McNees Wallace & Nurick LLC

2013-2014 Healthcare Reform Compliance Checklist

This year-end compliance checklist is intended to assist McNees clients with identifying and addressing compliance requirements that take effect in 2013 and 2014 under the Patient Protection and Affordable Care Act ("PPACA"). The requirements listed are in addition to other PPACA requirements that took effect from 2010 through 2012. The status of several noted PPACA requirements remain unclear or have uncertain effective dates. It is hoped that this checklist will assist our clients with organizing their PPACA compliance plan.

PPACA REQUIREMENT	SUMMARY & ACTION	DEADLINE
Elimination of pre-existing condition exclusions. ☐	Plans were required to eliminate pre-existing condition exclusions for minors in 2010. In 2014, such exclusions become unlawful for participants of all ages. Plans must be amended accordingly.	Plan year beginning on or after January 1, 2014.
Annual dollar limits on essential health benefits eliminated altogether. ☐	Plans were required to eliminate lifetime dollar limits on essential health benefits in 2010. Annual dollar limits have been gradually phased out since then. In 2014, annual dollar limits on EHB will be phased out entirely. Plans must be amended accordingly. (Note: Employers with stand-alone health reimbursement arrangements covering EHB for current employees may need to discontinue these arrangements).	Plan year beginning on or after January 1, 2014.
Dependent adult coverage exclusion for "other coverage" eliminated. ☐	Plans were required to extend coverage to child dependents up to age 26 in 2010. Grandfathered plans were permitted to exclude older dependents with other coverage available. This exclusion is eliminated in 2014 and plans must be amended accordingly.	Plan year beginning on or after January 1, 2014.
90-day waiting period. ☐	Eligible employees and dependents may not be required to wait more than 90 days to qualify for coverage. Plans must be amended accordingly.	Plan year beginning on or after January 1, 2014.

PPACA REQUIREMENT	SUMMARY & ACTION	DEADLINE
Non-grandfathered plans subject to out-of-pocket limits. ☐	Cost-sharing provisions in non-grandfathered plans may not exceed high-deductible health plan ("HDHP") maximium out-of-pocket limits. For 2014, these limits are $6350 (self) and $12,700 (family). A limited one-year safe harbor is available for plans that use multiple vendors such as a pharmacy benefit manager or a behavioral health management organization.	Plan year beginning on or after January 1, 2014.
Non-grandfathered plans to cover approved clinical trials. ☐	Non-grandfathered plans cannot deny or limit coverage of routine patient costs incurred in connection with approved clinical trials and may not be subject to discrimination for having participated in the trial(s). An "approved clinical trial" means a phase I, II, III or IV clinical trial that is conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition, and is either (i) a federally funded or approved study or investigation, (ii) a study or investigation conducted under an investigational new drug application reviewed by the Food and Drug Administration, or (iii) a study or investigation that is a drug trial exempt from having such an investigational new drug application. Plans must be amended accordingly.	Plan year beginning on or after January 1, 2014.
Expanded wellness program incentives permitted. ☐	Wellness programs which condition award of a financial incentive on a health factor or meeting a healthy outcome may increase the incentive from 20% to up to 30% of the applicable premium. An increase to 50% of the applicable premium is permitted for tobacco-related incentives. HIPAA non-discrimination rules impose certain related requirements. Plans and related wellness programs wishing to take advantage of the expansion may need to be amended accordingly.	Plan year beginning on or after January 1, 2014.

PPACA REQUIREMENT	SUMMARY & ACTION	DEADLINE
Transitional reinsurance fees take effect. ☐	Although payment is not due until early 2015, the initial transitional reinsurance fee payment will be based on covered lives in 2014. The fee is equivalent to approximately $63 per covered life per year and several methods are available for calculating covered lives. Payment must be transmitted by self-insured plans to the U.S. Department of Health and Human Services ("HHS"). Insurance carriers will pay the fee on behalf of their insured groups.	The initial payment is not due until January 2015 and the initial fee determination is based on covered lives in 2014. Plan sponsors and insurers are required to report their enrollment counts to HHS by November 15 of each year (2014, 2015 and 2016). HHS will provide a notice of fee liability by December 15, and the plan sponsor or insurer will have 30 days to remit the transitional reinsurance fee to HHS.
Automatic enrollment. ☐	Employers with 200 or more employees will be expected to implement a system whereby new employees are automatically enrolled in coverage upon reaching eligibility unless the employee affirmatively opts out of coverage. Enrollment processes, plan documents and eligibility requirements may need to be amended when these requirements take effect.	The automatic enrollment requirements were initially expected to take effect in 2014. However, to date, the regulating agencies have not issued regulations and have indicated that compliance is not expected until regulations are issued and a comment period has passed. It is unknown when this requirement will take effect. For present purposes, plans are advised to begin planning for compliance; however, specific action is not yet required.

PPACA REQUIREMENT	SUMMARY & ACTION	DEADLINE
Non-grandfathered fully-insured plans subject to nondiscrimination requirements. ☐	Non-grandfathered fully-insured plans will be expected to comply with requirements prohibiting discrimination in favor of highly compensated employees (similar to current requirements that apply to self-insured plans under Section 105(h) of the Internal Revenue Code). Plan documents and eligibility requirements may need to be amended when these requirements take effect.	The nondiscrimination requirements were initially expected to take effect on September 23, 2010. However, to date, the regulating agencies have not issued regulations and have indicated that compliance is not expected until regulations are issued and a comment period has passed. It is unknown when this requirement will take effect. For present purposes, plans are advised to begin planning for compliance; however, specific action is not yet required.
Modified community rating*; Maximum annual deductible*; Coverage of essential health benefits*. *(*These 3 requirements only apply to small group plans)*	These 3 requirements apply only to insured plans in the small group market (i.e. generally those with under 50 participants) and, therefore, should not directly impact most larger employers. To the extent the changes impact premiums in the small group market, they may impact the number of employees and dependents seeking to enroll in a large employer plan. No action required.	Plan year beginning on or after January 1, 2014. *(Small group plans only).*

PPACA REQUIREMENT	SUMMARY & ACTION	DEADLINE
Determination of large employer status / Shared responsibility compliance. ☐	Only "large employers" are subject to Employer Shared Responsibility Requirements (aka Pay or Play). These requirements have been delayed until 2015; therefore, determination of large employer status should now take place in 2014. An employer's status as a "large employer" is determined by taking the sum of the total number of full-time employees for each calendar month in the preceding calendar year and the total number of "full-time equivalents" for each calendar month in the preceding calendar year and dividing by 12. If the result is 50 or more, the employer is considered a large employer for the current calendar year. Plans seeking to avoid a Shared Responsibility Penalty in 2015 must ensure that coverage offered to full-time employees is affordable, minimum value and constitutes minimum essential coverage. Plan documents and employee contribution requirements may need amending accordingly.	Calendar year plans are expected to comply with the Employer Shared Responsibility requirements by January 1, 2015. It is unknown at this point whether fiscal year plans may delay compliance until the start of their 2015 plan year (as previously permitted for 2014 fiscal plan years).
Tracking of hours for variable hour employees. ☐	Since enforcement of Employer Shared Responsibility Requirements (aka Pay or Play) have been delayed until 2015, large employers should now use all or part of 2014 as their "standard measurement period" for purposes of determining whether variable hour employees (e.g. bus drivers, substitutes, etc.) meet the statutory definition of "full-time" (i.e. average 30 or more hours of service per week). Employers should also explore establishing an administrative period of up to 90 days in duration in late 2014 for purposes of calculating employee hour averages. An employer's standard measurement period may begin in late 2013 if necessary to accommodate an "administrative period."	The start/end dates of an employer's measurement periods and administrative periods should be established prior to January 1, 2014 so that adequate processes are in place to accurately track hours of service for variable hour employees.
Reporting on health plan coverage / Verification of employee eligibility for premium subsidy. ☐	Under Section 6056 of the Internal Revenue Code, self-insured employers, government agencies, insurance carriers and other parties that provide health coverage are required to report information regarding the coverage provided and whether it qualifies as minimum essential coverage. Large employers are similarly required to report information regarding coverage provided to full-time employees and to verify whether employees are eligible for health care premium subsidies to purchase coverage on an exchange.	Although compliance with these reporting/ verification requirements was initially required by 2014, the requirements have been delayed until 2015. Voluntary compliance is encouraged during 2014 pending issuance of federal guidance.

PPACA REQUIREMENT	SUMMARY & ACTION	DEADLINE
Notice of Health Care Exchanges distributed to employees. ☐	This Notice, titled "New Health Insurance Marketplace Coverage Options and Your Health Coverage" is available on the U.S. Department of Labor website at www.dol.gov/ebsa. It must be distributed to all employees (including part-timers) by October 1, 2013 and to new employees thereafter within 14 days of hire.	Distribution to current employees by October 1, 2013 and to new hires thereafter within 14 days of hire.
Employee assistance with "Application for Health Coverage and Help Paying Costs" form. ☐	Employees must complete this form when applying for a premium tax credit in order to purchase coverage on an exchange. Employers may be asked to assist employees with completing certain wage/benefit information on the Form and may not discriminate against employees for having applied for a tax credit (i.e. in 2015 and beyond, a full-time employee's eligibility for a tax credit may trigger Shared Responsibility penalties for the employer).	October 1, 2013.
Patient-Centered Outcome Research Institute Fees ("PCORI"). ☐	PCORI fees are based on a plan's covered lives for plan years ending between October 1, 2012 through October 1, 2019. The fee is $1 per covered life for the 1st year and increases thereafter (e.g. to $2 per covered life in the second year). Several methods are available for calculating covered lives. Self-insured plans transmit payment to the IRS via Form 720. Carriers pay on behalf of insured groups.	The initial PCORI payment was due July 31, 2013 for plans with plan years ending between October 1, 2012 through December 31, 2012. For fiscal year plans with plan years ending before October 1, the initial payment will be due July 31, 2014.
Maximum salary reduction for participants in medical flexible spending arrangement plans. ☐	FSA plans must limit participant salary reductions to $2500 per plan year. Plan documents and benefit election forms to be amended accordingly.	Effective for plan years beginning in 2013.

PPACA REQUIREMENT	SUMMARY & ACTION	DEADLINE
Modification of Medicare Part D subsidy deduction. ☐	Employer tax deductions for retiree prescription drug expenses are reduced by the excludible federal subsidy received for Medicare Part D prescription plans for retirees.	2013 Tax Year
Confirmation of grandfathered plan status. ☐	Plans maintaining grandfathered status may wish to confirm that such status is intact by ensuring that no disqualifying changes have occurred since March 23, 2010. Disqualifying changes include elimination of certain benefits, any increase in fixed-percentage cost-sharing requirements, increases in other cost-sharing requirements beyond established thresholds, decreasing employer contribution rates by more than 5%, establishment of annual limits (first time) or lowering existing limits and establishing a new insurance policy or agreement. _Existing compliance requirements that are triggered by loss of grandfathered status include: a) Expanded appeal processes; b) Independent review of claims denials; c) No-cost preventive services; d) "Patient bill of rights" requirements; and e) Plan reporting of quality of care (pending regulations).	Ongoing.
Planning for Cadillac Tax Implications. ☐	Employer health plans are well-advised to monitor annual costs to avoid the 40% "Cadillac tax" on plan costs exceeding a $10,200 threshold for single coverage and $27,500 for family coverage.	The Cadillac tax is scheduled to take effect in 2018.