Employer Shared Responsibility/Play-or-Pay Payment Provision
External Frequently Asked Questions

June 2013

EMPLOYER SHARED RESPONSIBILITIES PROVISIONS SUMMARY

In the Affordable Care Act (ACA), there are three provisions that are the responsibility of the employer. While Blue Shield can provide general information about these provisions, Blue Shield cannot provide employers or brokers with specific legal or tax guidance on these provisions. The provisions are as follows:

- ***Play-or-Pay:*** Starting in January 2014, the ACA will require employers with 50 or more full-time and/or full-time equivalent (FTE) employees to offer affordable health plan coverage to full-time employees (and coverage to their dependents) or face a penalty if a full-time employee receives federally subsidized coverage from Covered California (aka: The Marketplace, formerly known as The Exchange).

- ***Tax Reporting by Applicable Large Employers:*** Beginning in 2015, Applicable Large Employers (a company that employed an average of 50 or more full-time and/or full-time equivalent (FTE) employees during the preceding calendar year) must file a return with the IRS that reports the terms and conditions of the healthcare coverage provided to the employer's full-time employees for the calendar year.

- ***Employer Exchange Notice to Employees:*** Employers will be required to provide employees with a written notice about the health insurance Marketplace (known in our state as Covered California).

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Appendix

Play-or-Pay Diagram

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PLAY-OR-PAY FREQUENTLY ASKED QUESTIONS

1. What is the Play-or-Pay rule?

Applicable large employers must offer affordable health coverage to at least 95% of their full-time employees (and coverage to dependents) or pay penalties. (See FAQ #6 below for the definition of "dependent" for purposes of the Play-or-Pay rule.)

Although an employer must offer coverage to dependents to avoid penalties, the employer need only provide affordable and minimum value coverage (FAQ #7 below) to full-time employees.

To allow employers sufficient time to extend coverage to dependents, an employer will not be subject to penalties in 2014 for failing to offer dependent coverage if it takes steps in 2014 towards complying with this requirement.

2. When does the Play-or-Pay rule go into effect?

The rule goes into effect on January 1, 2014, the same date as the launch of Covered California (The 'Marketplace' formerly known as The 'Exchange'). If an applicable large employer maintains a fiscal year plan (i.e., a non-calendar year plan) as of December 27, 2012, that employer is not subject to penalties if the employer offers affordable coverage to full-time employees (and coverage to dependants) by no later than the first day of the plan year that commences in 2014.

3. What size employers are impacted by Play or Pay?

The Play-or-Pay rule applies to an "Applicable Large Employer" -– a company that employed an average of 50 or more full-time and/or full-time equivalent (FTE) employees during the preceding calendar year. ***Both fully funded and self-insured clients are impacted by Play-or-Pay.***

4. What is the difference between a full-time employee and a full-time equivalent (FTE) employee?

- **Full-Time Employee:** Employees working 30 or more hours per week on average.
- **Full-Time Equivalent (FTE) Employee:** The number of full-time equivalent (FTE) employees is determined by aggregating the monthly hours of part-time employees and dividing their total hours by 120.

5. Who is responsible for calculating employee count?

The ***employer*** is responsible for calculating the number of full-time and FTE employees in the preceding calendar year for purposes of determining whether the employer is an Applicable Large Employer.

6. Who is a dependant for purposes of the Play-or-Pay rule?

For purposes of the Play-or-Pay rule, "dependent" is defined as a child of an employee who has not attained age 26. "Child" is broadly defined and includes natural and legally adopted children, as well as step-children and foster children. Dependent does not include the spouse of an employee.

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7. When is an employee of an Applicable Large Employer "eligible" for federally subsidized coverage through Covered California?

Beginning in 2014, individuals who are *not* offered employer-sponsored coverage and who are not eligible for programs like Medi-Cal or Healthy Families may be eligible for federally subsidized coverage through Covered California. These individuals must also have incomes between 133% and 400% of the federal poverty level (FPL).

Individuals who *are* offered employer-sponsored coverage can obtain federally subsidized coverage through Covered California only if, in addition to the income criteria above, their employer's coverage is not affordable or fails to provide minimum value as defined by Department of Health and Human Services (HHS).

Affordability:

- To be affordable, the employer's plan cannot require the employee to contribute more than 9.5% of his income for self-only coverage (as opposed to family coverage)
- A Proposed Rule issued on January 1, 2013 includes a safe harbor allowing employers to use an employee's Form W-2 wages (Box 1 of W-2 form) instead of household income for determining affordability. This Proposed Rule also includes two alternative safe harbors for determining affordability based on rate of pay and the federal poverty line for a single individual. For some employers, these alternative safe harbors may be easier to apply than the safe harbor for W-2 wages.
- Application of the safe harbors does not affect an employee's eligibility for federal subsidies; eligibility for subsidies continues to be based on household income.

Minimum Value: The employer plan must provide coverage of at least 60% actuarial value (i.e., the plan's share of the total allowed costs of benefits under the plan must be at least 60%).

8. How is "Minimum Value" determined?

Health and Human Services (HHS) has put forth three alternative mechanisms to determine whether coverage provided by an Applicable Large Employer meets Minimum Value:

- ***Minimum Value Calculator*:** Modeled on the Actuarial Value calculator that will be available for IFP and small group plans, the HHS Minimum Value Calculator would allow an employer to enter information about benefits, coverage of services, and cost-sharing to determine if the plan provides Minimum Value.

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- ***Safe Harbors:*** The IRS has proposed three specific safe harbors. Plans with the following benefit designs do not have to utilize the Minimum Value Calculator to demonstrate Minimum Value.

	Deductible	HSA (Employer Contribution)	Coinsurance (employee share)	Maximum Out of Pocket Cost (MOOP)	Cost Sharing for Drugs
Safe Harbor 1	$3,500	$0	20%	$6,000	20%
Safe Harbor 2	$4,500	$500	30%	$6,350	30%
Safe Harbor 3	$3,500 medical	$0	40% medical	$6,350	$10/$20/$50/75%
	$0 drug		25% drug		

- ***Actuarial Certification:*** Designed for plans that do not have standard benefit designs or features, this would allow a certified actuary to verify that the plan provides Minimum Value. The rule proposes that the actuary be a member of the American Academy of Actuaries.

  Any benefit that is included in one the essential health benefit (EHB) benchmarks for qualified health plans, may be included in the MV calculation. There is no requirement, however, that a large group plan must cover every EHB category or conform to any of the EHB benchmarks.

9. How do Employer Contributions to Health Reimbursement Arrangements, Health Savings Accounts and Wellness Program Incentives Impact Affordability and MV Determinations?

- **Health Savings Accounts (HSAs):** Employer contributions to an HSA may be included in MV determinations. HSA contributions cannot be used to reduce premiums, so HSA contributions are not relevant to Affordability determinations.
- **Health Reimbursement Accounts (HRAs):** Amounts newly made available in an integrated HRA may be included in MV determinations as long as these funds may not be used to reduce premiums. Such amounts may be used for Affordability determinations as long as they are: (a) available only to reduce premium; or (b) available (at the employee's election) to reduce premium or to reduce cost-sharing.
- **Wellness Program Incentives**: Wellness program awards given to reduce premiums or cost-sharing may not be included in MV or Affordability determinations, except for tobacco related wellness programs. Whether a plan is affordable and provides MV is determined by assuming that each employee fails to satisfy the requirements of any wellness programs, except wellness programs related to tobacco use. For wellness programs related to tobacco use, affordability and MV may be determined assuming that each employee satisfies the terms of the tobacco-specific wellness program.

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10. How will employers know if one of their employees purchases subsidized coverage on Covered California?

Employers will be notified if an employee obtains coverage through Covered California and qualifies for federal subsidies. While not clear in present guidance, it is expected that employers will be able to contest assertions by employees that they were not offered qualifying coverage.

11. How will Blue Shield handle minimum participation and contribution requirements in light of Play-or-Pay?

The ACA limits a carrier's right to apply minimum participation and contribution requirements. In the large group market, a carrier may not apply such requirements to decline to issue coverage but is permitted to apply such requirements on renewal. In the small group market, a carrier may apply participation and contribution requirements to decline to issue coverage, except for the one-month window between November 15 and December 15 of each year. A carrier in the small group market is permitted to apply such requirements on renewal.

- **Current Large Business minimum participation and contribution requirements**:

  Minimum participation requirements:
  - If Blue Shield is the sole carrier, 75% of all eligible employees (100% if the group pays 100% of premium).
  - If BSC is quoted alongside another carrier, 75% of all eligible employees must enroll in medical coverage and 50% of active enrolled employees must select BSC.

  Minimum contribution requirements:
  - Employer must contribute at least 75% of employee's dues, or an amount equal to 50% of the employee and dependent dues.

- **Current Small Business minimum participation and contribution requirements:**

  Minimum participation requirements:
  - 75% of all eligible employees (100% if the group pays 100% of premium).

  Minimum contribution requirements:
  - Employer must contribute either **(a)** a minimum of $100 per employee, or **(b)** a minimum of 50% of the total employee rate.

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12. What are the penalties for not complying with the Play-or-Pay provision?

The applicable penalty amount depends on whether or not an Applicable Large Employer offers affordable coverage to its full-time employees and coverage to their dependents. An employer can be liable for penalties only if a full-time employee receives federally subsidized coverage through Covered California. For purposes of calculating potential penalties, full-time equivalent employees are not relevant. Penalties are determined on a monthly basis, unless the Applicable Large Employer takes advantage of the "look-back/stability" safe harbors referenced in FAQ #13.

Below are four Play-or-Pay penalty scenarios:

Scenario A

The large employer ***does not offer coverage***, but no full-time employees receive federally-subsidized coverage from Covered California. **NO penalty would be assessed.**

Scenario B

The large employer ***does not offer coverage***, and one or more full-time employees receive federally subsidized coverage from Covered California. **YES, a penalty would be assessed.**

The penalty assessed is the number of full-time employees minus 30, times $166.67/month ($2000/year) for each month an employee went without coverage.

(# of Full-Time Employees for month – 30) X $166.67/Month = Monthly Penalty

Scenario C

The large employer ***offers coverage*** that is not affordable and/or fails to meet the standard for minimum value and no full-time employees receive federally subsidized coverage from Covered California. **NO penalty would be assessed.**

Scenario D

The large employer ***offers coverage*** that is not affordable and/or fails to meet the standard for minimum value, and one or more full-time employees receive subsidies for Covered California coverage. **YES, a penalty would be assessed.**

The number of full-time employees receiving subsidies is used in the penalty calculation for an employer that offers coverage. The penalty is the lesser of the following:

1. The number of full-time employees minus 30, times $166.67/month ($2000/year) for each month an employee went without coverage; or
2. The number of full-time employees who receive subsidies for Covered California coverage multiplied by $250/month ($3000/year).

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Scenario Snapshot:

Potential Annual Penalties Beginning in 2014 for Applicable Large Employers

Not a large employer: less than 50 full-time and/or FTE employees	Large employer: 50 or more full-time and/or FTE employees			
	Does not offer coverage		Offers coverage	
	Scenario A No full-time employees get credits for Covered California coverage	Scenario B 1 or more full-time employees get credits for Covered California coverage	Scenario C No full-time employees get credits for Covered California coverage	Scenario D 1 or more full-time employees get credits for Covered California coverage
No penalty	No penalty	Number of full-time employees minus 30 multiplied by $2,000 (Penalty is $0 if employer has 30 or fewer full-time employees)	No penalty	Lesser of: Number of full-time employees minus 30, multiplied by $2,000/yr. OR Number of full-time employees who get subsidized coverage from exchange, multiplied by $3,000/yr.

13. What Play-or-Pay safe harbors are available to Applicable Larger Employers?

- **Play-or-Pay 90-day waiting period**: At least for the first three months (90 days) following a full-time employee's date of hire, an Applicable Large Employer will not, by reason of failing to offer coverage to the employee during the first three-month period, be subject to penalties.

- ***Optional Look-back/Stability Periods for Use in Identifying Full-Time Employees***: Applicable large employers may use optional "look-back/stability" measurement periods of up to 12 months to identify full-time employees in order to avoid and/or minimize potential penalties. Using these optional measurement periods, an employer is permitted to identify full-time employees in a "look back" period and avoid potential penalties in a subsequent "stability" period as long as the employer offers coverage to full-time employees identified in the look back period during the subsequent stability period. These optional look-back/stability periods are especially useful for employers who have practical difficulties in identifying full-time employees, such as employers who employ a large number of seasonal and/or variable hour employees. The rules applicable to these optional measurement periods are complex and are discussed in some of the preliminary guidance and in the January 2, 2013 Proposed Rule.

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TAX REPORTING FOR APPLICABLE LARGE GROUPS FREQUENTLY ASKED QUESTIONS

1. What are the Tax Reporting Requirements for applicable large groups?

Applicable Large Employers must file a return with the IRS that reports the terms and conditions of the healthcare coverage provided to the employer's full-time employees for the calendar year. In addition, written statements must be provided to employees showing the information reported to the IRS. The first information returns will be filed in 2015. The IRS will use this information to verify employer-sponsored coverage and administer the ACA's penalty provisions for Applicable Large Employers.

2. When does Tax Reporting rule go into effect?

The rule goes into effect on January 1, 2014.

3. What employers are impacted by the Tax Reporting rule?

The Tax Reporting rule applies to an "Applicable Large Employer" –- a company that has employed an average of 50 or more full-time and/or full-time equivalent (FTE) employees during the preceding calendar year.

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EMPLOYER EXCHANGE NOTICE FREQUENTLY ASKED QUESTIONS

1. What is the Employer Exchange Notice rule?

All employers subject to the Fair Labor Standards Act (FLSA) must provide their employees with a written notice about the health insurance Marketplace (known in our state as Covered California).

2. Which employers are subject to the FLSA?

Generally, the FLSA applies to all employers that employ one or more employees and have at least $500,000 in annual revenue. Additional guidance relating to the applicability of the FLSA, including an Internet compliance tool to determine applicably of the FSLA, is available at http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp.

3. Who receives the Employer Exchange Notice?

Employers must provide the Exchange Notice to each employee at the time of hire, regardless of plan enrollment status or part-time or full-time status. Employers are not required to provide a separate notice to dependents who are or may become eligible for coverage under the plan but who are not employees.

4. When does the Employer Exchange Notice rule go into effect?

Originally, the effective date for this rule was March 23, 2013. Federal regulators have delayed the implementation date of this rule. **The new deadline for distributing these notices is October 1, 2013.** Starting October 1, 2013, employers must provide this notice to new employees at the time of hire. With respect to employees who are current employees as of October 1, 2013, employers are required to provide the notice no later than October 1, 2013.

5. What information needs to be included in the notice?

The notice must include:

- A description of the state health insurance Exchange, including contact information for the Exchange;
- A statement that employees may qualify for a tax credit to help pay for Exchange coverage if the employer's plan does not provide minimum value (i.e., if the plan's share of benefit costs does not equal or exceed 60% of the costs of coverage); and
- A statement regarding the financial and tax consequences of purchasing coverage through the Exchange (i.e., that the employee will forego the employer-paid portion of the premium (if any) and the tax exclusion for the employer-sponsored coverage).

6. Do employers have any other notice obligations relating to the Exchange?

Yes. The U.S. Department of Labor (DOL) has directed that employers should include information relating to the Exchange in their COBRA election notices. The DOL has created a model election notice that plans may use to notify qualified beneficiaries of election rights under COBRA. This notice has been revised to help make qualified beneficiaries aware of other coverage options available in the Exchange.

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7. Where can the model notices be found?

The following model notices can be found on the U.S. Department of Labor's website www.dol.gov/ebsa/healthreform. Specific notices include:

- Model notice for employers who offer a health plan to some or all employees
- Model notice for employers who do not offer a health plan
- COBRA model election notice

8. Where can I get more information about the Exchange Notice Requirements?

For more information, download the U.S. Department of Labor's Temporary Guidance on PPACA Exchange Notices at **http://www.dol.gov/ebsa/newsroom/tr13-02.html.**

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APPENDIX

Penalties for Employers Not Offering Affordable Coverage Under the Affordable Care Act Beginning in 2014