

What Every Employer Needs to Know About Marketplace Opportunities

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2

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Seeing the Forest....

- “Patient Protection....”
 - Reform health insurance
 - No health based ratings or pre-existing condition exclusions
 - No annual or lifetime dollar limits
 - No cost preventive care (including contraception)
 - Mandate that everyone have coverage
 - Young & healthy subsidize old and ill

3

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Seeing the Forest....

- “...and Affordable Care Act”
 - Provide health insurance financial assistance to low/middle income individuals and families via Marketplace subsidies
 - But prevent “large” employers from foisting off employees on the Marketplace via the employer mandate

4

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ACA Key Events- Past

- March 23, 2010- PPACA enacted
- June 28, 2012- Supreme Court decision
- November 6, 2012- election
- December 28, 2012- employer mandate proposed Regs
- January 1, 2013- .9% & 3.8% “pay for” taxes began
- March 2013- “Exchange” became “Marketplace”

5

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ACA Key Events- Past

- May 8, 2013- DOL guidance on Marketplace notice
- July 1, 2013- original deadline to start tracking employee hours
- July 2, 2013- Employer Mandate delayed until 2015
- October 1, 2013- distribution of Marketplace notice, first Marketplace open enrollment period began (HealthCare.gov website fiasco)
- November 14, 2013- President announces optional “fix” to policy cancellations

6

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ACA Key Events- Future

- Now- large employers with calendar year health plans start tracking employee hours for first 12 month look-back “measurement period”
- Now to December 15, 2013- first annual SHOP open enrollment period (no participation/contribution requirements)
- Next 2 weeks- final regulations on employer mandate (section 4980H)- stay tuned for webinar announcement

7

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ACA Key Events- Future

- January 1, 2014 (The Big Kahuna)
 - Health insurance Marketplace coverage begins (if purchased by 12/15/13)
 - Individual mandate begins
 - Small employers begin tracking hours for confirmation of small employer status for 2015

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ACA Key Events- Future

- Sometime in 2014- non-discrimination Regs issued (?)
- January 1, 2015 (or possibly first day of 2015 health plan year?)- large employer mandate & penalties begin
- 2015 or 2016- non-discrimination Regs effective (?)
- 2018- 40% excise tax on “Cadillac” coverage kicks in (?)

9

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Individual Mandate

- Beginning with the month of January, 2014, **everyone** must have “minimum essential coverage” (MEC) or be penalized for each month without coverage
- This mandate includes your spouse (if filing jointly) and your dependents (all individuals included on the tax return)
- Coverage can be purchased from your or your spouse’s employer (if offered), from the Marketplace or provided by Medicare, Medicaid, Tricare, CHIP or other government programs

10

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Individual Mandate

- Penalty = **greater** of flat dollar amount per person or specified percentage of **household income** in excess of income tax filing threshold:
 - 2014 \$95 or 1% of excess
 - 2015 \$325 or 2% of excess
 - 2016 \$695 or 2.5% of excess
- **Household income** is Adjusted Gross Income (AGI) with the following add backs:
 - Foreign income excluded from AGI
 - Tax exempt or excluded interest
 - Any Social Security benefits not already included in AGI

11

Individual Mandate

- Dependent income included if dependent required to file an income tax return (parent can elect to include)
- **Income tax filing thresholds (2013)**
 - Single \$10,000
 - Married filing joint \$20,000
- Dollar penalty for dependents under 18 is 50% of regular amount
- Maximum dollar penalty for any household is 3 times the dollar amount

12

Individual Mandate

- 2014 Example:
 - 5 person household (2 parents, adult child >17 and 2 children <18), none insured
 - Household income \$50,000, assume filing threshold \$20,000
 - Dollar penalty before limitation = \$380 (3 adults and 2 children @ 50% = 4 x \$95)
 - Capped dollar penalty \$285 (\$95 x 3)
 - % penalty \$300 ($\$50,000 - \$20,000 \times 1\%$)
 - Pro-rate \$300 penalty for # of months without coverage

13

Individual Mandate

- 2016 Example:
 - 5 person household (2 parents, adult child >17 and 2 children <18), none insured
 - Household income \$50,000, assume filing threshold still \$20,000
 - Dollar penalty before limitation = \$2,780 (3 adults and 2 children @ 50% = 4 x \$695)
 - Capped dollar penalty \$2,085 ($\695×3)
 - % penalty \$750 ($\$50,000 - \$20,000 \times 2.5\%$)
 - Pro-rate \$2,085 penalty for # of months without coverage

14

Individual Mandate

- Exceptions/exemptions from individual penalty:
 - Income below the tax filing threshold
 - Premiums for lowest cost plan available from employer or marketplace exceeds 8% of household adjusted gross income (net of marketplace subsidies)
 - Gap in coverage for less than 3 calendar months
 - Low income individuals in states not expanding Medicaid
 - NEW: apply by 3/31/14 even if coverage not effective until 5/1/14 (4 month transition)

15

Individual Mandate

- Hardship exemptions (apply through HHS/Marketplace)
 - Eviction & homelessness
 - Death of close family member
 - Casualty to residence
 - Bankruptcy
 - Recent unpaid medical expenses
- Estimated 24 million excepted/exempt
- IRS can charge interest on unpaid penalty tax but prevented from collecting via tax liens and levies
 - Essentially can only collect from refunds

16

Health Insurance Marketplace

- All individuals lawfully present in the US and not incarcerated can shop for and purchase health insurance through the new health insurance Marketplace
 - Healthcare.gov
 - Everyone will “comparison shop”
- Only factors determining Marketplace rates are geographic location (“rating area”), age and smoker status
 - Virginia divided into 12 rating areas (see next slide)
 - 3 to 1 maximum age banding between ages 21 and 64
 - No rate difference due to sex or medical condition
 - Smokers = admit to 4 or more per week = 50% rate hike

17

Health Insurance Marketplace

- 4 “metal” tier insurance options
 - Bronze 60% actuarial value (AV)
 - Silver 70% AV
 - Gold 80% AV
 - Platinum 90% AV
- “Catastrophic” option only under age 30

18

12 Virginia Rating Areas

1. Blacksburg
2. Charlottesville
3. Danville
4. Harrisonburg
5. Bristol
6. Lynchburg
7. Richmond
8. Roanoke
9. Virginia Beach-Norfolk
10. Arlington/Alexandria
11. Winchester
12. All other non-MSA

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Lowest Virginia Rates (Area 9)

	Age 21	Age 64+
Catastrophic	\$128.00	\$384.00
Bronze	\$166.20	\$498.60
Silver	\$211.00	\$633.00
2 nd Lowest Silver	\$212.48	\$637.44
Gold	\$258.00	\$774.00
Platinum	N/A	N/A

See Virginia Rate Sheets

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Opportunity Example 1

- Both physicians in small medical practice have serious medical issues
- Poor experience rating = very high group renewal rates
- Practice is dropping group coverage and all employees will be purchasing in Marketplace at <50% of group rates

21

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Opportunity Example 2

- 6 location retail company (currently “large”)
- Poor experience rating = very high group renewal rates
- Dropping group coverage, premiums for owners’ family coverage reduced from \$20,000+ to \$11,000 (similar savings for other employees)
- Before 2015 splitting into 2 unrelated companies so both will be “small” and avoid employer mandate and penalties

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Marketplace Subsidies

- Individuals and families with household income between 100% and 400% of Federal Poverty Level who purchase through the Marketplace will be potentially eligible for “advance premium tax credits” paid directly by the Marketplace to their selected insurer
- In addition, those between 100% and 250% of FPL will qualify for “cost-sharing reductions” (limits on deductibles and co-pays) if they purchase at least “Silver” coverage (70% actuarial value)
- Collectively = Marketplace “subsidies”

23

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Advance Premium Tax Credit (APTC)

- Individuals and households 100% to 400% FPL
– 70% of US households!
- Marketplace (HHS) pays APTC directly to selected insurer “in advance” based on representations of households estimated 2014 income
- Individual/household pays the balance

24

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Advance Premium Tax Credits

- APTC operates by capping the individual/household share of the premium for 2nd lowest cost Silver plan at between 2% and 9.5% of household income
- NOTE: APTC caps individual/household share of premium at a % of household income, not a % of the actual premium
 - Actual premium irrelevant to the individual/household
- 100%-133% FPL pays 2% of household income for 2nd lowest cost Silver plan, government pays the balance
- 300%-400% FPL pays 9.5% of household income for 2nd lowest cost Silver plan, government pays the balance

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Sample 2013 Federal Poverty Levels/Lines (FPL)

- One person household
 - 100% FPL \$11,490
 - 133% FPL \$15,282
 - 400% FPL \$45,960
- Two person household
 - 100% FPL \$15,510
 - 133% FPL \$20,628
 - 400% FPL \$62,040
- Four person household
 - 100% FPL \$23,550
 - 133% FPL \$31,321
 - 400% FPL \$94,200

26

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APTC Table

- Percentage of household income contribution towards 2nd lowest cost Silver (70%) coverage in Marketplace:
 - 100% to 133% FPL 2%
 - From 133% to 150% 3% to 4%
 - From 150% to 200% 4% to 6.3%
 - From 200% to 250% 6.3 % to 8.05%
 - From 250% to 300% 8.05% to 9.5%
 - From 300% to 400% 9.5%
- Example of inverse linear sliding scale
 - 225% FPL is half way between 200%-250% band
 - Household income contribution half way between 6.3% and 8.05% = 7.04%
- See K&C detailed APTC chart

27

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Cost Sharing Reductions (CSR) (Reduced Deductibles & Co-Pays)

100%-150% FPL	70% Silver increase to 94%
150%-200% FPL	70% Silver increase to 87%
200%-250% FPL	70% Silver increase to 73%

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Employer or Marketplace Subsidy?

- To be eligible for Marketplace subsidies employee cannot be offered “adequate” and “affordable” coverage from employer
- “Adequate” means at least Bronze (60% actuarial value) coverage- virtually all current offerings meet this standard
- “Affordable” means the employee’s share of the self-only coverage premium cannot be more than 9.5% of his income
- If employer offers coverage for spouse and/or dependents (even if entire premium paid by employee) then spouse and dependents are also ineligible for Marketplace subsidies
- **Employer may be inadvertently “harming” certain lower income employees by offering coverage**

29

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Subsidy Analysis Required

- Analyze workforce to determine value of Marketplace subsidies
- Requires knowledge of employee’s household size and household income
- Household size: taxpayer, spouse if filing joint, dependents
- Household income: taxpayer, spouse if employed, dependents if required to file a tax return
- Compare cost of coverage in Marketplace (net of subsidies) to cost of employer group coverage

30

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Illustrating the Subsidies

- Joe Employee age 35 earns \$30,000/year (\$15/hour) and supports a family of 4 (unemployed spouse age 35 and 2 children under age 20), falls at 127% Federal poverty level
- Joe lives in Virginia Beach (Virginia Rating Area 9)
- 2nd lowest cost silver plan (70% actuarial value)
 - Total annual premium for all 4 = \$9,470
 - Family share of premium 2% of income = \$50/month = \$600/year
 - APTC \$9,470 - \$600 = \$8,870
 - Cost sharing reductions increase to 94% AV

31

Illustrating the Subsidies

- Buy down to Bronze (60% actuarial value) family coverage
 - Total annual premium \$7,407
 - APTC of \$8,870 covers entire cost
 - Family share of premium \$-0-
 - But no cost sharing reductions since didn't buy Silver

32

Opportunity Example 3

- Employer of “Joe Employee” currently offers Bronze (60%) coverage at a cost to Joe of \$200/month for the self-only premium with an option to add the family for \$700/month (employer subsidy \$200/month)
- Offering is “adequate” (Bronze) and affordable (self-only premium <9.5% of wages) so Joe cannot receive any Marketplace subsidies

33

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Opportunity Example 3

- Employer decides it’s \$200/month contribution can’t come close to the Marketplace subsidies
- Employer eliminates Joe from employer plan and raises his pay by \$200/month effective 1/1/2014 so Joe can take advantage of \$9,000+ of Marketplace subsidies

34

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Opportunity Example 4

- Small law firm currently pays the \$7,000 insurance cost for the 3 person family of a valued employee making \$35,000/year
- Firm learns that 3 person \$35,000 household falls at 179% FPL and household contribution is 5.33% of income (\$1,866/year)

35

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Opportunity Example 4

- Firm drops employee & family from coverage and raises employee's salary by \$2,500 effective 1/1/2014
- Firm assists employee in purchasing Silver coverage (enhanced to 87% AV) through the Marketplace (better value than employer offering)
- Firm pockets \$4,500 savings

36

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Small Employer Strategies

- Don't offer "affordable" coverage to any "lower income" employees who can benefit from Marketplace subsidies after January 1, 2014
 - Help steer employees to Marketplace opportunity
- Strategies to eliminate employer "offer":
 - Only offer coverage to 40 hour full-time employees and reduce lower income to 39 hours
 - Offer only high priced coverage to ensure self-only premium is "unaffordable" for lower income
 - Employees pay 100% of premium via cafeteria plan
 - Enroll through SHOP 11/15-12/15
 - Avoid minimum participation and contribution requirements

37

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Small (Exempt) Employer Strategies

- In comparing "value" of employer subsidy to the Marketplace subsidy remember that the employer subsidy is more valuable
 - Employer subsidy is tax free to the employee
 - Employee's share of Marketplace premium is after tax (non-deductible)
- Can still offer "higher income" employees insurance in 2014
 - Nondiscrimination regulations not yet issued
 - IRS says regulations not effective until 2015 at the earliest
 - We'll likely be discussing non-discrimination rules next year-stay tuned
- Possible long term result: small employers may stop offering group insurance and push all employees to the Marketplace?

38

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Large Employer Strategies

- Don't offer "affordable" coverage to "lower income" **part-time** employees after January 1, 2014
 - Part-time = less than 30 hours/week in prior "measurement period"
 - Enables those employees to enjoy Marketplace subsidies and will never expose employer to penalties
- Consider not offering "lower income" **full-time** employees adequate and affordable self-only coverage 1/1/14
 - Allows lower income employees to receive Marketplace subsidies until 2015 renewal
 - But employer not likely to continue this practice when employer mandate starts in 2015

39

Large Employer Strategies

- Consider dropping spouse coverage
 - No ACA requirement to ever offer spouse coverage
 - Enables lower income employee's spouse to obtain subsidized Marketplace coverage
 - UPS and UVA notable examples
- Must offer dependent coverage in 2015 to avoid penalty

40

OOPS- APTC Pay Back

- APTC provided “in advance” based on estimate of 2014 income and reconciled on individual tax return
 - Will rarely be exactly right- only smooth between
 - 100%-133% FPL (2%) and
 - 300%-400% FPL (9.5%)
 - If too little, claim additional refundable credit
 - If too much, repay to IRS, subject to maximum repayment limits
- Cost sharing reductions not subject to repayment

41

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Limits on APTC Repayments

- 100% to 200% FPL
 - Single \$300
 - Married Filing Joint \$600
- 200%-300% FPL
 - Single \$750
 - Married Filing Joint \$1,500
- 300%-400% FPL
 - Single \$1,250
 - Married Filing Joint \$2,500

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APTC Reconciliation Example 1

- 4 person household estimates 2014 income @ \$31,000 (131% FPL)
- Assume 2nd lowest Silver premium = \$12,000
- Family share 2.0% x \$31,000 = \$620
- APTC = \$11,380
- Wage earner gets \$1,000 bonus, actual income goes to 135% FPL
- Revised share of premiums 3.12% = \$998
- Owes \$378 difference with tax return

43

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APTC Reconciliation Example 2

- 4 person household estimates 2014 income @ \$94,000 (barely under 400% FPL)
- 2nd lowest Silver premium \$12,000
- Family share 9.5% x \$94,000 = \$8,930
- APTC = \$3,070
- Wage earner gets \$1,000 bonus, goes above 400% FPL
- Loses entire \$3,070 APTC (300% tax rate!)

44

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Today's Takeaways

- Did you properly distribute a Marketplace coverage Notice on October 1st?
- Are you advising all employees of individual mandate?
- If “large” employer with calendar year plan are you prepared to start tracking all employees’ hours this month?

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Today's Takeaways

- Should cafeteria plan be amended to permit new \$500 FSA carryover from 2013 to 2014 (and eliminate “grace period” if present)?
- Should non-calendar cafeteria plan be amended by 12/31 to add Marketplace opportunity as a qualifying change event (to allow mid-year election changes)?

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Today's Takeaways

- Should you change current health insurance offering 1/1/2014 to allow lower income employees to enjoy Marketplace subsidies (small employers forever, large employers until mandate begins in 2015)?
- If “small” are you prepared to start tracking employee hours 1/1/2014 to confirm “small” status for 2015?

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Today's Takeaways

- Have you analyzed opportunity for **employer** to save on health insurance costs by shifting lower income employees to Marketplace subsidies
- Have you analyzed opportunity for your **employees** to save on health insurance costs through Marketplace subsidies?

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Today's Takeaways

- Have you compared your group premiums to the premiums for comparable coverage in the Marketplace, particularly if you have bad experience ratings?

49

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Questions?

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Appendix 1: General Health Plan Compliance Issues

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DOL Audit Focus

- After decades of inattention the Department of Labor (DOL) has launched an initiative to audit welfare benefit plans (specifically health benefit plans)
- While the audit focus is on compliance with the Patient Protection and Affordable Care Act (ACA) the DOL is also reviewing preexisting requirements
- Commentators indicate DOL is finding major non-compliance and assessing significant penalties

52

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ERISA Applies

- Employee Retirement Income Security Act (ERISA)
 - September 1974 (almost 40 years ago)
 - Amended many times adding more requirements
- ERISA applies to all “employee benefit plans”
 - Pension Benefit Plans
 - 401k, profit sharing, defined benefit, some 403b, etc.
 - Welfare Benefit Plans
 - Group health, life, disability, long term care, etc.
 - Can be insured, self funded or unfunded
 - Sometimes difficult to determine when an employee benefit constitutes a “plan”

53

Pension Benefit Plans

- “Pension” plans highly regulated and scrutinized
 - All pension benefit plans file information returns (5500s) with both IRS and DOL
 - IRS audits for tax compliance (guarding against excessive use as tax shelters for highly compensated)
 - DOL audits for “fairness” to employees and in response to employee complaints
 - Pension plans have 3rd party providers to help keep plans in compliance
 - Attorneys and CPAs
 - Third party administrators (TPA)
 - “Bundled” investment & recordkeeping platforms
 - Note: pension plan financial advisers generally steer clear of providing compliance advice

54

Welfare Benefit Plans

- “Welfare” plans heretofore largely ignored
 - Only “large” plans file 5500s
 - Over 100 participants if fully insured
 - Minimal information provided
 - IRS doesn’t care (welfare plans not seen as tax shelters)
 - DOL hasn’t paid any attention
 - More focused on pension plans
 - Generally no employee rights being violated
 - No prior specific funding for a welfare plan audit initiative
 - Generally no professional 3rd party compliance assistance
 - Insurance companies and benefit advisors provide compliance suggestions but generally disclaim direct compliance responsibility

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General ERISA Requirements

- Plan document
- Summary Plan Description (SPD)
- Summary of Material Modifications (SMM)
- Summary of Material Reductions in Covered Services
- Annual Report (Form 5500)
- Summary Annual Report (SAR)
- Claims Notices/Explanation of Benefits

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Plan Document

- Basic ERISA requirement: all employee benefit plans must have a written plan document
- Insurance contract is NOT an ERISA plan document
- Usually ERISA welfare plan document “wraps” around the insurance contract (contract is an attachment)
- Our guess 99% of small businesses do NOT have ERISA welfare plan documents

57

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Summary Plan Description

- 2nd basic ERISA requirement: all employee benefit plans must have a Summary Plan Description
 - Purpose: put technical language in Plan Document into “layman’s” terms
 - Primary method of communicating plan benefits to employees
- Insurance “booklet” is usually NOT an ERISA compliant SPD
 - Usually lacks several important required items
- When plan terms amended must provide SMM

58

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Form 5500 & SAR

- Proper identification of all welfare benefit plans
 - Review employee handbook
 - Review payroll deductions
- Which “benefits” are “plans”?
- Which “plans” require 5500s?
 - Over 100 participants at beginning of year
- Do any require CPA audits?
- SAR distribution within 60 days of filing 5500

59

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Combining Welfare Plans

- Employers with multiple welfare benefit plans may consider combining into one
 - Primary benefit is single Form 5500 filing and SAR
 - Does not require all insurance contracts be on the same year
- Requires creation of a “mega wrap” plan document and SPD

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Potential Penalties

- No specific penalty for initial failure to provide but \$110/day penalty paid to requesting participant if not provided upon request:
 - SPD
 - SMM
 - SAR
- Late filing of Annual Report Form 5500
 - DOL \$300/day to \$30,000 maximum per filing
 - IRS \$25/day to \$15,000 maximum per filing
 - Delinquent Filer Voluntary Compliance Program much less

61

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Potential Penalties

- \$100 per day per participant excise tax penalty for failure to provide
 - Initial COBRA notice
 - COBRA election notice
 - Special Enrollment Notice
 - Certificate of Creditable Coverage
 - General Notice of Preexisting Condition Exclusion
 - Individual Notice of Period of Preexisting Condition Exclusion
 - WHCRA Notices
 - NMHPA Notice
 - CHIPRA Notice
 - HIPAA Wellness notice
 - Michelle's Law notice
 - PPACA Grandfather notice
 - Summary of Benefits and Coverage

62

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DOL Self Compliance Tools

- On March 1, 2013 DOL released two new “Self-Compliance Tools” for group health plans
- Basically extensive checklists employers and their benefit advisors can use to self-audit for compliance with HIPAA through ACA

63

DOL Self-Compliance Tool #1

- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - Limits on Preexisting Conditions Exclusion
 - Certificates of Creditable Coverage
 - Special Enrollment Provisions
 - HIPAA Nondiscrimination Provisions
 - Wellness Program Provisions
 - HMO Affiliation Period Provisions
 - MEWA Guaranteed Renewability Provisions
- Mental Health Parity and Addiction Equity Act (MHPAEA)

64

DOL Self-Compliance Tool #1

- Newborns' and Mothers' Health Protection Act (NMHPA)
- Women's Health and Cancer Rights Act (WHCRA)
- Genetic Information Nondiscrimination Act (GINA)
- Michelle's Law

65

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DOL Self-Compliance Tool #2 ACA

- Patient Protection and Affordable Care Act (ACA)
 - Grandfather Status
 - Dependent Coverage to Age 26
 - Anti-Rescission Provisions
 - Restrictions on Lifetime and Annual Limits
 - Preexisting Provisions Under Age 19
 - Summary of Benefits & Coverage (SBC)
 - Patient Protection
 - Choice of Primary Care Physician
 - Emergency Services
 - No Cost Preventive Services
 - Contraception controversy
 - Claims & Appeals
 - Internal
 - External

66

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Missing from DOL Self-Compliance Tools

- ERISA requirements
- Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
 - Continuation coverage and related notices

67

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Steps to Take Now

- Identify and empower a “compliance officer”
- Identify all welfare benefit plans subject to ERISA
- Complete the DOL Self-Compliance Tools
- Create a compliance binder for each welfare plan
 - ERISA compliant plan document
 - ERISA compliant SPD
 - Insurance contract
 - Contracts with service providers
 - Sample of enrollment form/open enrollment documents
 - Samples of all required notices
 - Logs or other proof of delivery of documents and notices
 - Copies of 5500s and SARs

68

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How We Can Help

- Help identify all welfare benefit plans subject to ERISA
- Provide ERISA compliant plan documents and SPDs for individual plans
- Provide “mega wrap” plan document to consolidate welfare plans into one Form 5500 filing
- Confirm proper filing of all required 5500s and assist in correcting any prior noncompliance (DFVC)
- Confirm maintenance of logs/records of proper distribution of required notices to participants

69

Appendix 2: Cafeteria Plan Issues

70

Cafeteria Plan Types

- Basic: convert employee contributions/premiums from after-tax to pre-tax deductions
 - AKA “Premium Only Plan”
- Complex: also include flexible spending account and/or dependent care reimbursement account
- Either type requires a written plan document, SPD and election forms

71

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Cafeteria Plan Issues

- Is there a plan document and is it up to date?
- \$2,500 annual limit on employee elective contributions to FSA (2013)
- Optional amendment for fiscal year plans to allow a one-time change in an employees health plan election (revocation or commencement of coverage) with respect to Marketplace opening

72

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Cafeteria Plan Issues

- NEW: Notice 2013-71
- IRS modified “use it or lose it” rule to allow a one year carryover of unused flexible spending benefits of up to \$500
- But cannot use the new \$500 carryover in conjunction with the 2 ½ month “grace period
- Recommendation: amend plan and notify employees by 12/31/2013 if implementing for 2013

73

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