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Navigating the Affordable Care Act

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It's 2014 – What's Already Been Done

- Coverage for dependents to age 26
- Lifetime dollar limits on essential health benefits prohibited
- Annual dollar limits on essential health benefits prohibited in 2014
- Pre-existing condition exclusions eliminated for all in 2014
- Rescissions prohibited in most cases
- Improved internal claims and appeals process; compliance with ERO



It's 2014 – What's Already Been Done?



- Consumer MLR rebates
- Employers report cost of health coverage on W-2
- OTC medicine/drugs are qualified medical expenses for FSA/HSA/HRA only if prescribed by doctor
- SBCs provided with OE
- Additional preventive services covered for women
- PCORI fees begin

It's 2014 – What's Already Been Done?



- Notice of Marketplace
- Medicare Part D subsidy deduction eliminated
- Medicare hospital insurance tax rate for high wager workers increased
- FSA contributions currently limited to \$2500
- Individual mandate begins
- Marketplaces begin operation
- Re-insurance fee effective from 2014 – 2016
- No waiting periods longer than 90 days

It's 2014 – What's Already Been Done?

- Small group and individual plans must offer comprehensive benefits coverage



On The Horizon

- Applicable large employers (ALEs) with 100+ FT employees must offer affordable coverage with minimum value or pay a penalty – 2015
- Applicable large employers with 50-99 FT employees must offer affordable coverage with minimum value or pay a penalty – 2016
- Cadillac tax – 2018
- Automatic enrollment - ?

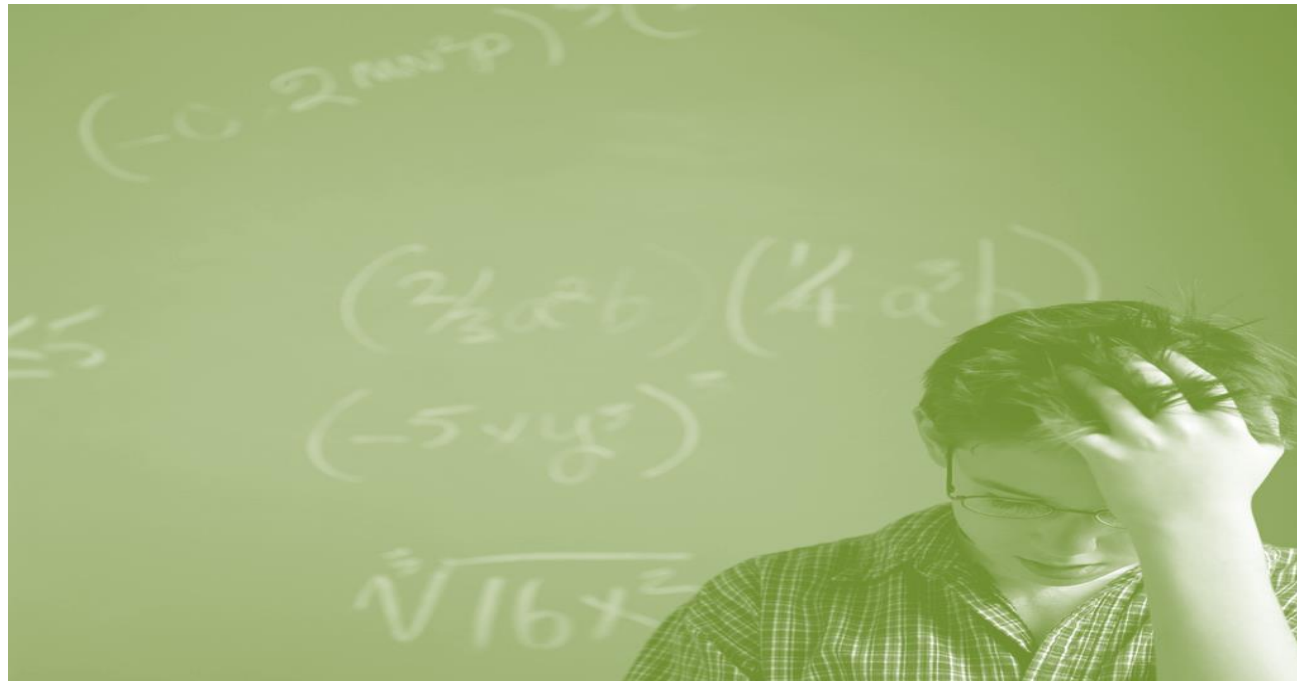


Who is An ALE?

- FT employee = employee working an average of 30 hours/week
- Look at total number of employees, not just those on plan – including seasonal
 - Count FT employees (including seasonal) by month
 - Count part-time employees (e.g. two PT employees each working 15 hours/week = 1 FT employee) by month; still includes seasonal
 - Add FT + PT employees by month
 - Divide by 12

Who is An ALE?

- If the only reason you are an ALE is due to the presence of seasonal employees, then back those employees out of the equation



ALEs, What Are Your Options?



- Walmart
 - New associates hired after Feb. 1, 2012 will receive benefits after one year of service **and** if they work an average of 30 hours per week
 - Walmart has more than 300,000 associates that have been with the company for 10 years or more.
 - Part-time associates hired prior to Feb. 1, 2012, were grandfathered under the old requirements, meaning they had to average 24 hours of work a week, and associates hired before Jan. 15, 2011, were grandfathered under the old requirements

ALEs, What Are Your Options?



- Target
 - Health Insurance Marketplaces
 - provides new options for health care coverage
 - part-time team members may prefer
 - Offering insurance could disqualify many for newly available subsidies
 - Majority of eligible part-time team members don't enroll
 - Less than 10 percent of our total team member population participate in part-time plans
 - Effective April 1, 2014
 - Discontinue part-time health insurance coverage for part-time team members

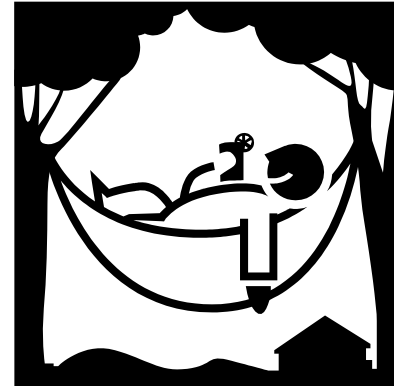
ALEs, What Are Your Options?



- Target
 - Part-time team members who are currently enrolled in Target's health coverage and who are losing
 - \$500 cash payment
 - Provide one-on-one support to every affected team member.
 - Team members who average between 20 and 31 hours
 - Eligible for benefits
 - Target matches dollar for dollar up to 5 percent
 - Team members who average 32 hours or more
 - Eligible for comprehensive health insurance

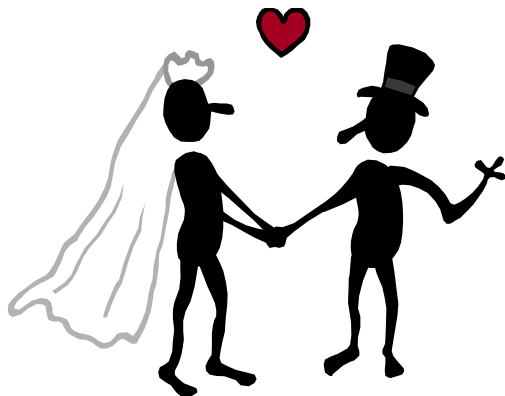
Workforce Planning

UPS



Cost \$

Scheduling



What Measurement/Stability Periods Do I Choose?



- Depends on workforce, work scheduling, and corporate culture
 - Longer measurement periods = fewer employees determined FT
 - On plan for longer period of time
 - Shorter measurement periods = administrative burden
 - Increases risk of mistakes – could result in penalty
- Consider amending plan document language to reflect rules
 - Mirroring locked-in FT status during stability period
 - Reduce/avoid 4980H penalties

Who Are Your Employees?

- **Critical determination**
 - If coverage is not offered, could be either a \$2000 fine per employee, or \$3000 per employee w/o affordable coverage of minimum value
- 1099 employees
 - Your determination of 1099 status does not count
 - Look at the IRS test for common law employee
 - Extremely broad test
 - Does employer have the right to control what the worker does and how the worker does his/her job?
 - Are business aspects of job controlled by employer?
 - Are there written contracts or employee benefits? Will relationship continue?

Who Are Your Employees?



- Temporary Staff
 - Follow common law employee test
 - Your employee if you can control what will be done and how it will be done
 - IRS opinion? Pros and cons
 - Safe harbor for employer
 - If staffing company makes offer of coverage on behalf of the employer, employer's obligation is satisfied if
 - Fee client employer pays is higher than fee client employer would pay if employee did not enroll in coverage
- PEO Staff
 - Follow same analysis/safe harbor as temporary staff

Who Are Your Employees?



- Additional guidance for specific situations
 - Volunteers
 - Volunteer firefighters/EMTs generally not full-time employees or FTEs
 - Student employees
 - Federal or state work programs
 - Adjunct faculty
 - “Reasonable method” for counting hours
 - One suggestion – count every hour of teaching time as 2.25 hours
 - On call hours

Measurement & Stability Periods



- These help you determine who is eligible for coverage and for how long
 - FT employees are entitled to coverage with no more than a 90-day waiting period
 - Variable hour employees must be measured
- Ongoing employees = standard measurement period
- New employees = initial measurement period
 - After new hire has worked an entire standard measurement period, new hire will transition to ongoing employee

Measurement & Stability Periods



- Employer may choose measurement periods
 - Between 3 and 12 months
- Stability period = longer of 6 months or measurement period
 - Same stability period for ongoing and new employees
- Example
 - New City picks a measurement period of 6 months for both new and ongoing employees. New City wants new hires on the plan for 6 months and ongoing employees on the plan for 12 months. This can't be done: both the ongoing and new employees must have the same stability period.

Measurement & Stability Periods

- Which kinds of employees may have different measurement periods?
 - Collectively bargained, non-collectively bargained
 - Salaried, hourly
 - Employees in different states
 - Different control group members



Measurement & Stability Periods



- For 2015 ONLY and for non-calendar year plans ONLY:
 - Plan is allowed to measure for 6 months, but allow a 12-month stability period
- Example
 - New City's plan year begins October 1, 2015.
 - New City uses an enrollment period of August 1 – September 30.
 - New City may measure employees from February 1 – July 31.
 - OE runs from August – September and variable hour FT employees are on the plan beginning October 1.
 - **Plan carefully; measurement period cannot end more than 90 days before coverage begins.**

Measurement & Stability Period Examples



- FT Ongoing Employee (12-month measurement)
- New City uses the following:
 - Standard measurement period: October 15, 2013 – October 14, 2014
 - Administrative period: October 14, 2014 - December 31, 2014
 - Stability period: January 1, 2015 – December 31, 2015
 - Anne worked for New City since 2007 and averaged 30 hours/week from October 15, 2013 to October 14, 2014. Anne must be treated as a FT employee for the stability period of January 1, 2015 to December 31, 2015
 - New City will use the administrative period from October 31, 2014 to December 31, 2014 to confirm eligibility and complete 2015 enrollment.

Counting Measurement Hours of Service During Leaves



- Hours for which employee is PAID = hours of service
- Certain unpaid leaves also = hours of service
 - FMLA
 - USERRA
 - Jury duty
- Employer may calculate average hours disregarding those four weeks, OR
- Impute same number of hours as employee averaged in rest of measurement period

Rehires & Returns After Absence



- General rule
 - Rehires and returnees resume their status for the remainder of applicable stability period
 - Measurement period includes period of prior service as well as period of absence
 - May have to impute hours during absence
 - Rehires' and returnees' status resets if they did not have at least 1 hour of service during the 13-week* period immediately preceding return to work, or
 - If employer elects rule of parity, they were absent for at least 4 weeks, and the period of absence is longer than period of prior service

*26 weeks for educational institution

Example: Rehired Employee



- New City has a calendar year SMP and stability period
 - Gina employed FT by New City for 10 years; she quits on April 30, 2015
 - Rehired on July 10, 2015, continues working through December 31, 2015
 - Gina is a continuous employee
 - Her absence was less than 13 weeks, and her period of prior service is longer than her period of absence
 - Gina resumes FT status through December 31, 2015 (remainder of stability period that includes her return date)
 - All Gina's hours are counted for calendar year 2015 SMP including 0 hours for May 1 to August 31) and are averaged to determine FT or PT status for 2016 stability period

Measurement & Stability Period Examples



- **PT Ongoing Employee (12-month measurement)**
 - Bob was hired by New City in 2007, but averaged less than 30 hours/week from October,15 2013 – October 14, 2014
 - New City is not required to treat Bob as a FT employee for the stability period beginning January 1, 2015
 - Bob does not have FT status for the 12-month stability period, but immediately will begin to be measured again from October 15, 2014 to October 14, 2015.
 - Even if Bob moves to a different position with longer hours in 2015, he is locked into PT status
 - This ongoing employee rule is different from the new hire rule.

Measurement & Stability Period Examples



- New Variable Hour (VH) employee (12-month IMP)
 - Don is a VH employee of Old City with a start date of May 10, 2014
 - Old City's initial measurement period is 12 months, beginning on Don's start date (May 10, 2015 – May 9, 2016)
 - NOTE – Don is still responsible for getting his own health coverage for those 12 months
 - New hires MUST be placed on plan within 13 months of start date
 - If Don averages 30 hours/week during IMP (initial measurement period) he must be on plan by June 10, 2016

Measurement & Stability Period Examples



- Don had initial measurement period from May 2015 to May 2016
 - Standard measurement period for ongoing employees is October 2015 to October 2016
 - Don will **also** be measured from October 2015 to October 2016
 - If Don was found to be a FT employee during both his IMP and the SMP, he will go through standard OE in October 2016
 - Don will be treated as a FT employee for the period between the end of his initial stability period (May 2016) until the beginning of his ongoing employee coverage in January 2017

Measurement & Stability Period Examples



- New VH Employee Goes PT to FT
 - Assume that Don averages only 25 hours/week in his initial measurement period
 - Old City treats Don as a PT employee for the length of his stability period (June 10, 2016 – June 9, 2017)
 - Remember, Don will still also be measured during the standard measurement period
 - What if Don is such a great employee, he is promoted to a FT position in September 2016?
 - He must be treated as FT no later than the first day of the fourth month after change in employment status
 - This rule does NOT apply to ongoing employees

Who Are Dependents?

- Definition of dependent
 - No foster children
 - No stepchildren
 - No children not US citizen or national
 - Exceptions for Canada, Mexico, or adopted children
 - No spouses
- Employer may still define dependent as it wishes
- Employer may charge more for spouse and dependents



What Is MEC?

- Policies sold in small or large group market
- **Employer-sponsored group health plans**
 - Must cover preventive benefits
- VA coverage
- TRICARE
- Other types of coverage specified in regulation (e.g., Peace Corps)



What Is Not MEC?

- **Stand-alone HRA** (not integrated)
- HIPAA-excepted benefits
 - Stand-alone vision
 - Stand-alone dental
 - Disease-specific policies
 - Indemnity plans
 - Accident or disability plans
 - On-site medical clinics
 - Other types of coverage listed in statute



What Is Affordable Coverage of Minimum Value?

- Requirement to offer coverage no more than 9.5% of household income
 - No employer knows this
 - Now use safe harbors
 - W-2 wages (Box 1)
 - Rate of pay (even if hourly rate of pay is reduced during year)
 - Federal Poverty Line (employer may use most recent guidelines in effect six months before plan year)
- Requirement that plan be of minimum value
 - Employer must pay at least 60% of plan costs
 - Roughly equivalent to Bronze level plan in Marketplace
 - Plan may always offer richer coverage - affordable

When Do Changes Apply?



- Assume you are ALE in 2014 and non-calendar year plan
 - In many cases, employer responsibility applies to you the first day of your 2015 plan year
- Plan year
 - If group doesn't have ERISA plan documents, use contract renewal
 - Groups with different ERISA plan year and contract renewal dates may want to modify plan year
 - Can only modify ERISA plan documents when ERISA renewal date is later in year than plan contract renewal
 - If ERISA date comes first, plan must have all changes in effect on the date of the ERISA plan anniversary

What About Plans With 50-99 Employees?



- Will NOT be penalized in 2015
 - From February 9, 2014 – December 31, 2014 employer does not reduce size of workforce/overall hours of service
 - Does not eliminate or materially reduce coverage offered as of February 9, 2014
 - Employer must certify eligibility as to size
 - No rules yet
 - Will still need to fill out 6055/6056 reporting

Employer Responsibility Penalties & How To Avoid Them



- ALEs with 100+ employees must comply on January 1, 2015 (or first day of plan year)
 - No penalty if coverage offered no later than first day of first payroll period
- Employers not currently covering dependents
 - Employers must take steps toward satisfying this by plan renewal in 2016
- 4980H penalties
 - Two different penalties
 - 4980h(a) penalty for not offering coverage
 - 4980H(b) penalty for not offering affordable and MV

Employer Responsibility Penalties & How To Avoid Them



- ALE must make offer of coverage to “substantially all” employees to avoid (a) penalty
 - 70% in 2015
 - 95% in 2016 and beyond
 - Safe harbor for not having to pay the \$2000 per employee penalty
 - Will not save you from the (b) penalty
- If ALE does not offer coverage to substantially all employees
 - Calculate amount of FT employees minus first 80 employees to determine penalty

Employer Responsibility Penalties & How To Avoid Them



- Number of FT employees minus first 80 is 2015 only
 - In 2016 and beyond, will use first 30 employees
- ALE does not offer affordable coverage with MV
 - Will pay \$3000 for every employee that goes to the Marketplace and gets a subsidy
- Example
 - New City has 100 FT employees, and offers coverage to 70 of them. New City will not pay the 4980H(a) penalty.

Employer Responsibility Penalties & How To Avoid Them



- Example
 - New City did not offer coverage to 30 of its employees in 2015. 10 of those employees go to the Marketplace and all receive subsidies. According to regulation, the 4980H(b) penalty will never be more than the (a) penalty.
 - If New City offered coverage to none of the 100 FT employees, it would pay \$2000 on 20 employees, or \$40,000. (100 – first 80 = 20)
 - 10 of its FT employees go to the Marketplace and obtain subsidies. That fine would be \$30,000. (\$3000 x 10) Since \$30,000 is less than \$40,000, New City owes \$30,000.

2015 Employer Reporting



TYPE OF REPORTING	AFFECTED EMPLOYERS	REQUIRED INFORMATION	EFFECTIVE DATE
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)	<p>Delayed until 2015</p> The first returns will be due in 2016 for coverage provided in 2015
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)	

Code § 6055: Offer of MEC

- Employers that offer MEC must file an annual return with the IRS reporting information for each individual (employee + spouse + children) provided coverage
- Related statements must also be provided to individuals

Code § 6056: Large employer coverage offer

- Applicable large employers must file a return with the IRS reporting the terms and conditions of the coverage provided to the employer's full-time employees (and dependents) for the calendar year
- Related statements must also be provided to employees

2015 Employer Reporting Code § 6055



Part 1: Information Required to be Reported

- Data elements that are not required by taxpayers for preparing their tax returns or by the IRS for tax administration:
 - The name, address and EIN of the reporting entity;
 - The name, address and TIN of the primary insured and each other individual covered under the policy or plan;
 - The dates each individual was covered under the policy or plan during the calendar year;
 - For each covered individual, the months for which, for at least one day, the individual was enrolled in coverage and entitled to receive benefits; and
 - Any other information required by the IRS.
- Data elements related to the employer's group health plan:
 - The name, address and EIN of the employer sponsoring the plan;
- Every entity required to file a return under section 6055 must also give a written statement to the responsible individual identified on the return:
 - The phone number for a person designated as the reporting entity's contact person and policy number, if any; and
 - The information required to be shown on the section 6055 return for the responsible individual and each covered individual listed on the return.

2015 Employer Reporting Code § 6055



Part 2: Filing Deadline

- **IRS:**
 - **February 28** (or **March 31**, if filed electronically) of the year following the calendar year in which they provided MEC
- **Employees:**
 - **January 31** following the calendar year for which the information was required to be reported to the IRS

Part 3: Manner of Filing & Furnishing

- **IRS:**
 - Self-insured group health plans that are not reporting as ALEs will report under section 6055 on **Form 1094-B and Form 1095-B**, or other form designated by the IRS (reporting entity filing at least 250 returns under section 6055 must file electronically)
- **Employees:**
 - Reporting entities may also furnish the **Form 1095-B or 1095-C** with the Form W-2 in the same mailing

2015 Employer Reporting Code § 6056



Part 1: Information Required to be Reported

The large employer's return filed with the IRS must include the following information:

- The ALE's name, address and employer identification number (EIN);
- The name and telephone number of the ALE's contact person;
- The calendar year for which the information is reported;
- A certification as to whether the ALE offered to its full-time employees (and their dependents) the opportunity to enroll in MEC by calendar month;
- The months during the calendar year for which MEC under the plan was available;
- Each full-time employee's share of the lowest cost monthly premium for self-only coverage, by calendar month;
- The number of full-time employees for each month during the calendar year;
- The name, address and TIN of each full-time employee during the calendar year and the months (if any) during which the employee was covered under the eligible employer-sponsored plan during the calendar year; and
- Any other information required by the IRS.

2015 Employer Reporting Code § 6056



Part 1: Information Required to be Reported (continued)

Under the general method of section 6056 reporting, the following information will be reported through the use of indicator codes :

- Whether the coverage offered provides minimum value and whether dependent coverage for spouses was offered;
- The total number of employees, by calendar month;
- Whether an employee's effective date of coverage was affected by a waiting period under the pay or play rules, by calendar month;
- Whether the ALE had no employees or otherwise credited any hours of service during any particular month, by calendar month;
- Whether the ALE is a member of an aggregated group under the Code's controlled group or affiliated service group rules, and, if applicable, the name and EIN of each employer member of the aggregated group;
- If a designated person is reporting on behalf of a governmental unit or agency, the name, address and identification number of the designated person;
- If an ALE contributes to a multiemployer plan, whether, with respect to a full-time employee, the employer is not subject to a pay or play penalty due to the employer's contributions to the multiemployer plan; and
- If a third party is reporting for an ALE, the name, address and identification number of the third party (in addition to the name, address and EIN of the ALE).

2015 Employer Reporting Code § 6056



Part 1: Information Required to be Reported (continued)

The following will be reported for each full-time employee through a code:

1. MEC providing minimum value was offered to:
 - The employee only;
 - The employee and the employee's dependents only;
 - The employee and the employee's spouse only; or
 - The employee, the employee's spouse and dependents;
2. Coverage was not offered to the employee and:
 - The failure to offer coverage will not result in an employer shared responsibility penalty;
 - The employee was not a full-time employee;
 - The employee was not employed by the ALE during that month; or
 - No other code or exception applies;
3. Coverage was offered to the employee for the month, although the employee was not a full-time employee for that month;
4. The employee was covered under the plan; and
5. The ALE met one of the affordability safe harbors with respect to the employee

If multiple codes apply with respect to a full-time employee for a particular calendar month, the reporting format will accommodate the necessary codes.

2015 Employer Reporting Code § 6056



Part 2: Filing Deadline

- **IRS:**

- **February 28** (or **March 31**, if filed electronically) of the year following the calendar year in which they provided MEC;
- Due to the one-year delay, the first section 6056 returns required to be filed are for the 2015 calendar year, and must be filed no later than **March 1, 2016** (Feb. 28, 2016, being a Sunday), or **March 31, 2016**, if filed electronically

- **Employees:**

- Section 6056 employee statements must be furnished annually to full-time employees on or before **January 31** of the year immediately following the calendar year to which the employee statements relate;
- This means that the first section 6056 employee statements (meaning the statements for 2015) must be furnished no later than **February 1, 2016** (January 31, 2016, being a Sunday)

2015 Employer Reporting Code § 6056



Part 3: Manner of Filing & Furnishing

- **IRS:**
 - **Electronic filing is required for all ALEs filing at least 250 returns under section 6056 during the calendar year;**
 - Only section 6056 returns are counted in applying the 250 return threshold, and each section 6056 return for a full-time employee is counted as a separate return

- **Employees:**
 - The section 6056 employee statement must include:
 - The name, address and EIN of the ALE; and
 - The information required to be shown on the section 6056 return with respect to the full-time employee.
 - Employee statements may identify the employee using an IRS truncated TIN rather than the social security number or other identifying number of the employee shown on the corresponding information return filed with the IRS.
 - Employee statements may also be furnished electronically if certain notice, consent and hardware and software requirements are met (rules are substantially similar to the process currently in place for the electronic furnishing of employee Forms W-2);
 - It is not sufficient for an ALE to simply post the information on a website accessible to the employee (similar to the current process for furnishing SBCs), or to provide the information to an employee only upon request

Fees & Penalties

- **Additional Medicare Tax**
 - Effective in 2013
 - Increased from 1.45% to 2.35% on wages over \$200,000 (individuals) or \$250,000 (married couples filing jointly)
- **Cadillac Tax**
 - Effective in 2018
 - High-cost plan excise tax
 - 40% excise tax to be imposed on the excess benefit of high-cost employer-sponsored health insurance
 - Annual limit is \$10,200 (individual); \$27,500 (other)



Fees & Penalties



- Employer Shared Responsibility Payment (Pay or Play)
 - If no coverage offered to eligible individuals, employer pays \$2000/year per employee (minus certain few) §4980H(a) penalty
 - If coverage offered is not MV and/or affordable, employer pays \$3000/year per employee who goes to Exchange and gets tax subsidy §4980H(b) penalty
- Reporting penalties
 - \$1.5M for 6056
 - \$1.5M for 6055

Fees & Penalties

- Failure to send SBC
 - \$100/day/member
- Notice of Marketplace
 - Currently no penalty



Future Developments



- Will 30 hour/week stand as definition of FT employee?
- Auto-enrollment regulations to be released (regs were due in 2012)
- Cadillac tax regulations to be released
- Quality report (regs were due in 2012) regulations to be released
- New request for comment on provider non-discrimination section of ACA

Questions?

