



Center for Health

Health Care Reform

Part 2: Tactical Issues

HealthFlex Summit

October 21, 2014



General Board

Pension and Health Benefits

Caring For Those Who Serve

Agenda

- ACA Fees
- ACA HIPAA—HPID
- Reimbursement Plans
- ACA and Retiree Plans
- ACA Violations
- 2015-2016 Employer Shared Responsibility
- 2015 ACA Reporting Requirements

ACA: Affordable Care Act (Patient Protection and Affordable Care Act, PPACA)
HIPAA: Health Insurance Portability and Accountability Act
HPID: Health plan identifier

ACA Fees

PCORI* Fee

- **\$2** per covered life for 2013
 - **\$2.08** per covered life for 2014
 - Increases with inflation in future years
- General Board pays PCORI Fee for HealthFlex active plans and Medicare companion plans
- Plan sponsors pay PCORI Fee for OneExchange health reimbursement accounts (HRAs)

* **PCORI: Patient-Centered Outcomes Research Institute**

PCORI Fee

- Plan Sponsor Submits IRS **Form 720** with payment
- Submitted and paid by **July 31** of the year after the Plan Year of the fee
 - E.g., **July 31, 2014** for 2013 plan year
- Plan years **2012–2018**

Transitional Reinsurance Fee

Transitional Reinsurance Fee

Applies to fully-insured and self-insured plans for plan years **2014–2016**

Per Covered Life	
2014	\$63
2015	\$44
2016	\$25 (estimate)

Pay in two installments to U.S. Department of Health and Human Services (HHS)

- General Board will pay this fee for all HealthFlex active plans
- **Not applicable to OneExchange HRAs**

Reinsurance Program Fee

Timeline



* HHS: U.S. Department of Health and Human Services

Health Plan ID

ACA—Health Plan ID

November 5, 2014: Large health plans
Annual receipts (claims paid) \geq \$5 million

November 5, 2015: Small health plans
Annual receipts $<$ \$5 million

- Plan sponsor may obtain separate HPID* for each “sub-health plan”
- Online application with Health Insurance Oversight System (HIOS)

November 7, 2016

Covered entities must use HPIDs in any HIPAA standard transactions

- Self-insured plan sponsors (employers) will rarely use HPID (don't perform HIPAA standard transactions)
- But, plan's TPAs** and business associates may use HPID more often

* **HPID: Health plan identifier number**

** **TPA: Third-party administrator**

ACA—HPID

**November 5
2014**



General Board obtains
HPID for HealthFlex
active plans

**November 5
2014**

OneExchange plan sponsors
obtain HPID for
OneExchange HRA plans

- “Small health plans”
(annual receipts < \$5 million)

As of November 7, 2016

Plan sponsors must use HPIDs in any HIPAA standard transactions

ACA—HPID

- Application process completely online
 - Technical difficulties in 2014
 - Should be smoother in 2015
- Requires “authorized official” who can bind the organization to approve
- TPA cannot obtain the number on behalf of the plan
- General Board will supply **step-action aid** and **other tools** to help plan sponsors comply

ACA-HIPAA Certification

Proposed Regulations

Large Plans

Certify compliance with HHS by **December 31, 2015**

Obtain certification of HIPAA compliance in 2015 for:

- Eligibility
- Health claim status
- EFT* remittance

Small Plans (<\$5 Million)

Certify with HHS by **December 31, 2016**

* EFT: Electronic funds transfer

Penalties for Failure

\$1	Per covered life per day until failure is cured
\$2	Per covered life per day for knowing noncompliance

Maximum Penalties:

\$20	Per covered life annually
\$20	Per covered life annually for knowing noncompliance

Reimbursement Arrangements

Health Reimbursement Arrangements (HRAs)

IRS Notice 2013-54: Restrictions on health reimbursement arrangements (HRAs)

- No “stand-alone” HRAs for active employees
- HRAs only allowed if “integrated” with **group** plan
 - Allows establishment of “private exchanges”
 - Prohibits combining HRAs with public exchanges
- Stand-alone HRAs allowed for **retiree-only** plans
 - However, no PTC* for those retirees (i.e., no “double dip” on tax benefits)

* **PTC: Premium tax credit**

Employer Payment Plans

Restricts 1961 IRS rule (*Rev. Rul. 61-146*)—
had allowed employers to reimburse premiums paid for
individual health insurance policies on tax-favored basis
("employer payment plans")

- Many local churches relied on this practice
 - Particularly for lay employees, deacons, part-time clergy
- Individual policies (through exchanges or private market) **can only be paid with taxable income**

Marketplace plans cannot be paid tax-free:

- By employer, or
- Through cafeteria plan pre-tax (other than SHOP*)

* SHOP: Small Business Health Options Program

Flexible Spending Accounts (FSAs)

- **Permissible** if they qualify as **excepted benefits**
 - Not subject to ACA Market Reforms
- **Qualified** if:
 - Offered with **employer group health plan**
 - Contributions do not exceed **2x** employee salary deferral

FSAs should not be offered to employees who are not also offered group health plan coverage

Retiree Plans

ACA Market Reforms

- **Apply to all non-grandfathered group health plans**
 - No pre-existing condition exclusions
 - No annual/lifetime limits
 - Include: Dependents up to age 26, claims and appeals rules, preventive services, no rescissions, etc.
- **Don't apply to excepted benefits**
 - Vision, dental, employee assistance program, etc.
- **Don't apply to “retiree-only” plans**

“Retiree-Only” Plans

- Group health plans **do not include** plan with “fewer than two current employees”
 - Generally, these are “retiree-only” plans
- Exempt from ACA Market Reforms
 - **Key:** Exempt from annual limits prohibition
- Exempt from HIPAA (partly)

OneExchange HRAs: OK (generally)

Areas of Concern

Certain types of individuals covered in plans for retirees...may cause plan to have **more than one** “current employee”

- Long-term disabled covered
 - ACA: FAQ temporary guidance from Departments (government) allows them in retiree plans
- “Working aged”
 - **Retired-rehired** (reappointed retired clergy)
 - **Active employees age 65 and older**

“One Employee” Exception?

Strict reading of the Tax Code:

Employer plan with **only one*** employee:
exempt from ACA Market Reforms

- Example: Plan of small local church with one clergyperson, no lay employees

Would permit **single employee HRA or EPP****

- Nontaxable employer \$ used to purchase individual plan

* Fewer than two “current employees”

** EPP: Employer Payment Plan

ACA Violations

Excise Tax Penalties

- Plan sponsor violations of ACA
 - Market Reforms: SBC*, pre-existing condition exclusion, annual/lifetime limits, preventive health coverage, claims and appeals, patient protections, 105(h) nondiscrimination [fully-insured plans only]
- Plan sponsor is subject to an excise tax
- Enforcement action by DOL, HHS and IRS**
- Lawsuits by participants

* **SBC: Summary of benefits and coverage (standardized)**

** **DOL: Department of Labor; HHS: Department of Health and Human Services; IRS: Internal Revenue Service**

Excise Tax Penalties

- **Code §4980D**
 - **\$100 per day** per “affected individual”
 - Accumulates quickly...**\$36,500** annually
 - Maximum: **\$500,000** annually
- **Applies to church plans (no exemption)**

These are already in effect.

Employer Shared Responsibility

Employer Shared Responsibility

Also called “Employer Mandate” or “pay or play” rule

Effective date:

- Statute: **January 1, 2014**
- July 2013 delay for all employers → **January 1, 2015**
- New delay for some employers → **2016**

Applies only to large employers

- **Applicable large employer:**
averages **50 or more** full-time
equivalent employees (FTEEs)

Small employers:
(**<50 FTEEs**)—
exempt

UMC Impact

Employer Shared Responsibility Rule
should not apply to most UMC local churches

- But, each annual conference will likely have **a few** (up to **a few dozen**) local churches subject to the Rule
- Many **annual conference offices** affected
- **General agencies** affected

Final Rule Highlights



Mid-sized employers (50–99 FTEEs*)

Delay → January 1, 2016

Certification required: Employer must certify to IRS:

- No layoffs to avoid 100 FTEEs in 2014
- No benefits cutbacks 2014-2015



Large employers (100+ FTEEs)

Transition rules → easier compliance for 2015

- Offer coverage to **70%** of FTEs** in health plan
 - **2016:** Offer coverage to **95%** of FTEs
- Deduct **80** FTEs from “no coverage” penalty in 2015
 - **2016:** Deduct **30** FTEs

* FTEE: Full-time equivalent employee

** FTE: Full-time employee

Employer Offer of Coverage

- Large employers must provide “**affordable coverage**” with “**minimum value**” to:
 - Full-time employees (FTEs) (**30+** hours/week)
 - **Excludes** certain seasonal employees (< 6 months)
 - **Excludes** part-time employees
 - Dependent children of FTEs (up to age 26)
 - ... Or else pay a penalty
- Spouse coverage **not** required

Small employers: **Exempt**

Affordability

Three “Affordability” Rules

Employee’s Cost for Premium

ACA has several definitions of “**affordable**”

1

<9.5% of MAGI* for individual coverage

- Employer avoids Employer Mandate penalty (“pay or play”)
 - **Safe Harbor:** <9.5% of W-2 wages (known to employer) for individual coverage
-

2

>8.05% of MAGI for individual coverage

- Employee may avoid Individual Mandate penalty
 - Determined separately for spouse, dependent children
-

3

>9.56 % of MAGI for individual coverage

- Employer plan is **unaffordable**
 - **Employee is eligible for PTC!**
 - **Dependent coverage affordability “glitch”**
 - **Family coverage is “affordable” if cost to employee is <9.56% of MAGI for self-only coverage**
-

*MAGI: Modified adjusted gross income

Affordability Safe Harbors

Employer Shared Responsibility Rule

W-2 Wages: Employee contribution for self-only coverage in lowest-cost plan is **less than 9.5% of W-2 wages**

Rate of Pay: For any month, employee share of monthly cost for self-only coverage in lowest-cost plan is **less than 9.5% of 130 hours multiplied by employee's hourly rate of pay**

FPL*: For any month, employee share of monthly cost of self-only coverage of lowest-cost plan is **less than 9.5% of 1/2 of FPL** for a single individual

* **FPL: Federal poverty level**

Conference Affordability Approaches

Clergy (employee) contribution for **self-only** coverage



9.5%

of conference minimum salary

Similar to “rate of pay” safe harbor

**of federal poverty level (FPL)
for 2014**

9.5% of \$11,670 = \$92.39 per month
for **lowest cost plan**

Employer Aggregation

Employer Aggregation

**“Controlled Group” rules of Code §414(c) apply—
“lumping together” closely affiliated employers**

Local Churches

- Day care centers
- Schools and after-school programs
- Summer camps
- Other ministries

Conferences

- Summer camps
- Agencies, boards, etc.
- District offices
- Foundations
- *Possibly also:* schools, hospitals, retirement homes over which conference may have control for board appointments

Employer Aggregation

Rule for churches* → “**reasonable good faith interpretation**”

Common control exists where:

- **Test 1:** Organizations share EIN**
- **Test 2:** Organizations share **80%** of board members/trustees (or control 80% of other board), **or**
 - One organization provides **80%** of operating funds for another, **and**
 - Both organizations share some **common management or supervision**

* Churches and conventions and associations of churches

** EIN: Employer identification number

Counting Employees

Counting Employees

Employer Shared Responsibility Rule

Is an employer subject to the Rule in 2015?
 Counting to 50 (or 100) in 2014

Employee Type	Rule or Accommodation
Full-time employees (FTEs)	30 hours/week (130 hours/month)
Part-time employees (PTEs) (< 30 hours/week)	Added to FTE count to determine: <i>Is employer subject to Rule?</i> Aggregate monthly hours worked ÷ 120 (no employee counted >120 hours)
Paid-leave employees (vacation, jury duty, disability, leaves of absence)	Added to FTE count to determine: <i>Is employer subject to Rule?</i>
“Seasonal Workers”	Employer not subject to Employer Mandate (“Rule”) if exceeds 50 FTEEs solely due to seasonal employees for less than 120 days of year

Penalties

Offer of Coverage



“Large” Applicable Large Employer (100+ FTEEs)

- **2015:** Offer coverage to **70%** of FTEEs
- **2016:** Offer coverage to **95%** of FTEEs



“Mid-sized” Applicable Large Employers (50–99 FTEEs)

- **2015:** Not required to offer coverage (must certify to IRS)
- **2016:** Offer coverage to **95%** of FTEEs

Penalties

No Coverage At least one FTE qualifies for PTC*	Penalty 2015 = \$2,000 per FTE (minus first 80 FTEs)
	Penalty 2016 = \$2,000 per FTE (minus first 30 FTEs)
Inadequate Coverage Employer offers coverage and at least one FTE qualifies for PTC*	Penalty = \$3,000 per FTE <i>who receives PTC</i> (limited to “No Coverage” penalty)
Penalties adjusted for inflation after 2014	

Part-time employees count toward determining applicability of the Rule—
but **do not count** for penalty assessed.

* PTC: Premium tax credit

Are you a large employer?

At least 50 FT equivalent workers

- Including FT (30+ hours/week) and PT workers (prorated)
- Excluding seasonal workers (up to 120 days per year)

Yes

No

Are any of your FT employees receiving PTC for exchange coverage?

No

Yes

Do you have more than 80 FT (2015) or 30 (2016) FT employees?

No

Yes

Do you provide health insurance?

No

Yes

No
Penalty

Pay monthly penalty
 $1/12 \times \$2,000 \times [\text{number of FT employees} - (80) \text{ or } (30)]$

Pay monthly penalty, *lesser of*:

$1/12 \times \$2,000 \times (\text{number of FT employees} - 80 \text{ or } 30)$

$1/12 \times \$3,000 \times (\text{number of FT employees receiving credits for exchange coverage})$

Plan Reporting (§6055)

Reporting Health Coverage

Minimum Essential Coverage (MEC) Reporting (Code §6055)

HealthFlex intends to report for all plan participants and dependents

- Required for 2015 coverage (annually thereafter)
- Plan submits *Form 1095-B* to IRS (**March 31, 2016**)
- Plan provides statement (copy of *Form 1095-B*) to all HealthFlex covered individuals by **January 31, 2016**
- Verifies HealthFlex participants comply with ACA Individual Mandate

Employer Reporting (6056)

Employer Coverage Reporting

Applicable large employers* must report covered full-time employees to IRS (Code §6056)

- **Required for 2015 calendar year**
 - Even if employer is subject to Employer Mandate 2016 “delay”
- Submit *Form 1095-C* for each covered FTE (with single cover *Form 1094-C*)—
February 28, 2016
 - Electronically: **March 31, 2016**
- Provide statement to each covered FTE:
January 31, 2016

HealthFlex will **not** perform this reporting for plan sponsors or local churches.

* Applicable large employer: 50+ full-time equivalent employees

Employer Certification (2015)

Mid-sized employers (50-99 FTEEs) must **certify** their eligibility for extra year's delay

Certification required for 2015: *Form 1095-C*

1. **50-99 FTEEs** in 2014
2. **Did not cut staff** to have fewer than 100 FTEEs (February 9 – December 31, 2014)
3. **Did not/will not drop or reduce health coverage** (February 9, 2014 – Dec 31, 2015)

Employer Coverage Reporting

§6056 Report must include:

1. Name, address, EIN* of employer
2. Contact person at employer
3. Certification that employer offered coverage to FTEs and dependent children
4. FTEs for each month
5. FTEs' share of premium of lowest-cost plan
6. Name, address, TIN* (SSN*) of each FTE (not dependents or spouses)

* EIN: Employer identification number; TIN: taxpayer identification number;
SSN: Social Security number

Questions?

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