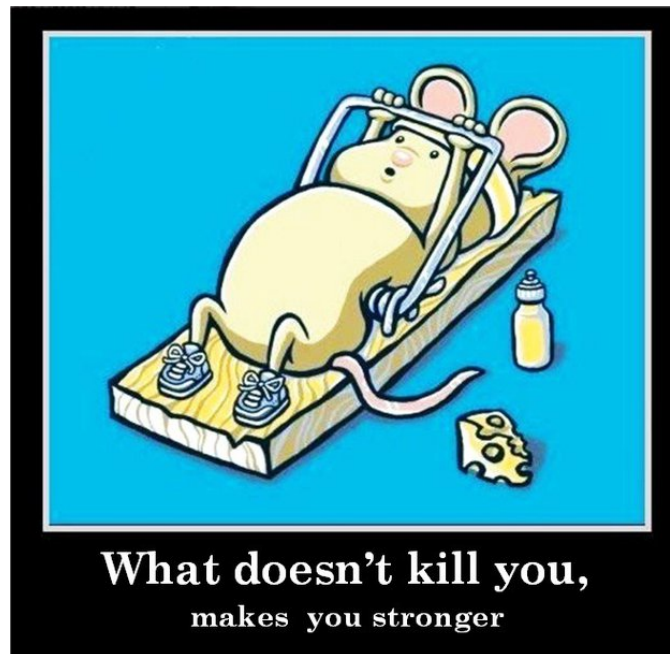


AFFORDABLE CARE ACT (ACA):



MACA-MCHRNA Fall Conference | Friday, October 4, 2013 | 9:30 am – 11:30 am

Presented By
Darcy L. Hitesman, Esq.

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Agenda

- Where are we?
- In the Weeds
- Traps for the Unwary
- Let's Talk About You

Where Are We?



Originally



October 2013



Play or Pay Delay

- Informal Announcement July 3, 2013
- IRS Notice 2013-45 (July 9, 2013)
<http://www.irs.gov/pub/irs-drop/n-13-45.pdf/n-13-45.pdf>
 - Section 4980H penalties delayed
 - Sections 6055 and 6056 reporting delayed
- Delayed ***certain*** requirements; fully effective for 2015
- ***No impact on effective dates or application of other HCR requirements***

In English...

- PHSA mandates ***not*** delayed
 - Prohibition annual/lifetime maximum
 - No pre-existing condition limitation
 - Preventive care first dollar
- Individual mandate ***not*** delayed

Suggestion: Look at each requirement and determine effective date.

Play or Pay

- Employers that do not offer particular type of coverage to all full-time employees that is both (1) affordable, and (2) provides minimum value, may be subject to penalties.
 - Applies to “large” employers
 - Triggered by a full-time employee purchasing coverage through the public exchange **and** qualifying for a subsidy.
 - Calculated monthly
 - Special transitional relief regarding large employer status for 2014
 - Special rule for non-calendar plan years for 2014

Q: What
about 2015

Q: What
about 2015

Non Calendar Cafeteria Plan Years

- Different than rule than for non-calendar plan years (described previously)
- Available to accommodate component plan where component plan permits in/out as of 1-1-2014
- Does not create/grant that right; have to look at component plan terms

Non Calendar Cafeteria Plan Years

- If non-calendar component allows in/out as of 1-1-2014, need this relief to permit corresponding election changes
- Big question: whether component allows
- Does require cafeteria plan amendment

Recommend: Consider and decide now; reflect immediately in plan documentation.

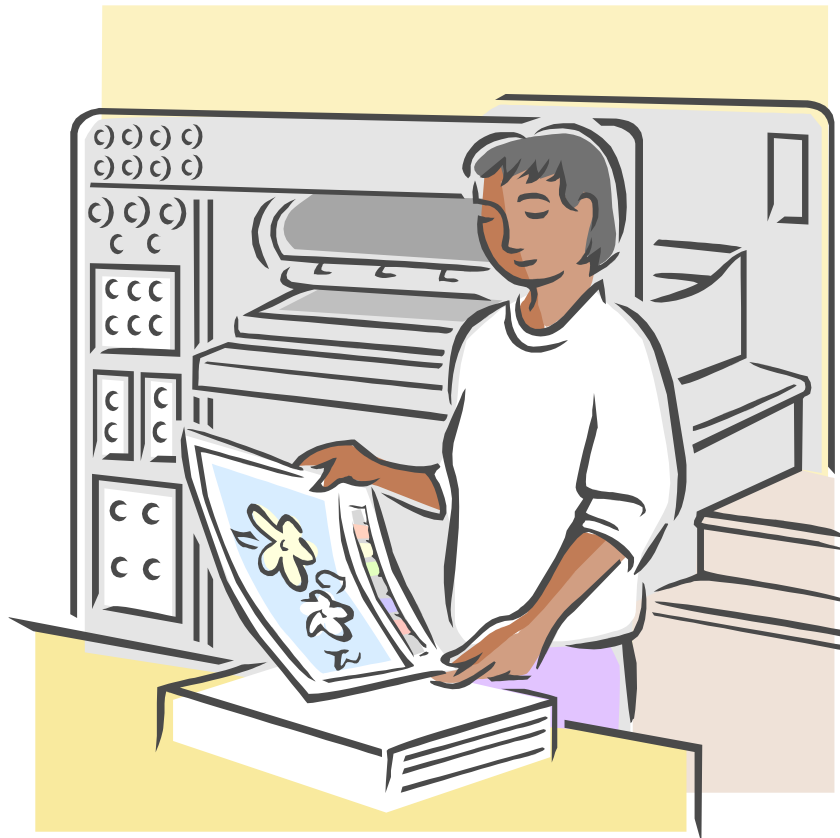
Exchange Notification

- Employer's responsibility
- All employees (part time and full time)
- Originally by March 1, 2013; delayed
- By October 1, 2013 for existing employees
- On/after October 1, 2013—within 14 days for new hires

Summary of Benefits and Coverage (“SBCs”) Year 2

- 2012 first year for requirement; good faith effort
- New FAQ and Updated Template issued April 23, 2013
- New questions about MEC and MV
 - Information needed for employee to determine likelihood of subsidy
- Enforcement relief extended for additional year

Hot Off the Presses



HRA Limitations



- DOL Tech. Rel. 2013-03
 - <http://www.dol.gov/ebsa/newsroom/tr13-03.html>
- HRAs subject to PHSA mandates unless certain categories
 - Integrated – time of contributions
 - Limited scope – type of reimbursable expenses
 - Retiree only – point at which can access

In The Weeds



“Full-time” Status

- “Full-time” defined as ***averaging*** 30 or more ***hours of service*** per week over measurement period
 - Determined on monthly basis
 - Prop. Regs. permit 130 hours per month equivalency
 - Hourly employees – actual hours worked
 - Non-hourly employees – weekly and monthly equivalency options

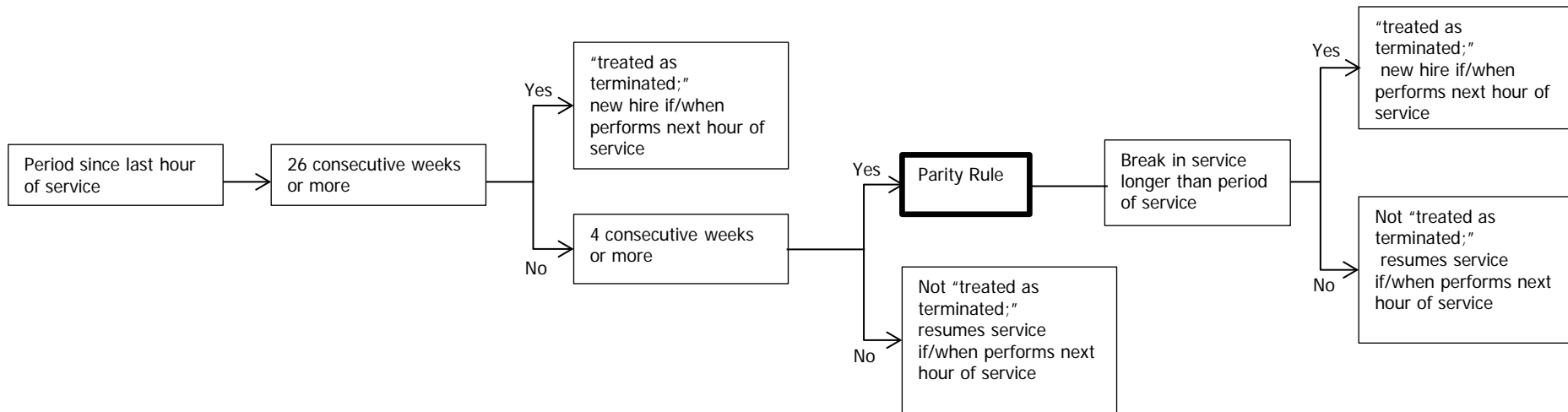
Hour of Service

- “Hour of service” – paid hour
- Disability, work comp, paid administrative leave
- Special unpaid leave
 - FMLA, USERRA, jury duty
 - Look back measurement periods including a “special unpaid leave”
 - Only where continuing employee (not treated as terminated and rehired)
 - Averaging methods – not for or against

Breaks in Service

- Resume, rehire
- Employer can “treat” as terminated
- Purpose specific
- Need to continue to track for at least 26 consecutive weeks

Resume/Rehire Rules



Prop. Treas. Reg. § 54.4980H-3(e)(1)

New Employees

- Reasonably expected to average 30 hours of service or more per week over initial measurement period
 - As of start date
 - “Not penalty assessable” if offered coverage on or before first day of fourth calendar month

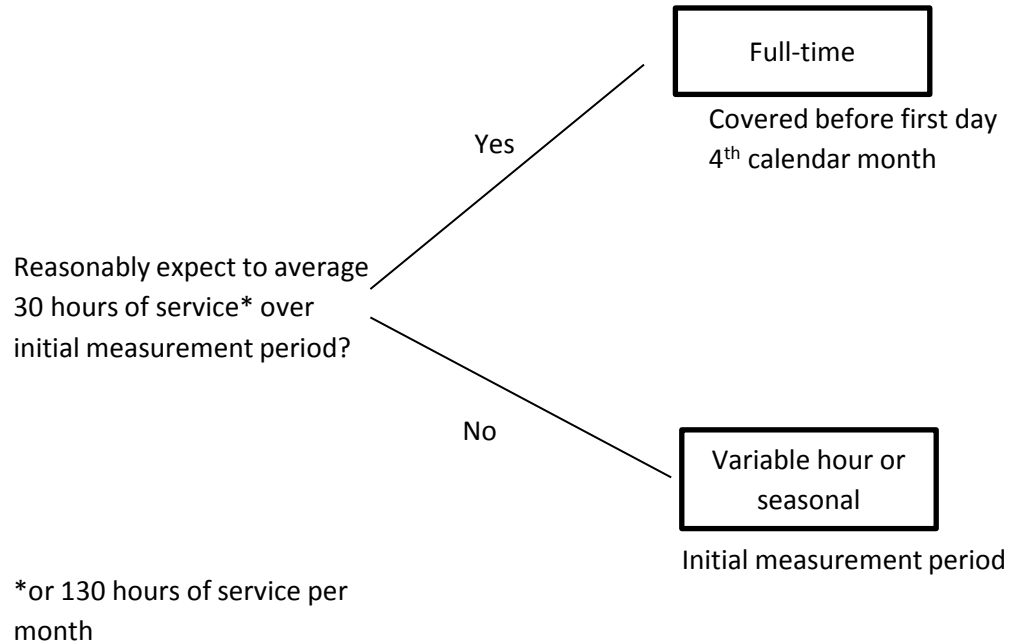
Question: What are your current plan eligibility and waiting period requirements?

- Does not count for penalty calculations
- Roughly coincides with maximum 90-day wait on coverage

New Employee Safe Harbors

- Cannot say reasonably expected to average 30 hours of service or more per week over initial measurement period
 - As of start date
 - Regulators still considering what factors
 - Variable hour employee or seasonal employee
 - Placed in initial measurement period; no coverage

New Employee Rules



Prop. Treas. Reg. § 54.4980H-3(c)(3)

Seasonal Employees

- For 2014, good faith reasonable interpretation of “seasonal”
- Treat like any other employee

Caution: No ability to just disregard; not related to whether “counted” for purposes of large employer determination.

Seasonal Employees

- ***Newly hired seasonal employee:*** Ask whether reasonably expect to average 30 hours of service or more per week over initial measurement period.
 - Yes, then must offer coverage no later than first day of fourth calendar month
 - No, then treat under safe harbor initial measurement period, administrative period, and stability period

Seasonal Employees

- ***Ongoing seasonal employee***
 - Treat like any other ongoing employee
 - Consider resume/rehire rules to determine if can treat seasonal employee as terminated
 - Performs no services for 26 consecutive weeks
 - Rule of parity available for more than 4 weeks

Unique Employees

- Adjunct professors, coaches, etc. where not paid by the hour and not salaried either; paid an amount to do X (regardless of hours it takes to do X)
- Commissioned employees
- On-Call
- If/until guidance, reasonable methodology; probably involves new descriptions for positions

Union Employees

- HCR does not relieve employer from CBA obligations
- Union employees count for purposes of determining large employer status
- Union employees count for purposes of penalties
- Special rule provides limited relief where union employees in multiemployer plan

Play or Pay

- **Penalty Category 1:**

Failure to Offer

- Do you offer minimum essential coverage (MEC) to all (or all but 5%) full-time employees?
- No credits or offsets for what do provide
- \$2,000 per year (\$166.67 per month)
- Based on all full-time employees (minus 30)
- No credits or offsets for what you do provide

- **Penalty Category 2:**

Offer MEC but coverage not good enough

- Minimum value of 60%

Not affordable

- Cost exceeds 9.5% HHI

Failure

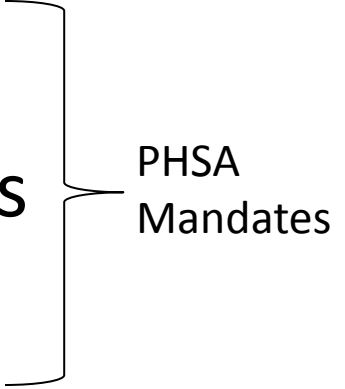
- \$3,000 per year (\$250 per month)
- Only for full-time that get subsidized
- Capped at Penalty 1 amount

***Remember:** Subsidy at exchange triggers.

Play or Pay Strategy

- Avoid Category 1
- Minimize/manage Category 2
- Factors
 - Type of coverage (MEC/not MEC)
 - Cost of coverage
 - Eligibility for subsidy

What is MEC?

- Includes eligible employer-sponsored group health plan
 - Has to cover preventive care
 - Cannot have annual/lifetime limitations
 - Cannot have pre-existing limitations
 - Beyond that...
 - No requirements regarding coverage!
- 
- PHSA
Mandates

Bare Bones (a/k/a Skinny) Plans

Possible configuration:

- MEC bare bones/skinny
 - No penalty under Category 1
- Also offer full coverage options
 - Caution regarding nondiscrimination

Bare Bones (a/k/a Skinny) Plans

- For purposes of Play or Pay, focus on bare bones/skinny option
 - Not minimum value
 - Employee can waive employer coverage; go to Exchange
 - Not disqualified from subsidy
 - Penalty only for those that go to Exchange and get subsidy
 - Employee can waive bare bones; take full coverage option



Question: Product availability.

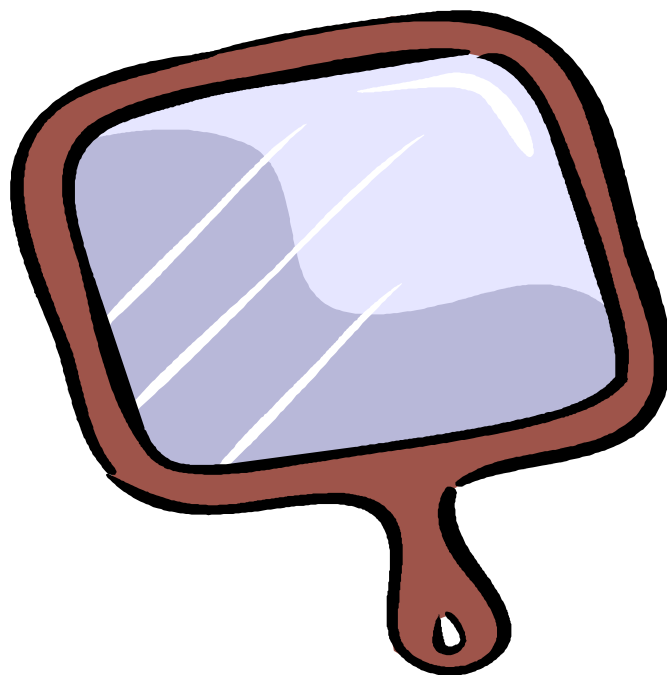
Traps for the Unwary



Ripple Effects

- Interplay with plan eligibility and termination of coverage language
- Interplay with plan operations (open enrollment(s), COBRA, etc.)
- Interplay with nondiscrimination requirements (Code and HCR)
- Interplay with collective bargaining agreements, personnel policies, employment contracts, etc.
- Public sector – aggregate value calculations
- Public sector – Impact on OPEB calculations
- Public sector – Impact on Pay Equity
- Others ???

Let's Talk About You



Thank you

- Darcy L. Hitesman
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