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215.355.2121 • www.totalbenefitsinc.com

Should an Employer with 51-100 Full-time Employees Change Its Policy Year to Delay Compliance with Certain ACA Provisions?

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Representatives from several insurance carriers are encouraging employers with 51-100 full-time employees to move their policy years to October 1 – September 30, effective October 1, 2015, to delay certain Affordable Care Act ("ACA") design requirements applicable to non-grandfathered group health plans for plan years beginning on or after January 1, 2016, summarized as follows:

- Small, insured group health plans must offer essential benefits and provide a bronze level of coverage.

- Insurance carriers will be subject to new underwriting rules with respect to small, insured groups. Instead of using experience rating, carriers will use community rating. Rating variations will be restricted to (a) benefit coverage elected (plan and tier), (b) geographic area, (c) age, limited to a ratio of 3 to 1 for adults, and (d) tobacco use, limited to a ratio of 1.5 to 1.

The definition of "small employer" will increase from an employer with up to 50 employees to an employer with up to 100 employees, beginning with the 2016 plan year.

The compliance issues associated with this proposal are outlined below.

Notably:

- there is transition relief available in some states by some carriers which allows employers to keep their current products through September 30, 2017; and

- changing the plan year to later in the calendar year will expose a mid-sized employer to the employer penalty as of **January 1, 2015** rather than the first day of the 2016 plan year.

CMS Transitional Policy

Under a transitional policy, non-grandfathered health insurance coverage in the 51 – 100 market that is renewed for a policy year starting between January 1, 2016 and October 1, 2016 (even if the employer did not previously have health insurance coverage) will not be considered to be out of compliance with newly effective market reforms if permitted by the state and offered by the health insurance issuer.

An employer who employs 51-100 employees is not required to remain with the same insurer between 2013 and 2016 in order to be eligible for transitional relief in 2016.

2015 Transition Relief for Employers with 50-99 Full-time Employees

Beginning in 2015, large employers can be subject to penalty when not offering affordable, minimum value coverage to all full-time employees. Final rules provide relief for mid-sized employers to delay the Employer Penalty until 2016.

The transition relief applies to all calendar months of 2015 plus any calendar months of 2016 that fall within the employer's 2015 plan year so will cover non calendar-year plans, but only if the employer did not modify the plan year after February 9, 2014 to begin on a later calendar date (for example, changing the start date of the plan year from January 1 to December 1).

The other conditions are as follows:

1. **Limited Workforce Size.**
   The employer employs on average at least 50 FTEs (including full-time equivalent employees) but fewer than 100 FTEs (including full-time equivalent employees) on business days during 2014.

2. **Maintenance of Workforce and Aggregate Hours of Service.**
   During the period beginning on February 9, 2014 and ending on December 31, 2014, the employer does not reduce the size of its workforce or the overall hours of service of its employees in order to satisfy the workforce size condition described in (1) above. Bona fide business reasons for a reduction in workforce size or overall hours of service will not be considered to violate this provision. For example, reductions of workforce size or overall hours of service because of business activity such as the sale of a division, changes in the economic marketplace in which the employer operates, terminations of employment for poor performance, or other similar changes unrelated to eligibility for this transition relief are for bona fide business reasons and will not affect eligibility for the transition relief.

3. **Maintenance of Previously Offered Health Coverage.** During the coverage maintenance period, the employer does not eliminate or materially reduce the health coverage, if any, it offered as of February 9, 2014. For purposes of this paragraph, the term "coverage maintenance period" means for an employer with a calendar year plan, the period beginning on February 9, 2014 and ending on December 31, 2015; and for an employer with a non-calendar year plan, the period beginning on February 9, 2014 and ending on the last day of the plan year that begins in 2015. An employer is not treated as eliminating or materially reducing health coverage if:
   - it continues to offer each employee who is eligible for coverage during the coverage maintenance period an employer contribution toward the cost of employee-only coverage that either:
     - is at least 95% of the dollar amount of the contribution toward such coverage that the employer was offering on February 9, 2014, or
     - is the same (or a higher) percentage of the cost of coverage that the employer was offering to contribute toward coverage on February 9, 2014;
   - when there is a change in benefits under the employee-only coverage offered, that coverage provides minimum value ("MV") after the change; and
   - it does not alter the terms of its group health plans to narrow or reduce the class or classes of employees (or the employees' dependents) to whom coverage under those plans was offered on February 9, 2014.

4. **Certification of Eligibility for Transition Relief.** The large employer certifies on Form 1094-C that it meets the (1) – (3) above.

Plan Year v. Policy Year

The policy year is relevant for transition rule purposes. The plan year is relevant for employer penalty purposes. A plan year is an accounting period. It is usually the same as the policy year (the period for which rates are locked in), but not always.

To confirm the plan year, employers can examine the summary plan description and/or Form 5500.

Employers relying on transition relief for the employer penalty until 2016 will no longer qualify if they change their plan years along with their policy years.

If employees pay premiums on a pre-tax basis, there should be a plan year change for the cafeteria plan. Any plan year change would have to be properly documented.

It may be desirable to change other policy years (e.g., for the disability and life insurance plans) as well to maintain a consistent program.

Bottom Line

Employers with 51-100 full-time employees can move their policy years to October 1 – September 30, effective October 1, 2015, to delay certain design requirements applicable to non-grandfathered group health plans. In addition to changing a policy year, employers should change the plan years of their cafeteria plans to allow employees to make pre-tax elections for the new period of coverage. Also, if desired, employers should change the policy years of their other underlying benefit plans.

Employers with 50-99 full-time employees relying on transition relief for the employer penalty until 2016 should not change their plan years along with their policy years.