



As you are aware, Healthcare Reform has so many interpretations. Even attorneys cannot agree. We are providing the information below as a means to assist but this does not represent a legal opinion. Opinions provided by Arthur J. Gallagher are not intended to be, and should not be construed to be legal advice. Requests for legal advice and interpretation should always be directed to an attorney.

### Key Provisions Under the Affordable Care Act for Employers with 50 or More Employees

Implementation of the Affordable Care Act occurs in stages, with many of the reforms and requirements taking effect in 2013 and 2014. Some of the provisions that may impact employers with 50 or more employees include:

- **Employer Notice to Employees of the New Health Insurance Marketplace**

Under the Affordable Care Act, employers covered by the Fair Labor Standards Act (generally, those firms that have at least one employee and at least \$500,000 in annual dollar volume of business), must provide notification to their employees about the new Health Insurance Marketplace; inform employees that they may be eligible for a premium tax credit if they purchase coverage through the Marketplace; and advise employees that if they employee purchase a plan through the Marketplace, they may lose the employer contribution (if any) to any health benefits plan offered by the employer. Employers are required to provide this notice to all current employees by **October 1, 2013**, and to each new employee at the time of hire beginning October 1, 2013, regardless of plan enrollment status (if applicable) or of part-time or full-time status. The Department of Labor has provided employers with two sample notices they may use to comply with this rule, one for [employers who do not offer](#) a health plan and another for [employers who offer a health plan](#) for some or all employees. For more information refer to [DOL's Technical Guidance](#).

- **Employer Shared Responsibility Provisions**

Beginning in 2015, employers with 50 or more full-time/full-time equivalent employees that do not offer affordable health insurance that provides minimum value to their full-time employees (and dependents) may be required to pay an assessment if at least one of their full-time employees is certified to receive a premium tax credit in an individual health insurance Marketplace. A full-time employee is one who is employed an average of at least 30 hours per week. The assessment, known as Employer Shared Responsibility, will offset part of the cost of the Marketplace premium tax credits. Treasury recently issued [transitional relief](#) to employers covered by these rules indicating that no shared responsibility payments will apply until 2015. You can refer to the [Proposed Regulations](#) for more information about these provisions. To determine if you have 50 or more full-time or full-time equivalent employees and are therefore covered by the Employer Shared Responsibility rules, [click here](#).

- **Minimum Essential Coverage – (MEC)**

The type of coverage an individual needs to have to meet the **individual responsibility** requirement under the Affordable Care Act. This includes individual market policies, job-based coverage, Medicare, Medicaid, CHIP, TRICARE and certain other coverage.

- **Minimum Value Standard**

One of the requirements of the Affordable Care Act for a health insurance plan is that an employer offers their employees coverage that meets the minimum value standard. If an employer plan fails to meet the minimum value standard, a large employer (50 or more full time employees) will be assessed a penalty. The minimum value standard is met if the employer's plan pays 60% or more of the plan's share of the total allowed costs of the benefits provided under the plan. Minimum value is calculated by dividing the anticipated covered medical spending of essential health benefits (EHB) coverage ( for the population covered by a typical self-insured group health plan) by the total anticipated allowed charges for EHB coverage for a typical self-insured group health plan population.

- **Health Insurance Coverage Reporting Requirements**

Beginning in 2015, employers subject to the Employer Shared Responsibility rules described above must [provide the IRS with information](#) about full time employees' coverage under the health plans and the cost of benefits provided. Likewise, employers that sponsor self-insured plans must submit [reports](#) detailing information for each covered individual. Treasury is expected to publish Proposed Rules this summer that provide further guidance about these provisions.

- **Summary of Benefits and Coverage (SBCs) Disclosure Rules**

Employers are required to provide employees with a standard "Summary of Benefits and Coverage" form explaining what their plan covers and what it costs. The purpose of the SBC form is to help employees better understand and evaluate their health insurance options. Penalties may be imposed for non-compliance. For more information, refer to this [completed sample of the SBC form](#) from the U.S. Department of Labor.

- **Medical Loss Ratio Rebates**

Under ACA, insurance companies must spend at least 80% of premium dollars on medical care rather than administrative costs. Insurers who do not meet this ratio are required to provide rebates to their policyholders, which is typically an employer who provides a group health plan. Employers who receive these [premium rebates](#) must determine whether the rebates constitute plan assets. If treated as a plan asset, employers have discretion to determine a reasonable and fair allocation of the rebate. For more information on the federal tax treatment of Medical Loss Ratio rebates, refer to [IRS's FAQs](#).

- **W-2 Reporting of Aggregate Health Care Costs**

Beginning January 2013 (applicable to 2012 reporting), most employers must report the aggregate annual cost of employer-provided coverage for each employee on the Form W-2. The new W-2 reporting requirement is informational only and it does not require taxation on any health plan coverage. Reporting is required for most employer-sponsored health coverage, including group medical coverage. **Small Employer Exception:** For 2012 reporting and beyond until further guidance is issued, the W-2 reporting requirement does not apply to employers required to file fewer than 250 Form W-2s in the prior calendar year. To learn more about the requirements, as well as exclusions, visit this [page](#) at IRS.gov.

- **Limits on Flexible Spending Account Contributions**

For plan years beginning on or after January 2013, the maximum amount an employee may elect to contribute to health care flexible spending arrangements (FSAs) for any year will be capped at \$2500, subject to cost-of-living adjustments. Note that the limit only applies to elective employee contributions and does not extend to employer contributions. To learn more about FSA Contributions, as well as what is excluded from the cap, refer to this [document](#) provided by the IRS.

- **Additional Medicare Withholding on Wages**

Beginning January 1, 2013, the ACA increases the employee portion of the Medicare Part A Hospital Insurance (HI) withholdings by .9% (from 1.45% to 2.35%) on employees with incomes of over \$200,000 for single filers and \$250,000 for married joint filers. It is the employer's obligation to withhold this additional tax, which applies only to wages in excess of these thresholds. The employer portion of the tax will remain unchanged at 1.45%.

- **New Medicare Assessment on Net Investment Income**

Beginning January 1, 2013, a 3.8% tax will be assessed on [net investment income](#) such as taxable capital gains, dividends, rents, royalties, and interest for taxpayers with Modified Adjusted Gross Income (MAGI) over \$200,000 for single filers and \$250,000 for married joint filers. Common types of income that are not investment income are wages, unemployment compensation, operating income from a non-passive business, social security benefits, alimony, tax-exempt interest, and self-employment income.

- **90-Day Maximum Waiting Period**

Beginning January 1, 2014, individuals who are eligible for employer-provided health coverage will not have to wait more than 90 days to begin coverage. The IRS has provided [temporary guidance](#) on how employers should apply the 90-day rule and is expected to provide more information in the near future clarifying these rules.

- **Transitional Reinsurance Program Fees**

The [Transitional Reinsurance Program](#) is a three-year program, beginning in 2014 and continuing until 2016, that reimburses insurers in the individual insurance Marketplaces for high claims costs. The program is funded through fees to be paid by employers (for self-insured plans) and insurers (for insured plans). The U.S. Department of Health and Human Services estimates that the fees for 2014 will be \$5.25 a month (or \$63 for the year) for each individual covered under a health care plan, with the required fee for the following two years to be somewhat lower. The fee applies to all employer-sponsored plans providing major medical coverage, including retiree programs. The U.S. Department of Labor has advised that for self-insured plans, these fees can be paid from plan assets. The IRS has stated that the fees are tax deductible for employers. The U.S. Department of Health and Human Services is expected to provide more information in the near future clarifying the details of this program.

- **Workplace Wellness Programs**

The Affordable Care Act creates new incentives to promote employer wellness programs and encourage employers to take more opportunities to support healthier workplaces. Health-contingent wellness programs generally require individuals to meet a specific standard related to their health to obtain a reward, such as programs that provide a reward to employees who don't use, or decrease their use of, tobacco, and programs that reward employees who achieve a specified level or lower cholesterol. Under final rules that take effect on January 1, 2014, the maximum reward to employers using a health-contingent wellness program will increase from 20 percent to 30 percent of the cost of health coverage. Additionally, the maximum reward for programs designed to prevent or reduce tobacco use will be as much as 50 percent. The final rules also allow for flexibility in the types of wellness programs employers can offer. For more information and to view the final rules, visit [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

## Timeline of Provisions

The Affordable Care Act [timeline](#) provided by the U.S. Department of Health and Human Services includes the next steps you can take to implement the provisions.

## Guidance - Reporting Requirements Under the Affordable Care Act

Under the provisions of the Affordable Care Act, those employers that are subject to the Employer Shared Responsibility provisions must report certain information regarding the health coverage they offer their full-time employees (known as Section 6056 reporting). The law also requires information reporting by insurers, self-insuring employers, and other parties like governmental entities that provide health coverage to individuals (Section 6055 reporting). These reporting provisions take effect on January 1, 2015, and the first reports are due to the Internal Revenue Service in early 2016.

The U.S. Department of the Treasury and the IRS issued proposed regulations that provide further guidance about these information reporting requirement designed to help streamline and simplify the requirements under the law.

## What Must Employers, Insurers, and Other Reporting Entities Report Under these Rules?

The Affordable Care Act calls for employers, insurers, and other reporting entities to report to the IRS, among other things:

- **Section 6056 Reports For Employers That Are Subject to Employer Shared Responsibility (Those with 50 or More Full-Time or Full-Time Equivalent Employees):**
  - Information about the employer that is offering health coverage (including contact information for the employer and the number of full-time employees).
  - The names, addresses, and taxpayer ID numbers of the employer's full-time employees and information about the coverage offered to each such employee, by month, including the cost of self-only coverage.

Section 6056 also requires these employers to provide written statements to their full-time employees that includes the contact information for the employer and the information required to be shown on the section 6056 reports with respect to the full-time employee so that employees may use the statements to help determine whether, for each month of the calendar year, they can claim an individual premium tax credit on their tax returns. The first employee statements must be provided in early 2016 as well.

In addition, information from these reports will be used to administer and ensure compliance with the eligibility requirements for the Employer Shared Responsibility provisions and the individual premium tax credit.

- **Section 6055 Reports For Insurers, Self-Insuring Employers, and Other Parties That Provide Health Coverage:**
  - Information about the entity providing coverage, including contact information.
  - The name of each individual enrolled in minimum essential coverage along with taxpayer ID numbers and the months they were covered.

## How Do These Proposed Regulations Help to Streamline Reporting Requirements?

The proposed regulations issued by Treasury reflect comments received and an ongoing dialogue with a variety of stakeholders, many of whom already offer their full-time workforce coverage far exceeding the minimum Employer Shared Responsibility requirements.

The proposed rules describe a variety of options to potentially reduce or streamline information reporting, such as:

- Replacing section 6056 employee statements with Form W-2 reporting on offers of employer-sponsored coverage to employees, spouses, and dependents.
- Eliminating the need to determine whether particular employees are full-time if adequate coverage is offered to all potentially full-time employees.
- Allowing employers to report the specific cost to an employee of purchasing employer-sponsored coverage only if the cost is above a specified dollar amount.
- Allowing self-insured group health plans to avoid furnishing employee statements under both section 6055 and section 6056 by furnishing a single substitute statement.
- Limited reporting for certain self-insured employers offering no-cost coverage to employees and their families.

## **How Can I Submit Comments on These Proposed Rules and Where Can I Go to Get More Information?**

Employers and other stakeholders are invited to submit written or electronic comments on both the Section 6056 and 6055 proposed rules by November 8, 2013. Public hearings on these proposed rules are scheduled for mid-November, and these public comments will be taken into account in developing the final regulations for these reporting rules.

Once the final rules have been published, reporting entities will be encouraged to voluntarily implement information reporting in 2014 (when reporting will be optional), in preparation for the full application of the reporting provisions starting in 2015.

The proposed rules can be viewed on the Federal Register:

- [Section 6056](#)
- [Section 6055](#)