

Health Care Reform Checklist 2015

1. Evaluate Grandfathered Status of Group Health Plan

A grandfathered plan is one in existence as of March 23, 2010 that has covered at least one person continuously from that day forward. Grandfathered plans **do not have to comply with certain ACA rules.**

- » Determine whether any changes to the plan that reduce benefits or increase costs to employees and dependents enrolled in coverage result in a loss of grandfathered status.
- » **If the plan loses grandfathered status**, confirm that the plan design and benefits offered reflect all ACA requirements that previously did not apply because the plan was exempt (such as coverage of preventive services without cost-sharing).
- » **If the plan remains grandfathered**, provide a Notice of Grandfathered Status whenever a summary of plan benefits is provided to participants and beneficiaries. Continue to maintain records documenting the terms of the plan that were in effect on March 23, 2010, and any other documents necessary to verify grandfathered status.

2. Review Plan Documents for Required Changes to Plan Benefits

Certain requirements apply on a plan year basis, meaning the changes take effect when a group health plan begins a new plan year. As a result, compliance deadlines may vary.

All Group Health Plans:

- » Ensure that any **waiting period**—the time that must pass before coverage can become effective for an employee or dependent that is otherwise eligible to enroll in the plan—does not exceed 90 days. (Other conditions for eligibility that are not based solely on the lapse of a time period are generally permissible.)
 - If the plan requires completion of a reasonable and bona fide employment-

based orientation period as a condition for eligibility, ensure the orientation period **does not exceed one month** and the maximum 90-day waiting period begins on the first day after the orientation period. (Note: Employers subject to “pay or play” may not be able to impose the full one-month orientation period and the full 90-day waiting period without potentially becoming subject to a penalty.)

- » Confirm that no **annual dollar limits** apply to coverage of “essential health benefits.” If the plan limits the number of visits to health providers or days of treatment, verify that the visit or day limit does not amount to a dollar limit.
- » Verify that **preexisting condition exclusions** for all individuals—regardless of age—have been removed. (Note: The requirement to issue certificates of creditable coverage, which could be used to reduce the preexisting condition exclusion period applied to an individual, is eliminated as of December 31, 2014.)

Non-Grandfathered Group Health Plans Only:

- » For small group plans, confirm the plan covers “essential health benefits,” a comprehensive package of items and services. (This requirement does not apply to self-insured plans or plans offered in the large group market.)
- » Ensure that annual out-of-pocket costs for coverage of all “essential health benefits” (EHBs) provided in-network do not exceed \$6,600 for self-only coverage or \$13,200 for other than self-only coverage for plan years beginning in 2015.
 - Plans with more than one service provider may structure a benefit design using separate out-of-pocket limits across multiple categories of benefits (rather than reconcile claims across multiple service providers), provided the combined amount of any separate out-of-pocket limits

Health Care Reform Checklist 2015

applicable to all EHBs under the plan does not exceed the annual limit.

- A plan that includes a network of providers may, but is not required to, count out-of-pocket spending for out-of-network and non-covered items and services towards the plan’s annual maximum out-of-pocket limit.

Note: Certain small businesses may be allowed to renew existing group coverage that does not comply with the requirements to cover essential health benefits and limit annual cost-sharing under the plan, through policy years beginning on or before October 1, 2016. Not all states and insurers will permit coverage to renew. Businesses that are eligible to continue existing coverage will receive a notice from their insurance companies for each policy year

3. Analyze Tax-Favored Arrangements

Employers who maintain cafeteria plans, HRAs, and health FSAs should confirm that these arrangements comply with several ACA changes that took effect in 2014.

Health Reimbursement Arrangements (HRAs)

- » Confirm that the HRA (other than a retiree-only HRA or an HRA consisting solely of excepted benefits) is **“integrated” with other group health plan coverage** in order to satisfy the preventive services requirements and the annual dollar limit prohibition.
 - To be “integrated,” an HRA must meet specific requirements under either of two methods described in agency guidance. Both methods require that the employer offer a group health plan (other than the HRA) to employees—either a plan that does not consist solely of excepted benefits or a plan that provides minimum value.
- » Confirm that the HRA is **not being used to reimburse an employee’s individual insurance policy premiums**. Such an arrangement may be

subject to a \$100/day excise tax per applicable employee (which is \$36,500 per year, per employee).

Health Flexible Spending Arrangements (FSAs)

- » Confirm that the health FSA **qualifies as excepted benefits** to comply with the preventive services requirements.
 - Health FSAs are considered to provide only excepted benefits if the employer also makes available group health plan coverage that is not limited to excepted benefits and the health FSA is structured so that the maximum benefit payable to any participant cannot exceed two times the participant’s salary reduction election for the health FSA for the year (or, if greater, cannot exceed \$500 plus the amount of the participant’s salary reduction election).
- » Confirm that the health FSA is **offered through a cafeteria plan** (a plan which meets specific requirements to allow employees to receive certain benefits on a pre-tax basis) in order to comply with the annual dollar limit prohibition.
- » Ensure plan documents are amended by December 31, 2014 to reflect that employee salary reduction contributions to health FSAs are limited to \$2,500 annually (as adjusted for inflation), effective as of plan years beginning in 2013. For taxable years beginning in 2015, the annual limit increases to \$2,550.
 - The amendment to the written cafeteria plan may be expressed as a maximum dollar amount, a maximum percentage of compensation, or by another method of determining the maximum salary reduction contribution.
- » Determine whether you will allow employees to carry over up to \$500 of unused health

Health Care Reform Checklist 2015

FSA amounts to use in the following plan year under the modified “use-or-lose” rule, and adopt appropriate plan amendments. (A plan incorporating the carryover provision **may not also provide for a grace period** in the plan year to which unused amounts may be carried over.)

Cafeteria Plans Generally

- » Determine whether you will allow employees to make additional mid-year changes in salary reduction elections in the event of an employee’s enrollment in Health Insurance Marketplace coverage and/or a reduction in an employee’s hours of service, as permitted in agency guidance, and adopt appropriate plan amendments.
- » Confirm that section 125 plan documents were amended to comply with the prohibition on providing a qualified health plan offered through the Health Insurance Marketplace as a benefit under an employer-sponsored cafeteria plan.

4. Provide Required Notices to Employees and Dependents

Please contact your carrier or an employment law attorney if you have questions regarding these notices.

Availability of Health Insurance Exchanges (Notice of Coverage Options)

- » Provide a written notice with information about a Health Insurance Exchange (Marketplace) to each new employee at the time of hiring, **within 14 days of the employee’s start date**. Employers are not required to provide a separate notice to dependents.
 - Two model notices are available to help employers comply with this requirement— one notice for employers that offer a health plan, and another notice for those that do not.

Summary of Benefits & Coverage (SBC) and Notice of Plan Changes

- » Confirm contractual arrangements with the carrier (insured group health plans) or third party administrator (self-insured plans) to prepare and provide the SBC. If the carrier or TPA does not assume responsibility, the employer should provide this notice (without charge) to employees and beneficiaries at specified times during the enrollment process and upon request.
- » If not already done, **update SBCs** to include language indicating whether the plan provides “minimum essential coverage” (the type of coverage an individual needs to satisfy the ACA’s individual mandate), and whether the plan meets the ACA’s “minimum value” standard (meaning the plan pays for at least 60% of covered health care expenses).
 - An SBC template that includes the additional language is available for use. Until further guidance is issued, a plan that is unable to modify its current SBC template may continue to use the previously authorized template, **so long as** the SBC is furnished with a cover letter or similar disclosure stating whether the plan does or does not provide “minimum essential coverage” and “minimum value.”
- » Ensure that enrollees are provided with notice of any material modification that would affect the content of the SBC (and that occurs other than in connection with coverage renewal or reissuance) **no later than 60 days prior to the effective date of the change**.

Health Care Reform Checklist 2015

5. Determine “Pay or Play” Responsibilities

Beginning in 2015, certain large employers will be subject to the ACA employer shared responsibility (“pay or play”) requirements. Due to the complexity of the law in this area, employers are strongly advised to work with knowledgeable employment law counsel to ensure full compliance.

- » Determine “**large employer**” status for the upcoming calendar year by calculating the average number of full-time employees and full-time equivalents (FTEs) across the months in the current year. (Note: For the 2015 calendar year, an employer may use any consecutive six-month period in 2014 to determine the number of full-time employees and FTEs.)
 - An employer that exceeds 50 full-time employees (or 99 under the 2015 transition relief discussed below), including FTEs, for **120 days or less** (or 4 calendar months) during 2014 is not subject to the requirements for 2015 if the employees in excess of 50 (or 99) during that period were **seasonal** workers.
- » Determine whether **transition relief** is available for 2015:
- » Large employers with **50 to 99 full-time employees** (including FTEs) that certify they meet certain eligibility criteria related to workforce size, maintenance of workforce and aggregate hours of service, and maintenance of previously offered health coverage, will not have to comply with “pay or play” until 2016.
- » Large employers that **maintained non-calendar year plans** as of December 27, 2012, that were not modified thereafter to begin at a later date, may be able to begin compliance at the start of their plan years in 2015.

Large Employers Subject to “Pay or Play” in 2015
*The following applies to employers with **100 or more full-time employees** (including FTEs) and employers with*

50 to 99 full-time employees (including FTEs) that do not qualify for the transition relief described above.

- » Determine whether group health plan coverage will be offered to **full-time employees**, using the measurement methods and rules for calculating hours of service described in the “pay or play” final regulations.
 - An employee is full-time for a calendar month if he or she averages at least 30 hours of service per week (or 130 hours for the month). The final regulations describe approaches that can be used for various circumstances, such as for employees who work variable hour schedules, seasonal employees, and employees of educational organizations.
- » For employers offering coverage, review the cost of your group health plan coverage to determine whether it is **affordable**.
 - Coverage is unaffordable if an employee’s required contribution for self-only coverage exceeds 9.5% of his or her household income for the taxable year. (Employers may use a number of safe harbors to determine affordability, including reliance on Form W-2 wages.)
- » For employers offering coverage, determine whether your group health plan coverage provides **minimum value**.
 - A plan generally provides minimum value if it pays for at least 60% of covered health care expenses. (Federal agencies have produced a minimum value calculator for employers to enter certain information about the plan. Other methods available to determine minimum value are described in proposed regulations. However, results of the calculator—or any other method chosen—should be carefully reviewed with benefits counsel.)

Health Care Reform Checklist 2015

- » **Determine if a penalty may apply.** For 2015, a large employer subject to “pay or play” may be liable for a penalty if it does not offer affordable health insurance that provides minimum value to its full-time employees (and their dependents, unless transition relief applies), and any full-time employee receives a premium tax credit for purchasing individual coverage on the Health Insurance Marketplace. (Note: In determining if a penalty applies, employers should be aware of limited non-penalty periods provided for in the “pay or play” final regulations, during which an employer generally will not be subject to a penalty.)

6. Prepare for Compliance With Information Reporting Requirements

Information reporting is used to determine compliance with the ACA individual responsibility and “pay or play” provisions. While the information reporting requirements are first effective for coverage offered (or not offered) in 2015, the initial deadlines for reporting entities are in 2016.

- » Determine if you are a reporting entity (and what type) to understand applicable reporting requirements:
 - **“Section 6055” Reporting Entities.** Self-insuring employers that provide **minimum essential health coverage** are required to report information on this coverage to the IRS and to covered individuals under section 6055 of the Internal Revenue Code.
 - **“Section 6056” Reporting Entities.** Employers with 50 or more full-time employees (including FTEs) are required to report information to the IRS and to their employees about their compliance with “pay or play” under Internal Revenue Code section 6056—even those that qualified for 2015 transition relief from the “pay or play” provisions.

- » Begin compiling the required information for section 6055 reporting and/or the required information for section 6056 reporting.
- » Review the IRS Draft Forms and Instructions to prepare for compliance, and stay tuned for finalized forms and instructions.
 - Draft Forms 1094-B and 1095-B, along with Draft Instructions, are available for **section 6055** reporting entities.
 - Draft Forms 1094-C and 1095-C, along with Draft Instructions, are available for **section 6056 reporting** entities (or employers that are subject to both reporting provisions).
- » Determine whether to hire a **third party** to fulfill reporting responsibilities (reporting entities will still be liable for the failure to report information and furnish employee statements).
- » For section 6056 reporting entities, determine whether you will use the general method of reporting or the simplified alternative method to satisfy the reporting requirements.
- » If the reporting entity plans to furnish employee statements **electronically** in 2016, ensure that affirmative consent is obtained from employees prior to furnishing (section 6056 reporting entities **must also** ensure that certain notice, hardware, and software requirements are met).
- » Remember to comply with the information reporting deadlines for calendar year 2015.

Section 6055 Deadlines:

- » First information returns must be filed **no later than February 29, 2016** (or March 31, 2016, if filed electronically).
- » First employee statements must be furnished **on or before January 31, 2016**.

Health Care Reform Checklist 2015

Section 6056 Deadlines:

- » First information returns must be filed **no later than February 29, 2016** (or March 31, 2016, if filed electronically).
- » First employee statements must be furnished **on or before January 31, 2016**

7. Other Action Items for 2015

The following outlines actions required for continued ACA compliance, as well as additional items that may be of significance for certain employers and group health plans.

- » **Additional Medicare Tax for High Earners.** Remember to withhold Additional Medicare Tax (0.9%) on wages or compensation paid to an employee in excess of \$200,000 in a calendar year.
- » **Coverage of Preventive Services.** Continue to monitor guidelines for preventive services, which are regularly updated to reflect new scientific and medical advances. As new services are approved, non-grandfathered group health plans will be required to cover them with no cost-sharing for plan years beginning one year later.
- » **Medical Loss Ratio (MLR) Rebates.** Distribute rebates received from insurance companies to eligible plan enrollees as appropriate. Rebates are due to employer-policyholders by **September 30th** starting in 2015. These rules do not apply to employers who operate self-insured plans.
- » **PCORI Fees.** Employers sponsoring certain self-insured health plans (including HRAs and FSAs not treated as excepted benefits) are responsible for fees to fund the Patient-Centered Outcomes Research Institute (PCORI). IRS Form 720 must be filed annually to report and pay the fees no later than July 31st of the year following the last day of the plan year to which the fee applies.
- » **Form W-2 Reporting of Employer-Provided Health Coverage.** Continue to report the cost of health coverage provided to each employee annually on Form W-2, which must be furnished to employees by January 31st each year, unless transition relief applies. (This requirement **does not apply to employers required to file fewer than 250 Forms W-2 for the preceding calendar year.**)
- » **Simple Cafeteria Plans.** If eligible, consider whether your company could benefit from establishing a simple cafeteria plan, which may be treated as meeting certain IRS nondiscrimination requirements.
- » **Small Business Health Care Tax Credit.** Determine if your company qualifies for the small business health care tax credit. For tax years beginning in 2014 or later, the credit is available to eligible employers for two consecutive taxable years. The maximum credit is 50% for small business employers; however, only premiums paid for qualified health plans offered through a Small Business Health Options Program (SHOP) count for the credit.
- » **Transitional Reinsurance Program Fees.** The Transitional Reinsurance Program collects contributions from employers sponsoring certain self-insured plans that provide major medical coverage. Employers with self-insured plans may utilize a third party administrator or administrative-services-only contractor for transfer of the contributions. (Note: For 2015 and 2016, a self-insured plan that does not use a third party administrator to perform its claims processing, claims adjudication, and enrollment functions generally does not have to pay these fees.)

Health Care Reform Checklist 2015

- The 2014 benefit year contribution can be made in one payment—**no later than January 15, 2015** reflecting \$63.00 per covered life—or in two separate payments, with the first contribution amount of \$52.50 per covered life to be remitted **no later than January 15, 2015**, and the second contribution amount of \$10.50 per covered life to be remitted no later than **November 15, 2015**.
- » **Start Preparing for 2016.** Employers with 50 to 99 full-time employees that qualified for transition relief from the “pay or play” requirements, and businesses that renewed coverage that did not comply with certain ACA requirements, should consult with a knowledgeable benefits advisor or legal counsel to determine the necessary actions to comply with the ACA’s provisions in 2016. Employers with at least 50 full-time employees should also finalize compliance with the information reporting requirements.