



ACA Update and Tackling the ACA's Reporting Requirements

Benefit Advisors Network

Stacy H. Barrow

(617) 526-9648

sbarrow@proskauer.com

February 4, 2015



Agenda

- Recent Developments
- ACA Reporting Requirements

Recent Developments: The Legal Landscape

- Administration fell to 2-1 in SCOTUS decisions in 2014
 - June 2012: Court upholds Individual Mandate
 - June 2012: Court strikes down Medicaid Expansion
 - **June 2014: Court held that Administration violated the Religious Freedom Restoration Act (RFRA) in *Hobby Lobby***
 - SCOTUS: HHS could have used *less restrictive measures* when dealing with for-profit employers who have religious objections to offering certain forms of emergency contraception
- 2015 may bring challenges re: whether the “opt-out” accommodation is the least restrictive alternative
 - Little Sisters of the Poor (10th Cir.)/Priests for Life (D.C. Cir.)

Recent Developments: The Legal Landscape

- SCOTUS will hear *King v. Burwell* in 2015
- Issue: Does ACA provide for subsidies in states with a federal Exchange?
- On its face, the ACA only provides subsidies for insurance purchased in state Exchanges
 - Majority of states have federal Exchanges
- This case can go either way
 - Does the Administration want to chance going down 3-1?
 - Will the Administration and Congress work together to fashion a legislative fix?



Recent Developments: EEOC & Health Risk Assessments

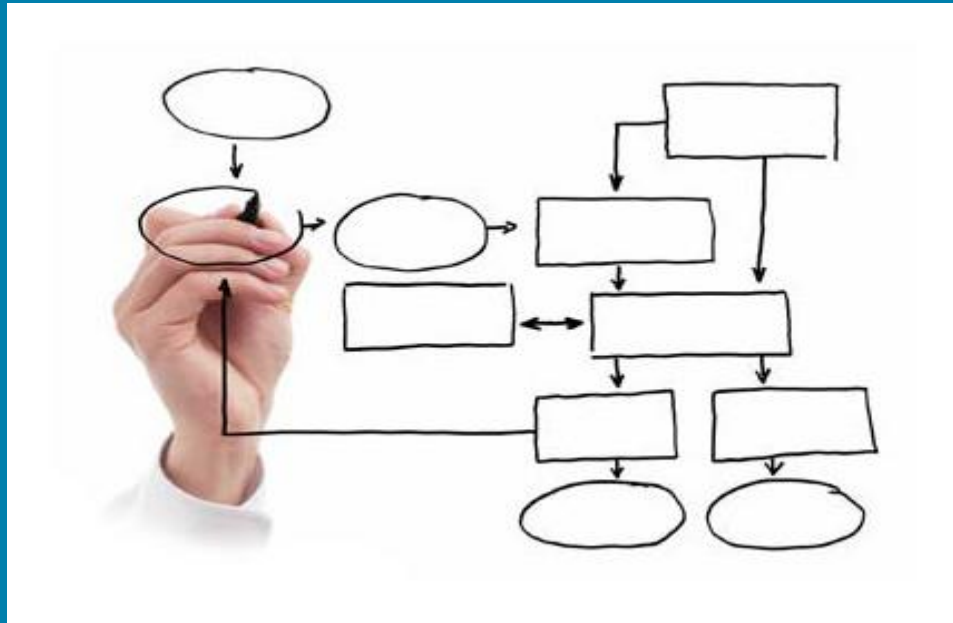
- Wellness is an important component of ACA
- Someone neglected to tell the EEOC
- DOL has blessed conditioning eligibility and amount of premium on completion of Health Risk Assessment (HRA), as long as not results-oriented
- EEOC sees *involuntary* HRA requirement as violation of ADA
- Three High Profile Cases Filed in 2014
- Will 2015 See More?
- Will *Seff v. Broward County* help?

Recent Developments: Employer “Opt-Out Credit”

- On 11/6/14 the Federal Regulators released FAQ XXII: Reiterates position on “premium reimbursement” and states that arrangements where employers pay an employee more to drop or not take coverage violates ERISA
- Focus was on high claims targeting strategy
- Impact is greater:
 - Service Contract Act employers who offer cash in lieu of benefits (based on rates in SCA contract)
 - Employment contracts in which employees opt out for higher pay

Recent Developments: SBC's

- On 12/22/14 the Federal Regulators released a joint notice of proposed rulemaking to amend the Summary of Benefits and Coverage and Uniform Glossary rule (fact sheet);
- Also released a proposed updated Uniform Glossary and proposed updated summary of benefits and coverage (SBC) templates, SBC language, instructions, and coverage example narratives and calculators.
- Proposed changes effective as of the first open enrollment period or plan year beginning on or after **September 1, 2015.**



ACA Employer and Provider Reporting

Overview of Reporting Requirements

- Code Sections 6055 (insurers and self-insured plans) & 6056 (applicable large employers – ALEs)
 - ALE: at least 50 full-time equivalent employees during prior year
- Effective Dates – Both reporting rules are effective in 2014; however, compliance is voluntary until 2015
 - First mandatory reporting in January/February 2016 for 2015
- Complex reporting requirements
 - Relief offered to employers who are offering affordable coverage to employees and to spouses and children
 - Reporting includes employers with 50-99 FTEs who are exempt from the pay-or-play mandate in 2015
 - Must *certify* on their Code § 6056 reporting filed in 2016 that they qualify for the transition relief in the pay-or-play regulations

Overview of Reporting Requirements

- Code Sections 6055 (insurers and self-insured plans) & 6056 (applicable large employers)
- Reminder: Applicable large employers are employers with at least 50 full-time employees (employees having an average of at least 30 hours of service per week), including full-time equivalent employees
- Employers are only required to report full-time employees under Code Section 6056; however, employers with self-insured plans must report on all covered employees to comply with Code Section 6055

Overview of Reporting Requirements

- Code § 6055 Reporting – **All health insurance providers**
 - Reporting used by government to track individual mandate compliance
 - Includes self-insured plans, but employers subject to §6056 reporting will report using Forms 1094-C and 1095-C instead
 - Reporting not required for HSAs, on-site medical clinics, wellness programs or dental/vision
 - Draft forms and instructions released
 - Form 1094-B (transmittal to IRS)
 - <http://www.irs.gov/pub/irs-dft/f1094b--dft.pdf>
 - Form 1095-B: (an employee statement)
 - <http://www.irs.gov/pub/irs-dft/f1095b--dft.pdf>
 - Instructions: <http://www.irs.gov/pub/irs-dft/i109495b--dft.pdf>
 - From an employer standpoint, only self-insured employers with less than 50 FTEs will use these forms – ALEs use 1094-C and 1095-C

Overview of Reporting Requirements

- Code § 6056 Reporting – **Applicable Large Employers**
 - Reporting used by government to track employer mandate compliance and determine eligibility for premium tax credits
 - Draft forms and instructions released
 - Form 1094-C (transmittal to IRS)
 - <http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf>
 - Filed with IRS by February 28 (March 31 if electronic)
 - Form 1095-C (an employee statement)
 - <http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf>
 - Provided to full-time employees by January 31
 - Fully-insured: Employer completes top half of the form
 - Self-insured: Employer completes both sections
 - Instructions: <http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf>
 - Electronic delivery is permissible with employee's consent

Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

Information about Form 1094-C and its separate instructions is at www.irs.gov/1094c.

CORRECTED

Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town	13 State or province	14 Country and ZIP or foreign postal code	
15 Name of person to contact		16 Contact telephone number	
17 Reserved			

For Official Use Only



18 Total number of Forms 1095-C submitted with this transmittal

Part II ALE Member Information

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member

21 Is ALE Member a member of an Aggregated ALE Group? Yes No

If "No," do not complete Part IV.

22 Certifications of Eligibility (select all that apply):

A. Qualifying Offer Method
 B. Qualifying Offer Method Transition Relief
 C. Section 4980H Transition Relief
 D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

_____ Signature
 _____ Title
 _____ Date

Part III ALE Member Information – Monthly

		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No				
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27	Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28	May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29	June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30	July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31	Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32	Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33	Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34	Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35	Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

DRAFT AS OF
JULY 2014
DO NOT FILE

Employer-Provided Health Insurance Offer and Coverage

Information about Form 1095-C and its separate instructions is at www.irs.gov/1095c.

VOID
 CORRECTED

Part I Employee						Applicable Large Employer Member (Employer)					
1 Name of employee		2 Social security number (SSN)		7 Name of employer		8 Employer identification number (EIN)					
3 Street address (including apartment no.)				9 Street address (including room or suite no.)		10 Contact telephone number					
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		11 City or town		12 State or province		13 Country and ZIP or foreign postal code	

Part II Employee Offer and Coverage	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
	14 Offer of Coverage (enter required code)												
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)													

Part III Covered Individuals																
If Employer provided self-insured coverage, check the box and enter the information for each covered individual. <input type="checkbox"/>																
(a) Name of covered individual(s)	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage												
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Employer ACA Reporting

- General Reporting Method
 - Full Reporting for all full-time employees
 - Reporting on a month-by-month basis
 - Lowest cost monthly premium for self-only coverage
 - To whom was coverage offered (employee, spouse, dependents?)
 - Did the coverage provide minimum value?
 - Indicator codes will be used to report certain other information



Employer ACA Reporting

- Code § 6056 – “General Reporting”
- Applicable large employers must report with respect to each full-time employee
- Each return must show—
 1. Employer name, address, and Tax ID
 2. Name and phone number of employer’s contact person
 3. Calendar year for which the information is reported
 4. Whether employer provided MEC to full-time EEs and their dependents
 5. Months minimum essential coverage was available
 6. Each FT EE’s monthly cost for EE-only, minimum value plan
 7. # of FT EEs for each month
 8. Name, address, and tax ID of each FT EE during the year and the months EE was covered
 9. Any other information specified in forms, instructions, or published guidance

Employer ACA Reporting – Simplified Method

- Code § 6056 – Simplified Method #1 – “Qualifying Offers”
- Qualifying offer is an offer of minimum value coverage to the employee that costs the employee no more than 9.5% of the FPL (~\$1,100 in 2014) for single coverage
 - Offer must include offer of MEC to spouse and children
- Employers making a qualifying offer will only need to report names, addresses, and tax IDs for employees who receive qualifying offers

Employer ACA Reporting – Simplified Method

- Employer reporting for employees who receive a qualifying offer for the entire calendar year is “simplified”
 - Form 1094-C – employer level data
 - Form 1095-C – indicator code to show qualifying offer was made
 - Employees receive Form 1095-C or a statement informing the employee that the family is ineligible for a premium credit that year
 - Note: Full reporting is required for employees not covered by a qualifying offer for entire calendar year
 - For 2015, employers making a qualifying offer to 95% of their FT employees (including spouses and children) may use the simplified reporting method for all employees, even those that did not receive a qualifying offer for the entire year
 - Forms will have a code indicating that an employee who did not receive a qualifying offer (or received no offer) may be entitled to the premium tax credit

Employer ACA Reporting – 98% Method

- Code § 6056 – Simplified Method #2 – “Option to Report without Separate Certification of FT Employees”
- Employers that offer affordable, minimum value coverage to at least 98% of employees (and dependents) included on the report may certify the offering without identifying which employees are full time
- Useful if the employer does not want to determine and report on who their full time employees are each month

Employer ACA Reporting – Multiemployer

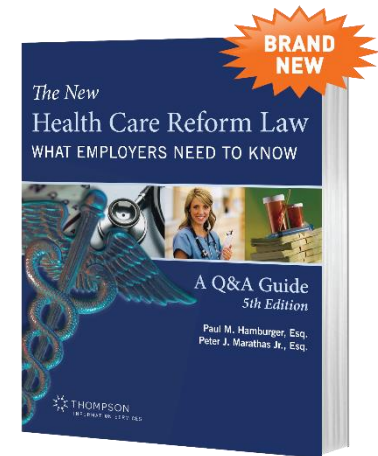
- Multiemployer plans may facilitate filing and furnishing returns for applicable large employers
- Liability for section 6056 reporting or information reporting penalties is not transferred to the multiemployer plan
- Liability for the section 4980H provisions remains with the employer

Employer ACA Reporting – Penalty Relief

- Penalty Relief for 2015
- Employers that show a good faith effort in complying with the information reporting requirements under section 6056 will not be liable for any accuracy related penalties
- The reasonable cause standards do apply under normal rules for those that fail to meet the timely reporting requirements

Questions?

- **Join Proskauer's ERISA blog at:**
<http://www.erisapracticecenter.com/>
- **Order the 5th Edition of Proskauer's Health Care Reform Book:** www.thompson.com/hcrln05



The information provided in this slide presentation is not, is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the firm, our lawyers or our clients. No client-lawyer relationship between you and the firm is or may be created by your access to or use of this presentation or any information contained on them. Rather, the content is intended as a general overview of the subject matter covered. Proskauer Rose LLP (Proskauer) is not obligated to provide updates on the information presented herein. Those viewing this presentation are encouraged to seek direct counsel on legal questions. © Proskauer Rose LLP. All Rights Reserved.