

Health Care Reform Newsletter #1: Pay or Play

By Steven R. Gerlach | April 15, 2010

As you know, Congress recently passed health reform legislation that will significantly change the way health care and health insurance are delivered in the U.S. In an effort to provide you with useful and timely information about the new law, I will be sending out newsletters such as this one over the next several months. Each of these newsletters will discuss one of the major aspects of the health reform law.

One of the many changes contained in the new legislation was the creation of the so-called pay-or-play provisions. Under these provisions, certain employers will be required to offer and contribute to their workers' health insurance or pay an excise tax. This letter discusses the pay-or-play provisions and what effects they are expected to have on employers.

Under the new law, effective for months beginning after Dec. 31, 2013, a large employer that does not offer coverage for all its full-time employees, offers minimum essential coverage that is unaffordable, or offers minimum essential coverage that consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60%, is required to pay a penalty if any full-time employee is certified to the employer as having purchased health insurance through a state exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee. Here are the details:

Who must pay or play? Starting January 1, 2014, applicable large employers are subject to the pay-or-play rules. An "applicable large employer," is defined as someone who employed an average of at least 50 full-time employees during the preceding calendar year. Small businesses that have fewer than 50 employees are thus exempt from the employer requirement. For the purposes of the pay-or-play rules, a full-time employee (meaning, for any month, an employee working an average of at least 30 hours or more each week) is counted as one employee and all other employees are counted on a pro-rated basis.

Even an applicable large employer, however, is not subject to the excise tax if it does not have any full-time employees whose income is low enough to qualify him or her to receive a subsidy when purchasing individual coverage in the state insurance exchange.

What kind of coverage must be offered? An applicable large employer must offer its employees and their dependents the opportunity to enroll in affordable minimum essential coverage for which the employer pays at least 60% of the cost. "Minimum essential coverage" is defined as health insurance provided by employers, Medicare and Medicaid, or purchased by an individual on one of the state insurance exchanges. Individuals will also be able to keep their existing health insurance policies as essential minimum coverage under a grandfathering provision. Coverage is considered to be affordable under the pay-or-play rules if the employee's share of the premium is more than 9.5% of his or her household income.

What triggers the excise tax? The excise tax is triggered when at least one full-time employee of an applicable large employer enrolls in coverage purchased through a state exchange and for which the employee is allowed a premium tax credit or cost-sharing reduction.

How much is the excise tax? An applicable large employer who does not offer minimum essential coverage to its employees and their dependents will pay a monthly excise tax equal to the number of full-time employees (minus a threshold number of 30) multiplied by one-twelfth of \$2,000 (\$166.67). For example, if an employer fails to offer minimum essential coverage and has 100 full-time employees, the employer will owe \$166.67 per month for each employee over the 30-employee threshold. As there are 70 employees over the threshold, the employer will pay \$11,666.67 per month, which equals \$140,000 per year.

The monthly excise tax is increased to one-twelfth of \$3,000 (\$250) for an applicable large employer who offers coverage but nonetheless has at least one full-time employee receiving a premium tax credit or cost-sharing reduction. The excise tax only applies, however, to the employees who receive the premium tax credit or cost-sharing reduction and will not apply at all if those employees are provided with free choice vouchers for that month. In addition, the excise tax is subject to an overall limit equal to the amount the employer would have paid if it did not offer minimum essential coverage to its employees (please see the previous paragraph). For example, assume that an employer with 100 employees offers minimum essential coverage, but nonetheless has 10 employees who purchase coverage through a state exchange and receive premium tax credits or cost-sharing reduction. The amount of the monthly excise tax will equal 10 times \$250 or \$2,500. As discussed above, if the employer does not offer minimum essential coverage, then the excise tax would be \$11,666.67 per month. This is the maximum amount of excise tax allowable for this employer. Because the calculated tax does not exceed the maximum amount, the calculated tax of \$2,500 will be assessed on a monthly basis.

Requirement to offer “free choice vouchers.” After 2013, employers offering minimum essential coverage through an eligible employer-sponsored plan and paying a portion of that coverage must provide qualified employees with a “free choice” voucher whose value could be applied to purchase of health coverage through a state exchange. “Qualified employees” are those employees:

- who do not participate in the employer’s health plan;
- whose required contribution for employer sponsored minimum essential coverage exceeds 8%, but does not exceed 9.8% of household income; and
- whose total household income does not exceed 400% of the poverty line for the family.

The value of the voucher is equal to the monthly portion of the cost of coverage that would have been paid by the employer had the employee participated in the employer’s plan. Employers providing free choice vouchers will not be subject to excise tax for employees that receive a voucher. Employees receiving vouchers are disqualified from receiving premium tax credits or cost-sharing reductions.

I hope you find this information helpful. If you would like more details about these provisions or any other aspect of the new law, please call me at (207) 228-7128.