purchased on a state-created exchange.<sup>[viii]</sup> A Court decision to restrict the subsidies to state exchanges could make health insurance unaffordable for millions of people and threaten the viability of the law's entire health insurance program. The Court has scheduled oral arguments for March 4, 2015, making a decision in the landmark case likely in mid-2015.

### **Conclusion**

As open enrollment on the ACA exchanges for 2015 comes to a close and the focus of the ACA primarily shifts to the employer mandate and related compliance issues, many wonder what's next for them in the health care arena—what will insurance rates look like, what improvements will state and federal exchanges introduce, and what will the Supreme Court

decide about federal subsidies for ACA plans. Whether you are an individual, small business, or large employer, new obligations, challenges, uncertainty, and perhaps opportunities await in the New Year.

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[i] Because most employers do not know their employee's household income, the act provides a safe harbor for the employer which requires that the cost of the employee-only coverage not exceed 9.5 percent of the wages reported in Box 1 on the employee's W-2

[ii] The remaining 40 percent of the costs are covered by the employee through copayments, deductibles and coinsurance

[iii] For 2015 only, the penalty will exempt the first 80 fulltime employees. Subsequently, only 30 employees will be exempt.

[iv] 26 U.S.C. § 4980H(a)

[v] 26 U.S.C. § 4980H(b)

[vi] \$162.50 per child under 18

[vii] Although employers with between 50 and 100 fulltime employees need not comply with the employer mandate until 2016, they are still required to submit Forms 1094-C and 1095-C for the 2015 tax year.

[viii] See *King v. Burwell*, 759 F.3d 358 (4th Cir. 2014).

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