

Health Care Reform: What Employers Need to Know



**PULLMAN
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ATTORNEYS

Pulling Together. Succeeding Together.

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ACA Changes Since 11/1/2013

- By Administration:
 - Insurance Companies may offer canceled plans-11/14/13
 - Exempting Unions from reinsurance fee—12/2/13
 - Extending Preexisting Condition Insurance Plan—12/12/13
 - Expanding hardship waiver to those with canceled plans-12/19/13 & 3/5/14
 - Discrimination Rules will not be enforced in 2014—1/18/14
 - Employer mandate delayed again—2/10/14

ACA Changes Since 11/1/2013

- Extending subsidies to non-exchange plans—2/27/14
 - Non-compliance health plans get 2-year extension—3/5/14
 - Delaying the sign-up deadline—3/26/14
 - Canceling Medicare Advantage Cuts—4/7/14
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- By Congress:
 - Eliminating Caps on Deductibles for Small Group Plans-4/1/14
 - Creates greater flexibility in plan design—HSAs, HRAs and health FSAs

Audit Issues

ACA Issues Under Review

- DOL asking for following:
 - Records supporting grandfathered status, if applicable
 - Records showing compliance with
 - Offering coverage to dependents up through age 26
 - Anti-rescission, lifetime limits, and annual limit requirements
 - Providing Choice of Provider Notice
 - Copies of
 - Documents relating to emergency and preventative care services
 - Documents relating to Claims Procedures including any adverse benefit determinations
 - Any contract with organization providing external review
 - Enrollment package
 - Medical Loss Ratio Rebate related documents



\$100 a day / per participant Penalties!

Violations Can Trigger Penalty:

- 90-day waiting period limit
- Excessive Out-of-Pocket Expenses
- Pre-existing Condition Exclusions
- Discrimination Rules
- Restrictions on ER Visits
- Failing to Provide Timely Notices
- Failing to have proper claims procedures (internal/external)
- Failing to cover preventative care
- Not an exhaustive list

\$100 a Day/per Participant Penalties!

Obligation to Self-Report on Form 8928

- Return due on due date of federal income tax return
- Must request extension of time to file
- Penalty for late filing: 5% of unpaid tax for each month or part of month return late up to a maximum of 25% of unpaid tax.

90 Day Waiting Rules

- Apply to 2014 Plan Year
- Cannot have a waiting period that exceeds 90 days
- Eligibility requirements not relating to a waiting period are ok
 - Eligible job classification
 - Achieving job-related licensure requirements specified in plan's terms
 - Satisfying a reasonable and bona fide employment based orientation period
 - Cannot exceed one month less one day
 - If no corresponding day in next month cannot go beyond last day of month

90 Day Waiting Rules

- Variable Hour Employees
 - can take a reasonable time to determine
 - coverage must be made available no later than 13 months following start date plus remaining time to first day of next calendar month
- An employee who has terminated employment can be subject to a new waiting period
 - Note different rules than under the Employer Mandate
 - Cannot be used as subterfuge to avoid compliance
- Plan documents need to be clear on measurement periods and entry dates

HIPAA Privacy & Security Does it Apply to Your Plan?

- HIPAA Privacy and Security Rules
 - Technically applies to most group health plans
 - Only small, self-administered, self-funded plans are not covered by HIPAA

- What is a Small, Self-Administered, Self-Funded Plan?
 - Benefits not provided through an insurance contract
 - The Plan Sponsor administers the Plan—e.g. handles claim administration in-house
 - There are less than 50 employees (including former employees) who are or may become eligible to receive benefits from the Plan

HIPAA Privacy & Security Does it Apply to Your Plan?

- IF:
 - Plan is Fully Insured
 - Plan Sponsor has access to Summary Health Information for limited purposes
 - Plan Sponsor has access to enrollment/disenrollment information
 - Plan Sponsor does not create or receive any other Protected Health Information (PHI)

HIPAA Privacy & Security Does it Apply to Your Plan?

- **THEN:**

- Plan Sponsor & Plan are subject to Privacy Rule prohibition against retaliation
- Plan Sponsor & Plan are subject to Privacy Rule prohibition against requiring employees to waive their HIPAA Privacy or Security rights
- Insurer responsible for:
 - Providing Privacy Notice to Plan participants
 - Providing individuals with right to access, review, amend, receive account of PHI
 - Administrative safeguards to protect PHI
 - Complying with Security Rule if there is EPHI

HIPAA Privacy & Security Does it Apply to Your Plan?

- What does disclosure of Summary Health Information (“SHI”) for Limited Purposes Mean?
 - SHI can be disclosed only for purposes of
 - Obtaining Premium Bids
 - Modifying, amending or terminating the Group Health Plan
 - SHI has 18 specific identifiers removed:
 - No names or geographic subdivisions smaller than five digit zip code
 - No dates other than years directly related to an individual
 - No telephone numbers, fax numbers, email addresses, social security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers, device identifiers, URLs, IP addresses, biometric identifiers, including finger & voice prints, photographic images, & any other unique identifying number, characteristic or code

HIPAA Privacy & Security Does it Apply to Your Plan?

- **IF:**
 - Plan is fully insured
 - Plan Sponsor has access to PHI other than SHI and enrollment/disenrollment information

- **Then:**
 - Privacy Rule applies but privacy notice requirements are limited
 - Security Rule applies if any PHI is electronic
 - Plan Document and Firewall Requirements apply to Plan and Plan Sponsor