

July 3, 2013

BENEFITS NOTEBOOK

HEALTH CARE REFORM “PLAY-OR-PAY” MANDATE DELAYED

Most employers know that major portions of the health care reform laws enacted in 2010 are scheduled to take effect in 2014. On July 2, 2013 the Obama Administration delayed for a year one important piece of those laws.

Background

A key feature of the health care reform laws is the “employer shared responsibility” mandate, often referred to as “play-or-pay” rules. Those rules require “applicable large employers” either to offer “affordable” health coverage that provides “minimum essential coverage” and “minimum value” to their “full-time” employees or risk paying an excise tax.

Here is what those terms in quotation marks mean:

- Applicable large employers are generally those with an average of at least 50 full-time-equivalent employees.
- Health coverage is generally affordable if employees are not required to pay more than 9.5% of their household income for employee-only coverage.
- Minimum essential coverage may mean the 10 categories of health benefits that most health plans cover, though it may just mean employer health plan coverage.
- Minimum value means that the health plan pays at least 60% of allowed costs.
- Full-time employees are those that work an average of at least 30 hours per week.

Applicable large employers that fail to offer minimum essential coverage to at least 95% of their full-time employees could be subject to an excise tax if at least one of their full-time employees goes to a state health insurance exchange and qualifies for federally-subsidized coverage from the exchange. The penalty would generally be \$166.67 per month multiplied by the number of the employer’s full-time employees, minus the first 30 such employees.

Applicable large employers that fail to offer affordable coverage that provides minimum value to their full-time employees could be subject to an excise tax of \$250 per month multiplied by the number of the employer’s full-time employees that go to a state health insurance exchange and qualify for federally-subsidized coverage from the exchange.

The play-or-pay rules were scheduled to take effect January 1, 2014, with some relief for certain employers with fiscal-year health plans.

What Happened Yesterday

Yesterday, the Obama Administration delayed the play-or-pay rules for one year, to 2015. Although the [Administration’s announcement](#) didn’t mention it, the delay may have been

motivated in part by many states' failure to establish a health insurance exchange, leaving that burden to the federal government.

What it Means for Employers

- Employers that were reconfiguring themselves so they would not be applicable large employers have another year to consider how best to respond.
- Applicable large employers that were expanding their health plans to cover more employees, or reducing employee contributions to assure affordability or just bracing for the excise taxes have another year to redesign their health plans or prepare for the excise taxes.
- Employers with significant part-time or seasonal workforces who were preparing to monitor their employees' hours have another year to establish their monitoring systems, and reconsider how to employ their workers most effectively.

What Did Not Happen Yesterday

Health care reform was not repealed. So, a number of mandates still are scheduled to take effect for *plan years* beginning in 2014, including the following:

- The 90-calendar-day cap on waiting periods (which may shorten waiting periods in some medical plans);
- The prohibition of annual benefit limits (which may present problems for health reimbursement arrangements covering employees who are not covered by the employer's regular medical plan); and
- Deductibles (in small employer's health insurance plans) and out-of-pocket maximums in all medical plans will be capped.

In addition, new rules prohibiting discrimination in favor of highly compensated individuals in non-grandfathered, insured medical plans may take effect for plan years beginning in 2014, though that depends on when the IRS issues guidance interpreting the new rules.

What to Do

Employers should continue to prepare for the mandates that are scheduled to take effect in 2014, and for the play-or-pay rules now effective January 1, 2015, but perhaps without the feeling of near-panic a January 1, 2014 deadline engendered.

Bullard Law will continue to monitor developments regarding tax, benefits and health care reform. Please feel free to contact us at any time about health care reform or other labor, employment, or benefits issues.

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