Health Care Reform Management Alert Series

Relief From Employer Mandate Penalties Until 2015

Issue 67

This is the sixty-seventh issue in our series of alerts for employers on selected topics in health care reform. (Click here to access our general summary of health care reform and other issues in this series) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

In an informal July 2nd blog post, a Treasury official announced that the Obama Administration intends to delay the following crucial employer mandate components until 2015:

- The employer reporting requirements that the IRS will use to facilitate the employer mandate penalty payments (under Internal Revenue Code Sections 6055 and 6056), and
- The employer mandate penalties (under Code Section 4980H).

Notably, it appears this transition relief does not extend to other provisions of the Affordable Care Act effective in 2014, including the 90 day limit on waiting periods, the exchanges (including the premium tax credits available to qualifying individuals), or the individual mandate.

Background

As described in Issues *45* and *48*, the Affordable Care Act requires large employers to pay a penalty if they fail to offer qualifying health coverage, starting in 2014. In addition, the Affordable Care Act requires employers to (1) report to the IRS whether they offer qualifying coverage to their full-time employees, and (2) provide a corresponding report to their full-time employees.

Delayed Effective Date for Reporting Requirement and Penalty

Yesterday, the Administration announced that it will delay for one year the effective date for the mandatory employer and insurer reporting requirements. The announcement indicated the IRS intends to issue guidance this summer on the reporting requirements, so employers will have more than a year to prepare before the requirement goes into effect. Recognizing that this transition relief will make it impractical to determine which employers owe shared responsibility payments for 2014, the transition relief also extends to the employer shared responsibility payments. In other words, the IRS will not assess penalties for failure to offer coverage in 2014. So, it appears the earliest an employer could be penalized for failure to offer coverage would be 2015 (with payments due in 2016).

Details Promised Next Week

The announcement (later confirmed by a senior advisor to the President) indicated the IRS will issue guidance within the next week providing additional details on the transition relief. The vague announcement leaves many unanswered questions, as detailed below. Specifically, nothing in the guidance indicated that the actual employer mandate (i.e., the requirement to offer coverage) will be delayed. But perhaps a delay in the penalty effectively results in a delay in the requirement to offer coverage.

Unanswered Questions

The Administration's announcement comes in the wake of several public announcements by employers (large and small) who intended to reduce employee hours and freeze hiring to avoid the costs associated with offering health coverage (or paying a penalty). The announcement indicates that during the 2014 transition period, employers are encouraged to maintain or expand health coverage. Presumably, the Administration hopes to stem this trend by delaying the penalty, but it leaves many unanswered questions.

- Will the IRS still require employers to take reasonable steps toward complying in 2014 to avoid penalties, or will employers get a free one-year pass? If employers are not required to offer qualifying coverage, will it cause employees to flood the exchanges?
- Will this transition relief further extend, through 2015 (or later), the previous transition relief granted:
    - For employers contributing to multiemployer plans?
    - From the dependent coverage requirement?
    - For employers with off-calendar year plan years?
    - For employers to treat full-time, temporary employees as variable hour employees if it cannot be determined that they will be employed at least 30 hours per week over the initial measurement period?
- How will the IRS determine which individuals have employer-sponsored coverage? (This information is necessary to determine (1) eligibility for tax credits on the exchanges, and (2) liability under the individual mandate.)
- Will employers still be required to report whether they offer "minimum essential coverage" and "minimum value" coverage on the SBCs issued for the 2014 plan year?
- Will the Department of Labor revise the model exchange notice to remove the information section regarding employer-provided coverage?

The Seyfarth Shaw Health Care Reform Team will monitor developments and supplement this Management Alert when the Obama Administration issues additional guidance.

Also, follow the Health Care Reform Team on *@SeyfarthEBLaw*

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