Health Care Reform – What You Should Know For 2016

Richard S. Chargar, Pamela D. Kaplan, Victoria E. Anderson

December 16, 2015

This Advisory supplements our previous advisories, October 2014, October 2013, November 2012, November 2011, and October 2010, addressing the requirements of the Affordable Care Act ("ACA").

Unlike most other years since the Affordable Care Act ("ACA") was passed, there are relatively few new requirements employers need to implement in connection with their health plans subject to the ACA. This Advisory summarizes some of those relevant rules and guidance. **Lapse of Transition Rules for Employer Mandate Provisions**

Effective in 2016, various transition rules which were available in 2015 for the employer mandate, will no longer be available. These include the following:

- Applicable large employers ("ALEs") with between 50 and 100 qualifying employees will be fully subject to the ACA's employer mandate rules and penalties for not offering affordable coverage that meets the ACA's minimum value and minimum essential coverage standards. In 2015, these employers were exempt from certain of the ACA's employer mandate penalties.
- All ALEs must offer minimum essential coverage to at least 95% of their full-time employees to avoid certain employer mandate penalties. In 2015 the threshold was 70%.
- The special rule allowing employers to determine ALE status on any consecutive six-month period during 2015 is no longer available.
- Special transitional relief for non-calendar year plans in 2015 is no longer available.
- The penalty calculation to determine whether minimum essential coverage was offered to 95% of full-time employees allows an employer to subtract 30 from the total number of full-time employees considered in the penalty calculation. In 2015, an 80 employee reduction was permitted.

Repeal of Automatic Enrollment Mandate for Certain Large Employers

ACA contained a provision that, pending further guidance from the government, certain employers with more than 200 full-time employees would be required to automatically enroll its employees in medical coverage. This requirement has now been repealed. Employers, however, may still automatically enroll employees in certain types of medical coverage if certain requirements are met. **Cadillac Tax**

The Cadillac tax, which is designed to tax high cost health plans, is currently scheduled to become effective during 2018. There are various proposals in Congress which would either delay the effective date of the Cadillac tax or outright repeal it. Please be on the lookout for a future client alert should any of these proposals be enacted into law. **Increases in Information Reporting Penalties**

The following penalties connected with filing information returns and providing correct payee statements under ACA have been increased for returns and statements required to be filed after December 31, 2015:

Type of Penalty	**Per Return Penalty – Old Law**	**Per Return Penalty – New Law**	**Maximum Penalty per Calendar Year – Old Law**	**Maximum Penalty Per Calendar Year – New Law**
Filing incorrect returns	$100	$250	$1,500,000	$3,000,000
Reduced Tax Penalty for Filing incorrect returns if corrected within 30 days	$30	$50	$250,000	$500,000
Reduced Tax Penalty for Filing incorrect returns if corrected by August 1	$60	$100	$500,000	$1,500,000
Intentionally Disregarding Requirement to File Timely and Correct Returns	$250	$500	No Maximum	No Maximum

Clarification of Information Reporting Requirements

The IRS has finally issued clarification on an employer's information reporting requirements under ACA. The following is a summary of what must be filed by an employer or furnished to employees under the reporting mandate:

IRS Form	**Purpose**	**Who Must File**	**Provided to Employees?**	**Due Date**
1094-B	Transmittal of 1095-B to IRS.	Insurers Issuing Insured Coverage; Employers with Self-Insured Coverage; Employers with fewer than 50	No	February 29, 2016 if on paper; March 31, 2016 if filed electronically

		employees		
1095-B	Reporting for Purposes of Individual Shared Responsibility Provisions (“Individual Mandate”)	Insurers Issuing Insured Coverage; Employers with Self-Insured Coverage; Employers with fewer than 50 employees	Yes	Filing with IRS due by February 29, 2016 if filed on paper or March 31, 2016 if filed electronically. Furnished to employees by January 31, 2016
1094-C	Transmittal of 1095-C to IRS. Also provides information about the methods by which coverage was offered to employees and whether minimum essential coverage with minimum value was provided	Applicable Large Employers	No	February 29, 2016 if paper filing; March 31, 2016 if filed electronically
1095-C	Reporting for Purposes of Employer Mandate	Applicable Large Employers	Yes	Filing with IRS due by February 29, 2016 if filed on paper; March 31, 2016 if filing electronically. Form must be furnished to employees by February 1, 2016

The following chart illustrates what needs to be completed on the forms provided to each employee as well as filed with the IRS, by filer type:

Form	**Filer Type**	**What to Complete**
1095-B	Employer Providing	Insurer files return and

	Insured Medical Coverage	furnishes copy to employee. Insurer completes Parts I, II, III and IV
1095-B	Employer Providing Self-Insured Medical Coverage	Complete Parts I, III and IV. Enter B on line 8
1095-B	Employer of Fewer Than 50 Employees	Insurer if insured medical coverage or employer if self-insured, as per above
1095-B	Employer Providing Self-Insured Medical Coverage to Non-Employees (e.g., directors, retired employees or COBRA beneficiaries)	If employer elects to report on 1095-B instead of 1095-C.
1095-C	Applicable Large Employer with Self-Insured Medical Coverage	Employer completes Parts I, II and III for each employee enrolling in the coverage, whether or not full-time
1095-C	Applicable Large Employer with Insured Medical Coverage	Employer completes Parts I and II. Insurer completes Part III
1095-C	Employer Providing Self-Insured Medical Coverage to Non-Employees (e.g., directors, retired employees or COBRA beneficiaries) and Not Electing to Report Such Persons on Form 1095-B	Employer completes Parts I, II and III for each individual who enrolls in the coverage, whether or not full-time. In Part II, enter code 1G in box 14 and either check box for all 12 months or checks the boxes for the months in which coverage was provided

Embedded Self-Only Out-of-Pocket (“OOP”) Limits

Effective in 2016, the ACA’s self-only OOP maximum applies to each individual under non-grandfathered, self-insured and large group health plans, regardless of whether the individual is enrolled in self-only or family coverage. The 2016 OOP limit (which is indexed for cost-of-living increases) for self-only coverage is $6,850. The Embedded Self-Only OOP Limit means that each individual who is enrolled in family coverage during 2016 is not required to pay more than $6,850 in cost sharing for essential health benefits, even if s/he has not reached the plan’s family OOP limit. The 2016 OOP Limit (which is indexed for cost-of-living increases) for family coverage is $13,700.

Kelley Drye will continue to monitor health care reform and keep you updated on any new developments. In the meantime, please contact our Employee Benefits group for any questions or compliance assistance with any Affordable Care Act requirements.