ACA Update: Where are we, what's next and will it end! ?

Greg Puig, PPACA Sentinel Benefits & Financial Group
Bill Enck, BerryDunn Employee Benefits Group

Sentinel Benefits & FINANCIAL GROUP

BerryDunn

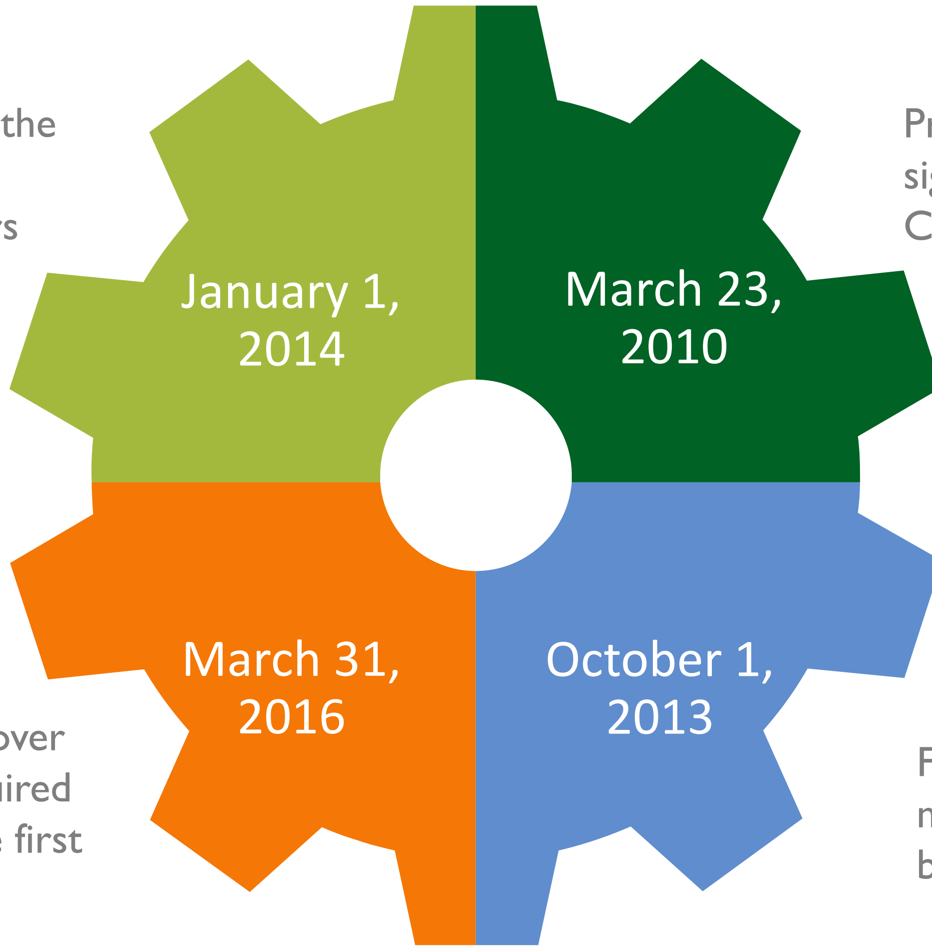
Past: 1940s

- Until World War II, few Americans had health insurance and most policies covered only hospital care, board and ancillary services.
- The War caused wage and price controls on American employers which lead them to search for a new way to attract talent – health benefits.
- This initiative gave rise to the employer based system that is in place today.
- During this time, Blue Cross became a household name by offering private coverage for hospital care in many states

Present: 2010 & Beyond

Many aspects of the ACA begin to impact employers

President Obama signs the Affordable Care Act (ACA)



Employers with over 50 FTEs are required to report for the first time.

Federal and State marketplace enrollment begins for the first time.

Who is a "full-time" employee?

A "full-time" employee is an employee who worked an average of 30 or more hours per week during a calendar month.

Example of calculation of a "full-time equivalent" employee

In June, Rob worked 90 hours, John worked 76 hours and Danielle worked 100 hours. Their combined hours (266) divided by 120 = 2.22 full-time equivalent employees for June.

$$(\overset{\text{Rob}}{90} + \underset{\text{John}}{76} + \overset{\text{Danielle}}{100}) \div 120 = \overset{\text{Full-Time Employees}}{2.22}$$

Know the Penalties #1

Applicable for Large Employers for 2016

- If a large employer does not provide "minimal essential" (basic medical) coverage to at least 95% of its full-time employees in 2016, the employer will owe a penalty of $166.67 per month ($2,000 per year) on all its full time employees, less the first 30.

Know the Penalties # 2

Applicable for Large Employers for 2016

- If a large employer does not offer affordable, minimum value coverage to its full-time employees, the employer will owe a penalty of $250/month ($3,000/year) for EACH full-time employee who **receives subsidized** coverage though a public Marketplace/Exchange.

Employer Mandate: Who Should Worry?

Size Matters. For 2016 and beyond:

Small Employer	49 OR LESS FT & FTE employees
Applicable Larger Employer (ALE)	
~~MID-SIZE~~	~~50-99 FT & FTE employees~~
LARGE	50 OR MORE FT & FTE employees

Controlled Group and Affiliated Service Group member Employers are Aggregated!

Employer Mandate: 2016 Rules

Employer "Play or Pay" rules become effective

"a" PENALTY

- FT employees only
- 95%
- Ignore minimum value & affordability
- Penalty of **$2,160**/year/FT employee – less deductible [If even one FT employee receives a subsidy]
- **AVOID AT ALL COSTS (UNLESS INTENTIONAL FAILURE)**

"b" PENALTY

- FT employees only
- Does coverage provide minimum value?
- Is coverage affordable?
- Penalty of **$3,240**/year/FT employee who receives a subsidy
- **Much more room for design ideas than with "a" penalty**

Affordability 2016

Employee share < 9.66% of employee household income
Cost of lowest priced single coverage

Three Safe Harbors available (9.66%):

- W-2
  [reduced income issue]
- Rate of Pay
  [reduced hours issue]
- Poverty line
  [low annual rate issue]

HRA (employer payment plan): Affordability

How do ER contributions to an HRA affect Affordability?

- Newly available ER contribution amounts available for use for premiums or for cost-sharing are counted towards affordability
- ER amounts must be required and/or determinable under arrangement

Cafeteria Plan Flex Contribution treatment: Affordability

How do ER flex contributions affect affordability?

- If the EE may not elect to receive the flex contribution as cash and the EE may use the amount to exclusively pay for medical care, then-
- ER flex amount counts towards affordability.
- Called a "Health Flex Contribution" – *these amounts may not be used for non-healthcare benefits*

Opt-out payments: Affordability

Unconditional opt-out payments will negatively affect affordability for purposes of "b" penalty and Form 1095-C reporting.

- For now – new arrangements adopted after 12/16/2015 must comply now.
- Existing arrangements adopted on or before 12/16/2015 will not affect affordability until final regulations.
- *Note: EE may claim that affordability is impacted and potentially get a subsidy!*

"Eligible opt-out arrangement" - new guidance in proposed regulations!

Employer Penalties: How do you know?

	When		
Section 1411 Certification	~~2015~~ **2016**	Right to appeal	• From the Marketplace • Certifies that EE has qualified for a subsidy – may trigger penalty
IRS Initial Contact	Fall 2016 for 2015	Right to respond	• Written communication to ER • Will summarize potential penalty
IRS Issues Notice & Demand for Payment			

Employer Penalties – How do you know

Marketplace notices being issued to employers for 2016

- For employees who qualified for a premium credit
- Sent to "benefits manager"
- 90 days to appeal
- How do I and why should I appeal?

What are the reporting requirements?

TYPE OF REPORTING	AFFECTED EMPLOYERS	REQUIRED INFORMATION	EFFECTIVE DATE
Code §6055—Reporting of health coverage by health insurance issuers and sponsors of self-insured plans	Employers with self-insured health plans	Information on each individual provided with coverage (helps the IRS administer the ACA's individual mandate)	Delayed until 2015 The first returns will be due in 2016 for coverage provided in 2015
Code §6056—Applicable large employer (ALE) health coverage reporting	Applicable large employers (those with at least 50 full-time employees, including full-time equivalents)	Terms and conditions of health plan coverage offered to full-time employees (helps the IRS administer the ACA's employer shared responsibility penalty)	

What are the Forms for 6056 Reporting?

Form No.	Form Name	Used to:
1094-C	Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return	• **Report summary information for each employer to the IRS** • Certify eligibility for transition relief (including medium-sized employer delay) • Transmit Forms 1095-C to the IRS
1095-C	Employer-Provided Health Insurance Offer and Coverage	• **Report information about each employee** • **Provided to the IRS and Employees**

Reporting penalty relief

- IRS reiterates that good-faith-effort relief applies only to incorrect or incomplete Forms 1094 and 1095
- Relief is not provided for late or non-filed reports! Unless reasonable cause exists

Greg & Bill's Crystal Ball…

We do not see the Affordable Care act going away any time soon…

- What impact might the presidential election have on the ACA?
  - Should Hillary Clinton win:
    - ACA would stay in tact and potentially expand
    - Potential elimination of the tax free status of employer health contributions
  - Should Donald Trump win:
    - There will be an attempt to repeal the ACA
    - HSA Expansion
  - Regardless of who wins:
    - Potential elimination of the Cadillac tax

Interested In More? Contact us.

Greg Puig
gregory.puig@sentinelgroup.com

Bill Enck
benck@berrydunn.com