



The ACA: *A Year in Review & Looking Ahead*



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Today's Agenda:

- ✓ Background & History of the ACA
- ✓ Key requirements impacting employers & employees
- ✓ Review of new thresholds, limits, penalties and other figures for 2016
- ✓ “Small” vs. “Large” Employer rules (Employer Mandate v. Small Group Expansion/PACE Act)

Background:

When passed on March 23, 2010, the primary goals of the Patient Protection and Affordable Care Act (PPACA) were to:

1. Extend access to affordable health insurance coverage to the uninsured and underinsured
2. Reduce overall health care costs
3. Establish nationwide consumer protections that apply to all insurance policies



Reform Timeline

2010-2014

➤ Early reforms went into effect between 2010 and 2013:

- Minimum medical loss ratio (MLR)
- Benefit enhancements: 1st dollar coverage for preventive services, guaranteed right to appeal, out-of-network emergency care
- Standardization of plan descriptions (SBC requirements)
- PCORI Fee (plan years ending on or after 9/30/2012)
- Employer-provided Marketplace Notice (FLSA)

➤ Key reforms became effective in 2014:

- Exchange marketplaces – opened October 1, 2013
- Individual Mandate
- Dependent coverage to age 26
- Annual dollar limits on Essential Health Benefits
- Waiting Period Limitation (no more than 90 days)
- Metal level (actuarial value) standardization
- Rating rule changes: guaranteed issue; no pre-existing condition exclusions; elimination of benefit caps, etc.
- Transitional Reinsurance Fee
- Employer wellness incentive % increase

Reform Timeline

2015 →

➤ 2015 Game Changers:

- Employer Mandate Coverage Requirements (100+ FTEs)
- Annual IRS Reporting of Employee Coverage (50+ FTEs)
- PACE Act –allowing states to define “small group” as 50 or fewer employees
- King v. Burwell Supreme Court decision

- *Delayed:* Cadillac Tax –until 2020
- *Repealed:* Automatic enrollment requirement
- *Pending:* Non-discrimination rules for fully insured plans; W-2 Reporting on the cost of coverage for employers issuing fewer than 250 W-2s; HIPAA Certification requirements

➤ 2016 & Beyond:

- Employer Mandate Coverage Requirements for “smaller” large employers (50+ FTEs)
- Trade Preferences Extension Act –increasing penalties for IRS reporting returns & statements filed in 2016 & beyond
- Termination of transitional reporting and coverage relief provisions
- Final rules on several ACA reforms (e.g. grandfathered status, dependent coverage) in effect Jan. 1, 2017

Legal Challenges to the ACA

- **NFIB v. Sebelius (2012):** Challenged constitutionality of the individual mandate. Supreme Court ruled in favor of the ACA holding the penalty as a valid exercise of the Congressional power to tax, thus upholding the individual mandate.
- **King v. Burwell (2015):** Challenged constitutionality of federally-facilitated marketplaces. Supreme Court again rules in favor of the ACA, confirming the validity of both federal and state exchanges.



*Is the ACA sustainable?
Critics disagree.*

Individual Mandate

Penalty Schedule for Individuals without Health Insurance

| Year | 2014 | 2015 | 2016 & beyond |
|---|---------|----------|---------------|
| Adult Penalty <u>Minimum</u> | \$95.00 | \$325.00 | \$695.00 |
| Child Penalty <u>Minimum</u> (50% of Adult Penalty) | \$47.50 | \$162.50 | \$347.50 |
| % of Income | 1.0% | 2.0% | 2.5% |
| Example: Penalty w/ \$30,000 annual income | \$300 | \$600 | \$750 |
| Example: Penalty w/ \$50,000 annual income | \$500 | \$1,000 | \$1,250 |

Updated Figures for 2016

Fees:

- PCORI Fee – \$2.17 per covered life (plan years ending between 10/1/2015 & 10/1/2016)
- Transitional Reinsurance Fee – \$27 per covered life

Account Limits:

- FSA limit on salary reduction contributions: \$2,550 (same as 2015)
- HSA contribution limit: \$3,350 for self-only coverage and \$6,750 for family coverage
- Out-of-Pocket Maximum for EHB: \$6,850 for self-only coverage and \$13,700 for family coverage
- HDHP Annual Out-of-Pocket Maximum (OOPM): \$6,550 for self-only coverage and \$13,100 for family coverage

**Effective for the 2016 plan year, HHS has clarified that the self-only OOPM must be applied on an individual basis (e.g. individual OOPM must be embedded in family coverage)*

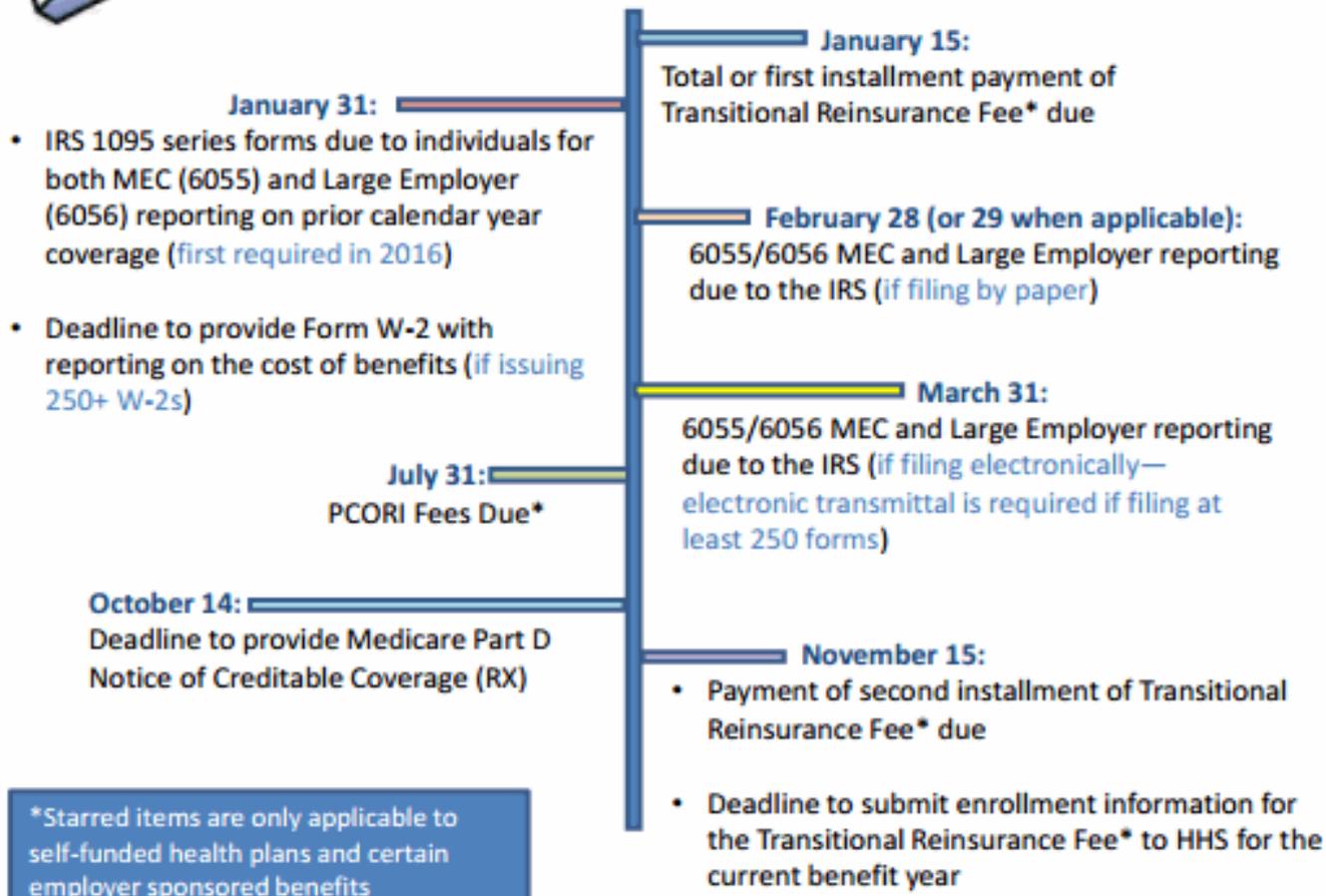


2016 ACA Compliance Checklist

- Review Grandfathered Plan Status
- Check Your Plan's Cost-Sharing Limits & OOPMs
- Update Your Health FSA's Contribution Limit
- Determine if Your Health Plan is Subject to Reinsurance Fees
- Provide All Required Annual Enrollment & New Hire Notices
- Determine if Small Group Expansion Effects You
- Determine Your Applicable Large Employer (ALE) Status & Corresponding Compliance Obligations



Annual Deadlines for ACA Required Notices & Filings



Annual Enrollment & New Hire Notices

- **Notice Regarding Availability of Health Insurance Marketplace:** Notice was to be sent no later than October 1, 2013 for current employees. After that date, it must be provided within 14 days to all new hires.
- **Plan sponsors should ensure all applicable required annual participant notices have been provided at open enrollment or upon initial enrollment, including:**
 - Summary of Benefits and Coverage (SBC)
 - Patient Protection Disclosures
 - Disclosure of Grandfather Status
 - COBRA Notices
 - Children's Health Insurance Program (CHIP) Notice
 - Women's Health and Cancer Rights Act Notice
 - Notice of HIPAA Special Enrollment Rights

What is a “small” employer?

- Traditionally, most states have defined a small employer for purposes of group health insurance as one with 50 or fewer employees.
- **The PACE Act:** Repealed the ACA’s requirement that definition of a small group employer would increase nationally in 2016 to apply to organizations with one to 100 FTEs.
- Many states will now retain the 50 employee limit; However, **New York has already changed the definition of small group to 100 or fewer employees starting in 2016.**
- While NYS small group expansion considers all employers with 1-100 FTEs to be a part of the “small group market,” under the ACA all employers with 50+ FTEs are considered Applicable Large Employers subject to the Employer Mandate.

Small Group Market Plan Requirements

- Cover 10 essential health benefits (EHBs)
 - Fit into the actuarial value levels (platinum, gold, silver and bronze) defined under the ACA
 - Participate in the risk adjustment program and be part of a single risk pool for setting premiums
 - Only consider age, geographic location, family composition and tobacco use in setting rates
- *Midsize employers (50-99 FTEs) in NY are now subject both to the employer mandate and the small group insurance requirements.

What is an Applicable Large Employer?

- A company is an ALE if it employs, on average, 50 or more full-time equivalents (FTEs) in the preceding year
- ALE status is determined on a controlled group basis
- ALEs must comply with the Employer Mandate coverage & reporting requirements:
 - Coverage requirements delayed until 2016 for most employers with 50 – 99 FTEs on average in 2014
 - Transition Relief For Fiscal Year Plans
 - ACA reporting applies to all employers with 50+ FTEs on average in 2014

The Employer Mandate

- ALEs must offer “full-time” (30+ hours/week) employees compliant health care coverage or may be subject to a penalty.
- Two types of employer assessments, both may only be imposed if at least one employee seeks and receives a Marketplace subsidy.

For 2016:

1. **Penalty A** - 4980H(a): \$2,160 per full-time employee if employer does not offer coverage to 95% of full-time employees
2. **Penalty B** - 4980H(b): \$3,240 per employee who is not offered affordable, minimum value coverage AND receives a Marketplace subsidy

Employer Mandate Changes

- Transitional rules enacted last year to ease implementation for employers will end in 2016:
 - All employers with 50-99 FTEs must meet the coverage requirements
 - The percentage of full-time workers who must be offered health insurance will increase from 70% to 95%
 - In 2015, the first 80 full-time employees were excluded from counting toward the Penalty A fee; in 2016, only the first 30 will be excluded.



ACA Employer Penalties in 2016

The sledgehammer:

Penalty for no offer of coverage

\$180 a month, times all eligible employees



The ice pick:

Penalty for noncompliant coverage

\$270 a month, times the number of eligible employees who got a subsidy on an exchange

+ The non-filing penalty: \$500 per required return – for intentional disregard of a reporting obligation

FFM Notices of Employee Subsidy

- In 2016, federally-facilitated Marketplaces will send notices to employers whose employees received premium credits in 2016 and whose employees provided the Marketplace with their employer's address
- State Marketplaces generally have been doing this in 2015
- Employers may appeal (within 90 days) and assert that affordable, minimum value coverage was offered or that the employee enrolled in coverage, and therefore the employee is ineligible for a premium credit
- If successful, the FFM notifies the employee to update his or her Marketplace application to reflect the access to or enrollment in other coverage, and that failure to do so may result in a tax liability
- Pay-or-Play penalties are determined by the IRS without regard to whether the Marketplace issued a notice or the employer engaged in any appeals process

ACA Reporting

| | Section 6055 | Section 6056 |
|---------------------------------------|--|---|
| Applies to: | Providers of minimum essential coverage (MEC): Self-insured plan sponsors; insurers | Applicable Large Employers (ALEs) |
| Requires reporting parties to: | <ul style="list-style-type: none"> • File information with the IRS • Provide statements to covered individuals | <ul style="list-style-type: none"> • File information with the IRS • Provide statements to full-time employees |
| Purpose is to assist: | <ul style="list-style-type: none"> • IRS administer the individual mandate • Individuals show compliance with the individual mandate | <ul style="list-style-type: none"> • IRS administer the employer shared responsibility rules and determine eligibility for subsidies |

2016 Reporting Deadlines

| Forms | Original IRS Due Date | Updated IRS Due Date |
|--|-----------------------|----------------------|
| Forms 1095-B and 1095-C | Feb. 1, 2016 | March 31, 2016 |
| Forms 1094-B, 1095-B, 1094-C, and 1095-C (on paper) | Feb. 29, 2016 | May 31, 2016 |
| Forms 1094-B, 1095-B, 1094-C and 1095-C (electronically) | March 31, 2016 | June 30, 2016 |

*Penalty relief for “good faith” ACA reporting for 2015

IRS Notice 2015-87

On December 16, 2015, the IRS published 2015-87:

- Indicates certain Section 125 employer contributions and cash-in-lieu/opt-out payments should be considered employee contributions for affordability calculations
- Clarifies 2016 affordability threshold of 9.66%
- Updates 4980H(a) and (b) assessment amounts
- Explains handling of disability payments with hours measurement
- Applies 26-week rule to third-party educational staffing firms

Additional proposed regulations are expected.

ALE Compliance Action Items

- ✓ Review 2015 ACA/IRS reporting results
- ✓ Model vulnerability to 2016 penalties
- ✓ Evaluate impact of IRS Notice 2015-87
- ✓ Determine which option works best to achieve the 95% offer
- ✓ Prepare for annual ACA reporting

Questions?

