Play or Pay and Minimum Essential Coverage: What, When and How (Much)?

April 2013
www.cbia.com
CBIA Human Resources

Beginning in 2014, the Affordable Care Act’s employer shared responsibility rules, the so called “play or pay” rules, impose penalties on an employer with more than 50 “full-time equivalent” employees (a large employer) if the employer (1) does not offer “minimum essential coverage” under an eligible employer-sponsored medical plan to its full-time employees, or (2) offers minimum essential coverage, but it is either not “affordable” or does not provide the necessary level of coverage. The following provides a brief summary of these “play or pay” rules.

First-Tier Penalty

A large employer will be liable for what is referred to as the “first tier penalty” if it does not offer “minimum essential coverage” to substantially all full-time employees and their dependents. This penalty is designed to motivate employers to provide medical coverage, and intended to penalize those who do not offer a healthcare plan. Therefore, virtually any private employer-sponsored healthcare plan that offers medical coverage will provide “minimum essential coverage.” Also, any plan approved by the Connecticut Department of Insurance to be offered in the state will be considered to provide minimum essential coverage.

If a large employer does not maintain a health care plan, it will be liable for the first-tier penalty equal to $166.67 per month ($2,000/year) times the number of the employer’s full-time employees (excluding the first 30), if at least one full-time employee enrolls in a qualified health plan through a state or federal administered exchange and the employee receives a subsidy toward the cost of the coverage. If no employee enrolls in an exchange or if no employee receives a subsidy, there is no penalty.

Second-Tier Penalty

Each healthcare plan must also pass a Minimum Value Test and an Affordability Test, or the employer will be subject to what is referred to as the “second-tier penalty.” Given that a health care plan will rarely fail to provide “minimum essential coverage,” employers should focus on passing these tests to avoid this penalty.

Minimum Value Test
Play or Pay and Minimum Essential Coverage: What, When and How (Much)?

To pass the Minimum Value Test, the plan must offer health coverage that pays at least 60% of the cost of the covered services provided under the plan (as determined by a complicated actuarial methodology). There are three ways to determine whether a plan passes this test:

- First, the IRS and the Department of Health and Human Services intend to develop an on-line “Minimum Value calculator” to determine whether a plan satisfies this 60% threshold. By inputting requested data about the benefits provided, an employer may determine if the Minimum Value Test is satisfied.

- Second, the IRS provides a number of safe-harbor checklists listing acceptable levels of benefits. If the plan provides coverage that is at least as generous as any of the safe-harbor checklists, the plan satisfies this test.

- Third, where the Minimum Value calculator or checklist safe-harbors are not appropriate, for example, if the plan contains nonstandard features (such as limitations on the number of doctor visits or on the amount of covered visits in the hospital), a plan will have the option of engaging an actuary to determine the plan’s minimum value.

Affordability

An employer’s plan will pass the Affordability Test if the monthly premium for employee-only coverage does not exceed 9.5% of one-twelfth of the annual poverty level for a single person. Currently the annual poverty level is $11,490, so to satisfy this test the monthly premium cannot exceed $90.96.

If that is not satisfied, the Affordability Test may also be passed if on an employee by employee basis the monthly premium does not exceed 9.5% of the employee’s monthly wages. Penalties would only be incurred for those employees for whom the monthly premium exceeds 9.5% of monthly wages.

If the plan fails either the Minimum Value Test or Affordability Test, as outlined above, the second tier penalty will be (1) $250/month ($3,000/year) multiplied by (2) the number of full-time employees who enroll in a state or federal administered exchange for coverage and who receive the subsidy. However, the penalty cannot exceed the penalty amount that would apply under the first-tier penalty had the employer not offered health plan coverage at all. In other words, the employer cannot be penalized more by having a plan than by not offering one at all.

When assessing potential exposure to the penalties, an employer should also bear in mind that not all full-time employees that purchase their health insurance coverage from a state or federal exchange will be eligible for a subsidy, and so may not trigger the penalty. An employee will not qualify for the subsidy if: (1) the employee’s household income exceeds 400 percent of the federal poverty level for a single person (which currently equates to $45,960); (2) the employee is eligible for Medicare or Medicaid coverage; (3) the employee has coverage through a spouse’s employer sponsored plan that offers minimum essential coverage.
Play or Pay and Minimum Essential Coverage: What, When and How (Much)?

and is both affordable and provides minimum value; or (4) the employee elects to purchase coverage other than through a state or federal exchange.

Understandably, the “play or pay” rules are complex and little time remains for planning around these rules before they become effective January 1, 2014. This summary merely highlights some of the key elements addressed in the current guidance that employers need to consider. We recommend that employers work with their plan advisors now to develop a comprehensive strategy to comply with the employer “play or pay” rules.

George J. Kasper is a partner and Ira D. Reifer is an associate in the Employee Benefits practice at Pullman & Comley, LLC.

Hear from both of them at CBIA’s 2013 Compensation and Benefits Conference—sponsored by Pullman & Comley, LLC,—on April 10 in Cromwell. Details and registration >>

To link to the full newsletter please click here.

Professionals
George J. Kasper

Practice Areas
Employee Benefits
Litigation

This publication is intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. This report may be considered attorney advertising. To be removed from our mailing list, please email unsubscribe@pullcom.com with “Unsubscribe” in the subject line. Prior results do not guarantee a similar outcome.