FMS & Program Member Forum
Understanding the Affordable Care Act Employer Responsibility Mandate

Questions & Answers from the Member Forum

July 15, 2013

To view the webinar recording, click here.

Please email membership@participantdirection.org if you have any questions regarding this document.

Q: What is the expected % of employees that are anticipated to go to the exchange if an employer chooses not to offer coverage and pay the lesser of (1) exchange penalty($3,000 per employee that goes to Exchange) or (2) Full time employee penalty ($2000 times all FTE)?
A: *(Lucia Cucu, Policy Analyst)* The success of the act depends on the willingness of people to go and buy insurance and comply with the individual mandate. The tax penalties that someone has to pay for not supplying health insurance are actually quite small. The administration is hoping that the penalties will encourage individuals to willingly comply with the law even if the penalties aren't that large. It will be interesting to see what plays out once the mandate goes into effect.

Q: Must the employer continue to offer coverage during the stability period, even if employment is terminated?
A: *(Lucia Cucu, Policy Analyst)* If the employment is terminated no coverage has to be offered anymore. When it comes to the grey area of dealing with an employee who doesn't seem to be working (if employee doesn't work any hours in a month), hopefully the IRS will issue further regulations clarifying whether insurance must be provided for such employees.

Q: We increased our AWC billing rates to compensate for the ACA and incorporate insurance into the rate. They were issued on June 30th. Now that the ACA will not impose penalties until 2015, we are looking at reducing the AWC billable rate to not include compensation for health insurance. Our issue is, what if AWCs already started offering health insurance starting July 1, 2013 to prepare for when they were required to offer it starting 2014 as insurance plans can run from July to June?
A: *(Mollie Murphy, FMS Lead)* Would you want to have the AwC providing the insurance starting in July? If so then you might compensate at the higher rate. If they aren't providing the insurance in July, then you could delay the increased compensation until they do start providing the insurance. Have you heard from some of the agencies that they already have employees signed up for July and won't be able to delay it until 2015? I would think they would be able to pick their enrollment period and adjust for when the ACA starts.

Q: Is it possible that the previous deadline for the start of the employer responsibility mandate could be reinstituted if it's determined that the extension was not permissible (i.e., the President did not have the authority to extend the deadline)?
A: *(Lucia Cucu, Policy Analyst)* It's not an easy question to know the answer to ahead of time; the Administration has the right to issue regulations which work out the details on how laws should be applied. I assume they ran this though their counsel and believe this is permissible. I think we should assume there won't be any issues with this.

Q: What happens if we provide insurance but the employee buys insurance on the exchange, not because it's not offered at an affordable rate, but because they want a different plan/vendor.
A: *(Lucia Cucu, Policy Analyst)* In a case like that there would be no penalty. There is nothing that says the employee needs to get insurance from employer. If the affordability requirement is met then the employee has no good reason to go to the exchange. They are strongly discouraged to buy their own insurance (higher premiums) but it is their right to do that and it won't affect the employer in any way.

Q: Have the reporting periods moved from 2013 to 2014 for larger employers?
A: *(Lucia Cucu, Policy Analyst)* The requirements will be postponed but we will know more once the official rules are issued.

Q: Do you think programs will move to Fiscal/Employer Agent from Agency with Choice to avoid the ACA requirements?

A: *(Mollie Murphy, FMS Lead*) Programs that are concerned about having to cover the costs of health insurance because they do AwC may want to transfer to F/EA. At the Center we are concerned that programs will transition from AwC to F/EA for this reason. We are concerned that F/EA and by connection participant direction will look like a dumping ground for programs that don't want to pay for the responsibilities of the ACA. We will have to see if it becomes important for programs to transition participants to avoid the costs.

Q: What are your thoughts on AWCs limiting the hours that the employee can work so they don't have to pay insurance?

A: *(Mollie Murphy, FMS Lead*) I am hearing that this is happening a lot with employers. Rather than provide health insurance we are hearing that AwC providers may keep an employee's hours below the threshold so that person won't be fulltime and thereby won't need health insurance provided for them. One downside is that for a participant that needs 40-50 hours a week of care, they now need two employees instead of one.

A: *(Lucia Cucu, Policy Analyst)* From a legal perspective there is nothing in the employee responsibility mandate that says an employer cannot reduce hours. An employer has the right to determine that they only want to have part-time employees.