DDI benefits

Stretch your dollars...

The Affordable Care Act

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2013 Affordable Care Act Compliance Update

Agenda

Welcome

- Calendar of Provisions
- Large or small employer
- Compliance Update and Guidance
- Exchanges
- Large Employer Shared Responsibility
- Reporting and taxation

Thank you

Stretching your dollars…

Affordable Care Act
Calendar of Provisions

The Affordable Care Act
Calendar of Provisions

Currently in effect:

- Small employer tax credit
- Child coverage to age 26
- No rescission of coverage except for fraud.
- Lifetime and annual dollar benefit limits prohibited although restricted annual limits permitted for grandfathered plans until 2014.
- Prohibition against reimbursement for over-the-counter drugs and medicines without prescriptions.
- Choice of providers.
- Emergency care coverage the same as in-network without preauthorization.
- Preventive care without cost-sharing.
- Women's preventive care and contraception

The Affordable Care Act
Calendar of Provisions

Currently in effect (cont.):

- Internal and external appeals procedures.
- Summary of Benefits and Coverage
- Reporting the value of 2012 coverage on 2013 W-2s
- Medical loss ratio rebates
- Patient Center Outcomes Research fee
- $2,500 maximum on health FSA annual elections
- Increase in Medicare payroll tax for high income workers
- Medical device tax of 2.3% on sales price
- Higher threshold for deduction of medical expenses.

Delayed until regulations are issued:

- Nondiscrimination of non-grandfathered, insured plans
- Large employers (200+ employees) automatic enrollment.

The Affordable Care Act
Calendar of Provisions

Beginning in 2014:

- State exchanges and low income employee tax credits
- Individual mandate and penalty
- Wellness reward maximum increases to 30% of premium
- Large employer shared responsibility penalties
- Large employer individual mandate reporting
- Prohibition of all annual limits, pre-existing condition exclusions and probationary periods over 90 days
- Cost-sharing limits

Effective in 2018: 40% excise tax on "Cadillac" health plans

Stretching your dollars…

Affordable Care Act
Large or Small Employer

Affordable Care Act
Large and small employer definitions

Small employer premium tax credit:

- **Large employer (ineligible): 25 or more full-time employees.**
- **Small employer: Fewer than 25 full-time equivalent employees, average annual wages must be less than $50,000 and employer must pay at least ½ of premiums.**

Self-reportable excise tax for compliance violations:

- **Large employer: 51 or more employees.**
- **Small employers are exempt: Employed at least 2, but not more than 50 employees on business days during the preceding calendar year and at least 2 employees on the first day of the current plan year.**

Full-time equivalent employees are not mentioned.

Affordable Care Act
Large and small employer definitions

W-2 reporting of aggregate cost of employer-sponsored health coverage:

- Large employer (mandatory): 250 W-2s in prior year.
- Small employer (optional at this time): Fewer than 250 W-2s in prior calendar year.

Large employer shared responsibility penalty:

- Large employer: 50 employees including full-time equivalent employees
- Small employer (exempt): Fewer than 50 .

Employee count must include part-time and seasonal employees.

Affordable Care Act
Large and small employer definitions

Offering coverage to employees through exchange:

- **Large employer (2017 at the earliest): 101 or more employees on business days in preceding calendar year and at least one employee on first day of plan year.**
- **Small employer: 100 and fewer employees on business days in preceding calendar year and at least one employee on first day of plan year.**

States may limit to under 50 employees until 2016.

Automatic enrollment and renewal for large employers subject to Fair Labor Standards Act:

- **Large employer: Must have more than 200 full-time employees.**
- **Small employer (exempt): 200 and fewer employees.**

Stretching your dollars…

Affordable Care Act
Compliance Update and Guidance

Affordable Care Act – Mandates and restrictions
Adult child coverage to age 26

Health plans are not required to offer dependent coverage, but if they do, coverage must be provided without regard to any criteria except:

- age (to age 26) and
- the relationship of the child to the employee.

Note: Large employers will be required to cover dependent children under the shared responsibility mandate.

For the age 26 mandate, a "child" is:

- a son, daughter, stepchild, legally adopted child, or eligible foster child.

The mandate does not extend to other children an employer may cover, such as a grandchild, niece or nephew.

Affordable Care Act – Mandates and restrictions
Adult child coverage to age 26

A foster child is:

- a child placed with an employee by an authorized placement agency or
- by a Court judgment, decree or order.

An employer may require proof of the placement or order before it is required to provide coverage to age 26.

The following coverage is tax-exempt:

- coverage for children to age 26
- health FSA/HRA reimbursements for a child through the end of the year of a child's 26th birthday

The fair market value of coverage provided to children after age 26 is taxable unless the child is a tax dependent.

Affordable Care Act – Updates and Guidance
Annual limits

Annual limits on essential health benefits for grandfathered and non-grandfathered group health plans:

- Since 2010, only restricted annual limits have been permitted on essential health benefits.
- For plan years on or after 9/23/2012, the annual limit for essential health benefits may not be less than $2,000,000.

Annual limits will be banned for plan years beginning on or after 1/1/2014.

Annual limit prohibitions do not apply to:

- Health FSAs and limited-scope dental and vision plans or
- Grandfathered individual coverage policies.
- Health Reimbursement Arrangements that are integrated with a group medical plan.

Affordable Care Act – Updates and Guidance
Summary of Benefits and Coverage ("SBC")

Insurers/health plans must provide SBCs to employees:

- **New enrollment:**
- **with any written application materials, or**
- **if none, no later than first date of eligibility to enroll.**
- **Open enrollment:**
- **with enrollment materials if applications are required, or**
- **If renewal is automatic, SBC must be provided:**
  - **At least 30 days prior to the new plan year or**
  - **If policy not final, as soon as practicable but no later than 7 days after earlier of policy is issued or renew.**
  - **SBC only for plan in which the participant is enrolled.**
- **HIPAA special enrollees – first plan year after 9/23/2012:**
  - **SBC must be provided within 90 days after enrollment**

If requested, provide ASAP but not more than 7 days.

Affordable Care Act – Updates and Guidance

Notice of Coverage Options through Exchange

Employers will be required to provide employees with a notice:

- Providing information of the exchange, its services and how to contact the exchange.
- Whether the minimum value of the employer's health plan is below 60%.
- If the employee buys exchange coverage, the employee may lose the employer's tax-free premium contribution.

It is anticipated that a model notice will be provided.

The original March 1, 2013 compliance date has been delayed until a later date to be announced, at which time:

- The notice must be provided for existing employees and
- The employer must start distributing the notice to new employees when hired.

Affordable Care Act – Updates and Guidance
Deductibles and maximum out-of-pocket limitations

Annual deductibles for small employer group plans cannot exceed:

- $2,000 for self-only coverage and
- $4,000 for non-self-only coverage

The annual deductible limit may be exceeded if necessary to reach an actuarial level of coverage.

Large group insured plans and self-funded plans are not currently subject to the deductible limitation, at least until regulations are issued.

Affordable Care Act – Updates and Guidance
Deductibles and maximum out-of-pocket limitations

Non-grandfathered health plans' out-of-pocket maximums (OOP) may not exceed HSA-eligible HDHP maximums:

- 2013 OOP maximums are $6,250 for self-only and $12,500 for family coverage. These are adjusted annually.
- Employers having multiple benefits administrators, such as for a major medical plan and prescription drug plan, must coordinate participants' credits against OOPs.

Safe harbor for first plan year after 1/1/2014 for plans with multiple administrators: Plan is in compliance if neither the major medical plan nor other coverage exceed OOP limits.

Mental Health Parity and Addiction Equity Act:

- OOPs for mental health and substance use disorder cannot differ from OOPs for medical/surgical benefits.

Affordable Care Act – Updates and Guidance
90-day probationary period – temporary guidance

A probationary or waiting period (Notice 2012-58):

- is the time that must pass before coverage for an eligible employee becomes effective and
- may not exceed 90 days.

The 90-day period starts when an employee becomes eligible, such as by moving from part-time to full-time work.

New employees who are hired as full-time employees:

- must be covered within 90 days of their start date.
- unless a delay is caused by the employee.

Employers are not required to cover part-time employees, so it is still permissible to make them ineligible for coverage.

Stretching your dollars…

Affordable Care Act
State Exchanges

Affordable Care Act – Updates and Guidance

State Exchanges and Qualified Health Plans

State exchanges are to be operational by 2014:

- To provide online markets for individuals and small employers to buy health coverage and
- For individuals to apply for cost and premium subsidies. "Navigators" will assist applicants.

Terminology:

- Essential health benefits (EHP): A set of benefits a plan must provide to be a Qualified Health Plan.
- Benchmark plan: A plan selected by a state that defines a standard set of benefits that may be sold in a state.
- Qualified health plans (QHP): Health insurers' plans that are approved to be sold in an exchange.
- SHOP exchange: An exchange that small employers may use to provide health insurance options for employees.

Affordable Care Act – Updates and Guidance
State Exchanges and Qualified Health Plans

Individuals wishing to purchase health insurance may go directly to an exchange or work through an agent:

- **Eligibility determinations based upon single application and simple year-to-year redetermination process**
- **Coordination with Medicaid, CHIP and Basic Health Program to determine eligibility regardless of where application is submitted.**

As of 2/17/2013 :

- **17 states plus Washington, D.C. will run their own exchanges.**
- **The federal government will run 26 state exchanges.**
- **7 states will partner with the federal government to run their exchanges.**

Affordable Care Act – State Exchanges
Essential health benefits ("EHB")

Essential health benefits in QHPs must include:

- ambulatory patient services,
- emergency services,
- hospitalization,
- maternity and newborn care,
- mental health and substance use disorder services,
- prescription drugs,
- rehabilitative and habilitative services and devices,
- laboratory services,
- preventive and wellness services and chronic disease management, and
- pediatric services including oral and vision care.

Employer self-funded and large insured group health plans are not required to provide essential health benefits.

Affordable Care Act – State Exchanges
Essential health benefits ("EHB")

EHBs will include consumer protection standards:

- Prohibits discriminatory benefit designs;
- Special standards and options for non-typical individual and small group policies, such as habilitative services;
- Prescription drug coverage standards.

A catastrophic plan will be permitted:

- Will cover EHBs, but benefits paid only after satisfying High Deductible Health Plan deductibles.
- Deductibles will not apply to 3 primary care visits/year.

Catastrophic plan coverage will be limited to individuals:

- who are under 30 before the start of the plan year and
- are not eligible for affordable coverage or due to hardship

Affordable Care Act – State Exchanges
Actuarial value (AV) of essential health benefits

AV is the percentage of expected health care costs a health plan will cover for a standard population:

- Bronze = 60% AV
- Silver = 70% AV
- Gold = 80% AV
- Platinum = 90% AV

A plan will meet a particular level if within +/-2% points.

Calculators have been provided:

- to determine the AV of exchange plans and non-grandfathered individual and small group plans and
- to determine the minimum value of employer-sponsored self-funded or large employer insured plans.

The calculators will integrate different claims data tables and cost-sharing variables for each type of health plan.

Affordable Care Act – State Exchanges
Benchmark plans

Each state must select or be assigned a Benchmark Plan:

- The BP must cover all Essential Health Benefits.
- All health insurance provided for non-grandfathered small group and individual health plans must be substantially equal to a state's BP, both inside and outside of the exchange.
- Insurers may deviate from the BP in order to substitute actuarially equivalent benefits within the same category.

Participating insurers must offer standard bronze, silver and gold plans in each of their service areas.

Self-funded, large group and grandfathered health plans will not be required to comply with BP standards.

Affordable Care Act – Updates and Guidance
SHOP exchanges

Small Business Health Options Programs ("SHOP"):

- First option:
- Small employers may choose one tier of coverage.
- Employees could select any health plan within tier.
- Second option:
- Employer may select one/more plans for its employees.
- Employees would be covered under selected plans.

On April 1, 2013 HHS delayed the federally-operated SHOP exchanges in 33 states until 2015.

- Small employers will only be able to purchase a health plan for their employees through an exchange, so
- their employees won't have a choice of plans.

States running their own exchanges may decide what to do.

Affordable Care Act – Play or Pay
Role of agents and exchange navigators

It has been reported that CMS explains the roles of agents and exchange Navigators as follows:

- Both will provide information of health coverage options.
- Navigators will provide objective information while producers will be advising.
- Navigators will not make recommendations and will not be selling. Producers will provide bottom-line answers to "what should I do" but Navigators will not.

Navigators will come from community church groups and advocacy groups that have been serving the community.

Issues and concerns:

- Accountability of Navigators
- Education of employees, e.g., employee meetings

Health Insurance Exchanges

Cover Oregon

Affordable Care Act – State exchanges

Cover Oregon

Oregon's exchange will be called Cover Oregon and will become operational in October, 2013.

- Individuals and small businesses will be able to purchase health coverage online to:
- search for and compare health insurance plans,
- obtain personal assistance; and
- obtain assistance in applying for premium tax credits and cost-sharing subsidies available to low-income individuals.

Coverage obtained through Cover Oregon will take effect beginning January 1, 2014.

Employers are not required to participate in Cover Oregon and may continue to purchase coverage through an agent.

Affordable Care Act – State exchanges
Cover Oregon

Miscellaneous Cover Oregon rules:

- Employers with fewer than 50 employees are not required to provide health coverage for employees.
- At least 51% of employees must be employed in Oregon.
- Participation: 75%/more of small employer's employees must be enrolled in the health plan (50% for dental).
- Tiers of coverage: Employee-only or employee and dependent coverage.
- Domestic partners: Employers may offer coverage only for registered domestic partners or for all domestic partners, including non-registered and opposite sex.
- Enrollment deadline: Employees must be enrolled by the 22nd day of the month before coverage becomes effective.
- Policy premium rates: Locked in for 12 months.

Affordable Care Act – State exchanges
Cover Oregon

Small Business Health Options Programs ("SHOP"):

- Qualified health plans are to be made available to small employers.
- All full-time employees must be eligible for coverage.
- New ways to offer employee health coverage
- Access to tax credits and easier administration.

Oregon Small Business Health Options Program (SHOP):

- The Oregon SHOP exchange will be limited to businesses with 50 or fewer employees in 2014 and 2015, and to 100 or fewer employees beginning in 2016.

Employers with 101+ employees may not purchase coverage through an exchange, at least until 2017.

Stretching your dollars…

Affordable Care Act
Large Employer
Shared Responsibility

Affordable Care Act – Play or Pay
Large employer shared responsibility

Large employer shared responsibility issues and factors:

1. Penalties
   - Failure to offer coverage to full-time employees
   - Failure to offer affordable coverage
   - Failure to offer coverage with a 60% minimum value
2. Large employer
3. Controlled group - Single or multiple employers
   - Parent-subsidiary
   - Brother-sister companies
4. Identifying full time employees
5. Minimum essential coverage (“MEC”)
6. Affordability (Less than 9.5% of income for self-only)
7. Premium tax credits
8. Actuarial and Minimum Value

Affordable Care Act – Play or Pay
Large employer "shared responsibility" tax

Beginning in 2014, a "play or pay" tax on employers with 50/ more full-time equivalent employees:

1. Employers who do not offer minimum essential coverage to all full-time employees and children to age 26
   - will be taxed $167 per full-time employee (after first 30) for each month
   - in which they have full-time employees enrolled in an exchange plan who receive a tax credit.
2. Employers who offer coverage to all full-time employees and their children to age 26, but
   - coverage has less than a 60% minimum value or
   - self-only cost is greater than 9.5% of employee income.

Employer will be taxed $250/month per full-time employee who enrolls in an exchange plan and receives tax credit.

Affordable Care Act – Play or Pay
Large employer

A large employer is one who had an average of 50 or more full-time employees including full-time equivalents (FTE) as determined on a controlled group basis.

- A full-time employee is one who works, on average, 30 hours per week.
- The number of full-time equivalent employees (FTEs) is determined by adding together the work hours of all part time employees and dividing by 30.

Transition rule for 2013:

- The employer may use any six or more consecutive months in 2013 that it chooses to determine whether or not the employer is a large employer in 2014.

Affordable Care Act – Play or Pay
Large employer

Two issues regarding seasonal employees:

- counting them for large employer determination and
- determining if they are full time employees.

Seasonal employees are defined by DOL regulations as:

- employees whose employment is exclusively performed at certain seasons or periods of the year and which
- is not continuous or carried on throughout the year.

Also includes retail employees during holiday seasons.

Large employer seasonal worker exception:

- if workforce exceeds 50 full-time employees for 120 or fewer days in a calendar year and
- seasonal workers were the only reason for this.

If this occurs, employer is not a large employer.

Affordable Care Act – Play or Pay
Controlled group of employers

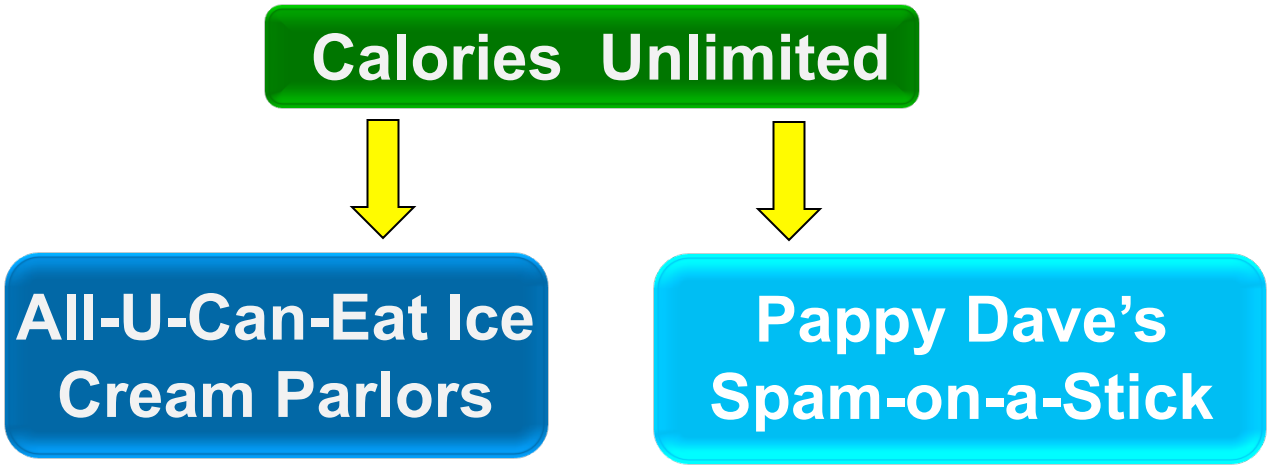
Controlled group rules apply for determining how many employees an employer employs:

- Controlled group: A parent company owns 80% or more of a subsidiary.
- Commonly-controlled (brother-sister) group: The same 5 or fewer owners must own:
- effective (50%) control of all companies and
- actual (80%) operational control of all companies.
- A controlled group also includes a combination of parent-subsidiary and brother-sister companies.

For example, if two companies in a controlled group each have 26 employees, they will be deemed to have 52 employees which will make them a single large employer.

Affordable Care Act – Play or Pay
Controlled group of employers

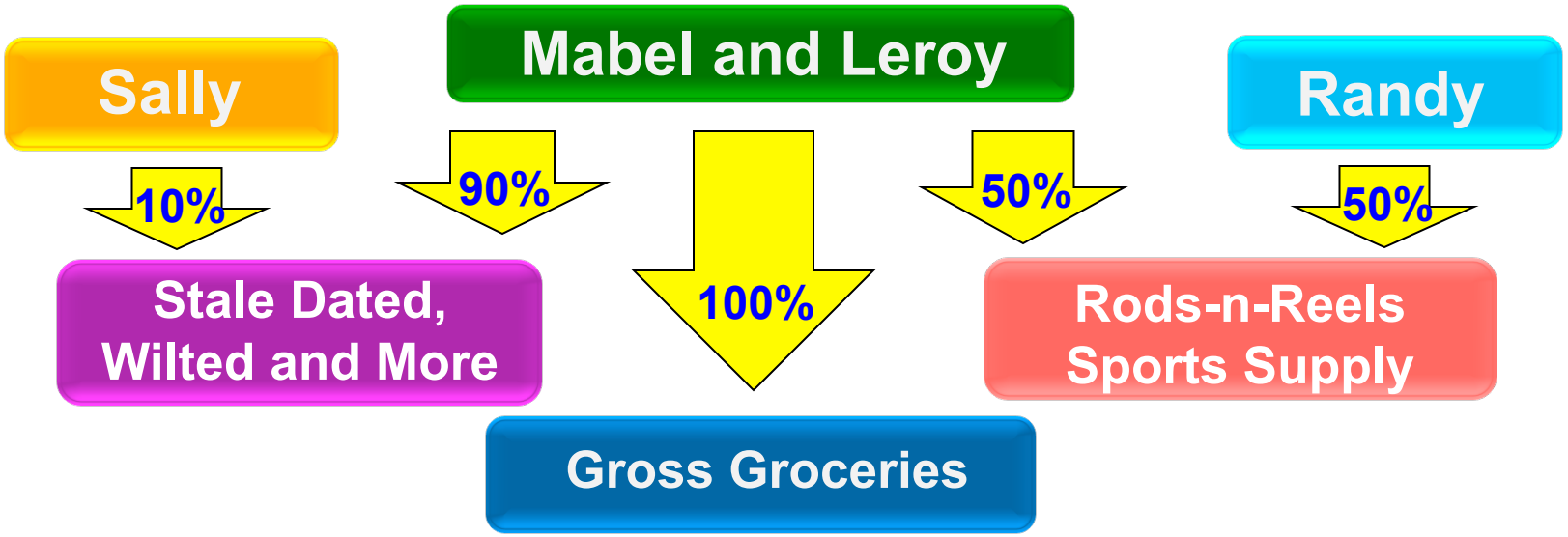
Hypothetical #1: Parent owns at least 80% of subsidiaries:



Hypothetical #2: Parent and chain of 80% subsidiaries:

Affordable Care Act – Play or Pay
Controlled group of employers

Hypothetical #3: Commonly-controlled group



Analysis:

- M&L own effective control (50%) of all three companies.
- They have an 80% controlling interest in Stale Dated and Gross Groceries but not Rods-n-Reels.

Stale Dated and Gross Groceries are a single employer, but Rods-n-Reels is not part of this group.

Affordable Care Act – Play or Pay

Determining if an employee is a full-time employee

Full-time employee:

- Employee who works an average of at least 30 hours per week or 130 hours per month.

FTEs (full-time equivalents) are based on 120 hours/month.

Variable hour employee:

- Based on the facts and circumstances on the employee's start date, it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week during a Standard Measurement Period.

Ongoing employee:

- An employee who has been employed for at least one Standard Measurement Period.

Affordable Care Act – Play or Pay
Determining if an employee is a full-time employee

Safe harbor rules - Ongoing employees:

- Employers must adopt a Standard Measurement Period (SMP) of 3 to 12 months (selected by employer).
  - The SMP may begin on a date chosen by the employer, such as two months prior to open enrollment.
- Employee who is full-time during a SMP remains full-time during a Stability Period (SP) (which must be as long as the Standard Measurement Period, but not less than 6 months) and the AP for the following SMP.
- An optional Administrative Period (AP) of up to 90 days between the end of the SMP and the start of the SP:
  - to determine which employees are full-time and
  - to notify and enroll them.

If not full-time, no coverage during stability period.

Affordable Care Act – Play or Pay
Determining if an employee is a full-time employee

Safe harbor rules - New employees:

- If hired as a full-time employee, employee must be enrolled on or before the first 90 days of employment.
- If hired as a variable-hours or seasonal employee:
- employer may determine if employee worked an average of 30 hours during a look-back "initial measurement period" (IMP).
- Employer may select an (IMP) of 3 to 12 months:
  - IMP may begin on any date between the employee's start date and 1st day of 1st calendar month after start date.
  - Employer may have an administrative period (AP) of up to 90 days, but any gap between an employee's start date and first day of IMP reduces permissible 90-day AP.

Affordable Care Act – Play or Pay
Determining if an employee is a full-time employee

New employees - Safe harbor rules (cont.):

- If full-time, employee must be covered during a stability period (SP), which cannot be shorter than for ongoing employees.

The combined IMP and the Administrative Period cannot extend beyond the last day of the first calendar month that begins on or after the employee's anniversary date.

If a new employee is *not* a full-time employee:

- The employer may deny coverage during the SP, but
- the stability period must not be more than one month longer than the IMP and must not exceed the remainder of the SMP plus the AP in which the IP ends.

Affordable Care Act – Play or Pay
Determining if an employee is a full-time employee

New employees - Safe harbor rules (cont.):

A new employee becomes an ongoing employee if:

- employed for an IMP and an entire SMP, in which case
- the employee must be retested for work hours during the most recent Standard Measurement Period.

A new employee who was not full-time during an IMP may become full-time during an SMP.

Affordable Care Act – Play or Pay
Interns, temporary and seasonal employees

A large employer's interns and seasonal workers:

- Are entitled to health coverage the same as other employees if they average at least 30 hours per week of work and are "common law" employees.

Temporary workers ("temps"):

- Are not an employer's employees if placed by a temp agency, but
- Are employees whose work hours must be calculated if hired directly by the employer

Warning: It is possible that long term temps may be found to be common-law employees.

Dividing work hours with temp agency will not avoid a temp from being a full-time common law employee.

Affordable Care Act – Play or Pay

Identify full-time employees – "Look-back" Method

Safe harbor method for counting full-time employees:

	3 to 12 Months	Up to 90 Days	At Least 6 Months No Shorter than SMP
Ongoing Employees	Standard Measurement Period (SMP)	Administration Period	Stability Period
New Employees	Initial Measurement Period (SMP)	Administration Period	Stability Period

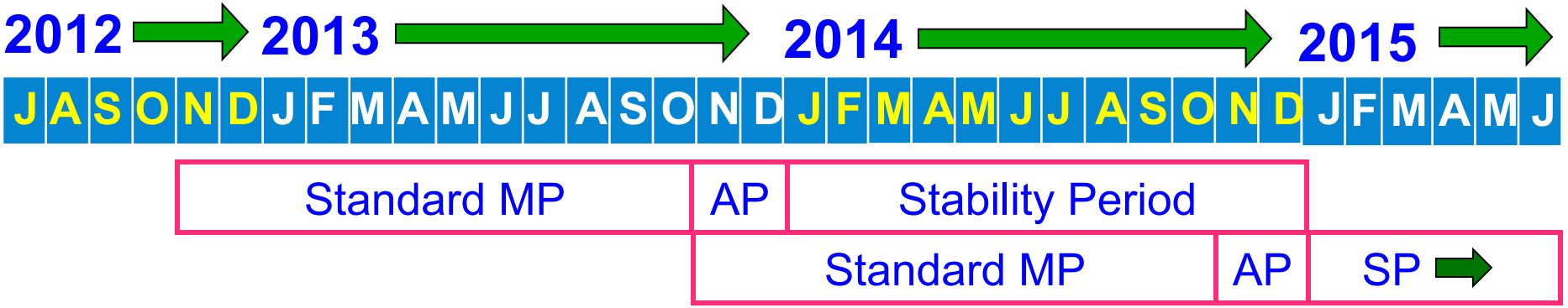
Some special transition rules not discussed here:

- Plans with fiscal years.
- Salary reduction election changes for cafeteria plans with fiscal plan years beginning in 2013.
- Shorter 2013 SMP of at least 6 months and ending no earlier than 90 days before 2014 plan year.
- Time to expand coverage to include dependents.

Affordable Care Act – Play or Pay
Identify full-time employees – "Look-back" Method

Example: For *ongoing* employees, if employer selected:

- 12-month SMP from November 1 to October 31 each year
- 2-month Administrative Period (Options: Zero to 90 days)
- Stability Period (same as SMP but not less than 6 months)



Ongoing employees are reviewed after each Standard MP.

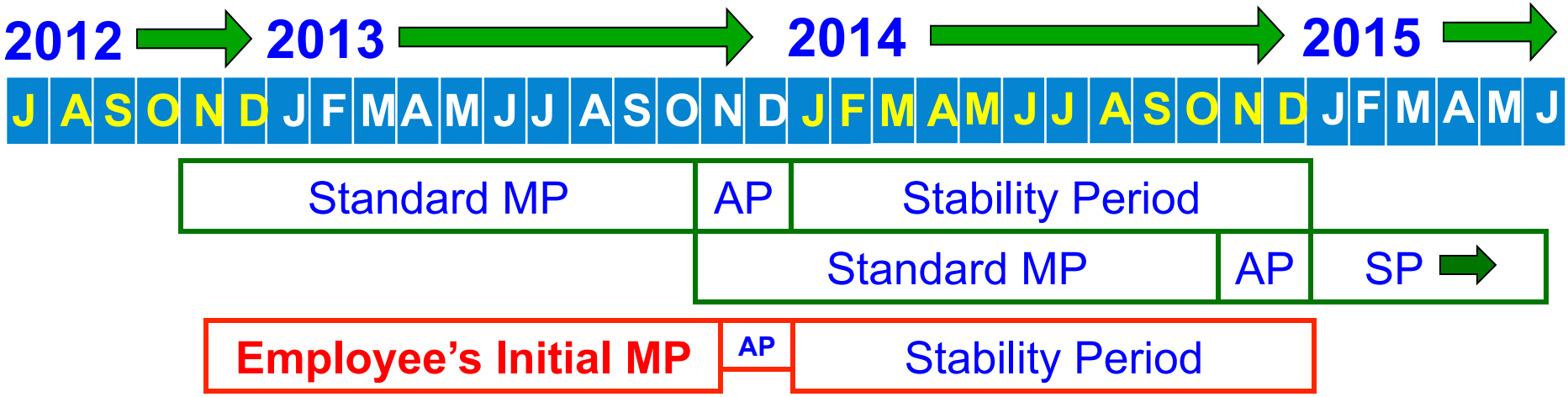
- Each employee who worked an average of 30+ hours per week during the SMP becomes a full-time employee.
- Coverage must be offered during the AP.
- Coverage must be provided during the Stability Period.

Affordable Care Act – Play or Pay
Identify full-time employees – "Look-back" Method

Example: For *new* employees, if employer selected:

- **12-month Initial Measurement Period and a 2-month AP.**

Employee started work on 11/15/12 as part-time employee.



Employee's first anniversary is 11/15/13, so if full-time:

- **The combined IMP and the Administrative Period cannot extend beyond the last day of the first calendar month that begins on or after the employee's anniversary date.**
- **If full-time, employee's coverage must begin by 1/1/14.**

Affordable Care Act – Play or Pay
Hiro's Ramen Castle and Sushi Corral

Hiro is the sole owner of the Ramen Castle:

- During each month in 2013, Hiro has:
  - 15 employees who average 37 hours per week and
  - 40 employees work average 90 hours per month

Analysis:

- The 15 employees who average 37 hours per week are full-time employees.
- The work hours of the 40 non-full time employees are added together (not more than 120 hours/employee) and divided by 120 to determine Full Time Equivalents:
  - 40 times 90 work hours = 3600 work hours
  - 3600 work hours divided by 120 = 30 FTEs

Conclusion: Hiro has 15 full-time and 30 FTE employees, so Hiro is not a large employer (15 + 30 = 45).

Affordable Care Act – Play or Pay
Hiro's Ramen Castle and Sushi Corral

On 1/1/14, Hiro buys Sushi Corral which he runs as a separate business. Sushi Corral has:

- 10 employees who average 32 hours per week and
- 25 employees who average 75 hours per month

Analysis:

- Hiro owns 100% of Ramen Castle and Sushi Corral, so the companies are a single brother-sister employer.
- The work hours of the 25 non-full time employees are then calculated to determine Full Time Equivalents:
  - 25 times 75 work hours = 1875 work hours
  - 1875 work hours divided by 120 = 15.62 FTEs

Conclusion: Hiro has a combined 25 full-time (15+10) and 46 FTE employees (30+16), so Hiro is now a large employer (25 + 46 = 71) subject to shared responsibility.

Affordable Care Act – Play or Pay
Hiro's Ramen Castle and Sushi Corral

Business is good but margins are thin:

- No health coverage is offered to any full-time employees.

Shared responsibility rules for controlled groups:

- Each company is not liable for the others' failure to offer coverage to full-time employees and is only liable for its own failure.
- The penalty exemption for the first 30 employees is pro-rated between the companies based upon how many full-time employees each company employs.

Conclusion:

- Ramen Castle takes 18 of the 30 penalty exemptions (60% of 30) and Sushi Corral takes 12 (40% of 30)
- No penalty because the penalty exemptions exceed the number of each company's full time employees.

Affordable Care Act – Play or Pay
Hiro's Ramen Castle and Sushi Corral

During 2014, Asian Cho-Cho opens and offers jobs to Hiro's employees. To retain his staff:

- Hiro buys a group health policy which he offers to all full-time employees and their children.

Analysis:

- The policy has a 60% minimum value.
- For 6 full-time employees (4 at Ramen Castle and 2 at Sushi Corral), the single-party contribution is more than 9.5% of their W-2 wages, so it is unaffordable for them.
- These employees all purchase health coverage through the exchange and are eligible for tax credits.

Shared responsibility penalty:

- Ramen Castle penalty is $1,000 per month (4 x $250).
- Sushi Corral penalty is $500 per month (2 x $250).

Affordable Care Act – Play or Pay
Margie's Custom Needlepoint and Pizza Company

Margie's Custom Needlepoint and Pizza Company:

- Margie is the sole owner of her company and has no ownership interest in any other business.
- She has 55 full-time employees and 15 FTEs.
- Margie does not offer minimum essential coverage to any employee, so 10 full-time employees purchase exchange coverage and receive the premium subsidy.

Analysis:

- **Common control:** Not an issue. Only one company.
- **Large employer:** Yes.
- **Shared responsibility penalty:** $167 per month per full-time employees (minus the first 30), so Margie's penalty will be $4,175 per month ($167 x 25 = $4,175) which is $50,100 annually.

Affordable Care Act – Play or Pay
Margie's Custom Needlepoint and Pizza Company

Option: Offer coverage to avoid the shared responsibility penalty:

- Coverage must be offered to 55 full-time employees and their children.
- Affordability is only based on single-party premium, so Margie's contribution for dependent coverage could be zero.

Assumptions:

- Single-party premium is $400 for minimum essential coverage with 60% minimum value.
- Employee contribution is 20% ($80), so Margie would pay $320 per month.
- Margie's corporate marginal tax rate is 30%.

Affordable Care Act – Play or Pay
Margie's Custom Needlepoint and Pizza Company

Cost of group health coverage:

Annual premium cost per employee: $320 x 12 months.	$3,840
Total premium cost for 55 employees: $3,840 x 55	$211,200
Deductible corporate expense: $211,200 x 30%	($63,360)
Net expense:	$147,840

Net expense of providing group coverage	$147,840
Shared responsibility penalty if no group coverage	($50,100)
Increased expense:	$97,940

For each full-time employee who enrolls in an exchange plan because coverage is not affordable:

- **Margie will owe a shared responsibility penalty of $250 per month, but**
- **Will pay $320 less for group health coverage premiums.**

Affordable Care Act – Play or Pay
Other issues

Other issues pertaining to shared responsibility:

- When full-time employment is not based upon number of work hours.
- Shared responsibility for fiscal year health plans – transition rules
- Obligations of successor employers
- Breaks in employment – termination and rehire
- New employers not in existence during an entire preceding calendar year
- Foreign employers and foreign employees

Stretching your dollars…

Affordable Care Act Reporting and Taxation Requirements

Affordable Care Act – Updates and Guidance
Individual mandate effective 1/1/2014

An individual is liable for the individual mandate tax:

- for him or herself and
- dependents that may be claimed as dependent exemption.

The tax is the sum of the monthly penalty for each month the individual did not have minimum essential coverage.

The monthly tax is 1/12th of a flat dollar amount or a percentage of income, whichever is greater:

- Flat dollar amount: $95 in 2014 increasing to $695 in 2016 then indexed for each non-exempt individual, but not more than 300% of the flat dollar amount.
- Percentage: The excess of the individual's household income over the individual's federal income tax threshold multiple by 1% in 2014, 2% in 2015, 2.5% in later years.

Affordable Care Act – Updates and Guidance
Individual mandate

The penalty will not exceed a cap based upon:

- the national average premium for bronze coverage offered through exchanges for the individual's family size
- which must be determined each month.

Exempt individuals:

- religious conscience exemption;
- incarcerated individuals;
- undocumented aliens;
- if contribution exceeds 8% of household income;
- individuals with a coverage gap of less than 3 months;
- individuals in a hardship situation (as defined by HHS);
- individuals with income below the tax filing threshold; and
- members of Indian tribes.

Affordable Care Act – Updates and Guidance
Small employer premium tax credits

Tax credits for small employers:

- **2013:** A sliding scale tax credit of up to 35% of employers' premium payments (25% for tax-exempt charities) for employers who:
  - Have fewer than 25 full-time equivalent employees;
  - Pays at least 50% of single-party premiums; and
  - Pays annual wages that average less than $50,000.

- **2014 and later:** The sliding scale tax credit will increase to up to 50% of a small employer's total premium cost.

A calculator is available at:
http://coveroregon.com/shop_calculator.php

Affordable Care Act – Updates and Guidance
Premium and cost-sharing subsidies

Beginning in 2014, qualifying low income employees will be entitled to a sliding-scale premium tax credit:

- if household incomes are between 100% and 400% of the federal poverty level (FPL) as of the tax year ending two years prior to the enrollment period;
- they do not receive health coverage through an employer or a spouse's employer that is
- affordable (9.5% requirement) and
- has at least a 60% minimum value; and
- they purchase health coverage through a state exchange.

The 2013 FPL for a family of four is $23,550.

Those with incomes between 100% and 250% of FPL will also be eligible for cost-sharing subsidies.

Affordable Care Act – Tax Issues and Guidance
Employer and insurer reporting requirements

Minimum essential coverage return (beginning in 2014):

- Insurers and employers must report enrollee's and all covered dependents' names, addresses, dates of coverage and taxpayer identification numbers ("TIN")
  - If insured, return must include status as a qualified health plan through exchange and amount of advance payment of cost-sharing reduction or premium credit.
  - If employer-provided, must also include employer's name, address and EIN, employer contribution amounts

A statement of reported information must be given to every named person together with contact information.

For employers with insured health plans, this requirement should be satisfied by their health insurers.

Affordable Care Act – Tax Issues and Guidance
Self-reporting of excise taxes – final amendments

Employers are required to self-report and pay excise taxes owed for non-compliance with:

- Compliance with pediatric vaccine mandates
- Failure to provide COBRA coverage
- HIPAA portability (ERISA plans):
- Mental health parity
- Newborns' and Mothers' Health Protection
- Genetic Information Nondiscrimination Act
- Michele's Law - medically necessary leaves from school
- Archer MSA/HSA comparable contribution requirements
- Summary of Benefits and Coverage

Form 8928 must be filed and excise taxes must be paid for COBRA and HIPAA violations *occurring during that year* on or before the due date for the annual tax return.

Affordable Care Act – Tax Issues and Guidance
Self-reporting of excise taxes – final amendments

The excise taxes are:

- **COBRA: $100 per day per individual affected person or $200 per day per family for same qualifying event**
- **HIPAA: $100 per day per affected person**
- **Archer MSA and HSA: 35% of all employer contributions**

Minimum excise tax for COBRA and HIPAA violation after IRS send a Notice of Examination of Income Tax Liability:

- **$2,500 for each affected person *if* the failure continued during the examination period or**
- **$15,000 *if* the failure is more than *de minimis* (undefined)**

Employers with insured health plans and an average of fewer than 50 employees in the prior year are exempt.

Affordable Care Act – Tax Issues and Guidance
Patient-Centered Outcomes Research Institute

The ACA created the Patient-Centered Outcomes Research Institute to identify research:

- to evaluate and compare health outcomes and the clinical effectiveness, risks and benefits of medical treatments, services, procedures, drugs, etc. to treat, manage, diagnose or prevent illness or injury.
- Fund and facilitate the research.

Insurers and employers that sponsor self-funded health plans must pay a fee for each plan year ending on or after 10/1/2012 and before 10/1/2019:

- $1 per covered life if plan year ends before 10/1/2013
- $2 per covered life if plan year ends 10/1/13 to 10/1/14
- Fee increases for plan years ending after 10/1/14

Affordable Care Act – Tax Issues and Guidance
Patient-Centered Outcomes Research Institute

Reporting and paying the fee:

- IRS form 720 will be revised for reporting and paying the fee.

Filing deadline for self-funded plans: July 31 of the calendar year following the plan year. For example:

- If the plan year ends on 12/31/2012, the return is due by 7/31/2013.
- If the plan year ends on 1/31/2013, the return must be filed by 7/31/2014.

This fee will almost certainly be paid by employers through higher premiums.

Affordable Care Act – Tax issues and reporting

Health insurance provider tax

Beginning in 2014, health insurers will be assessed an annual tax (the "HIT") in a fixed-dollar amount:

- from $8 billion in 2014 to $14.3 billion in 2018
- After 2018, the HIT is indexed based on premium growth.

The total HIT assessment will be divided among insurers based upon each insurer's net premiums.

- Insurer's will pass the tax to their customers in the form of premiums.
- The higher premiums will, in turn, be subject to higher HIT assessments.

The HIT will not apply to self-funded plans, so it may have a bigger impact on small employers.

Affordable Care Act – Tax issues and reporting
Funding reinsurance to spread risk

Guaranteed issue, which will apply to all plans whether sold through an exchange or in the outside market, will cause increased risk due to adverse selection:

- Individuals only obtain health insurance when ill
- which causes claims to skyrocket in relation to premiums

Health insurers and self-funded health plans must pay assessments to be used to cover increased claims.

Source of funds:

- Based upon a "per-covered life" (not percent of premium)
- States may collect additional amounts if needed for claims and administrative costs (state must notify HHS).

Health Care Reform - Taxation and revenue
Cadillac plan excise tax – Beginning January 2018

A nondeductible excise tax will be imposed on:

- health insurers for insured coverage and
- employers or plan administrators for self-funded plans.

For 2018, the tax will be 40% of the amount the aggregate cost of coverage exceeds:

- $10,200 per individual and $27,500 family (indexed), *but*
- For multiemployer plans, $27,500 will apply for all participants regardless of tier of coverage

Includes all employer-sponsored health coverage, e.g.,

- medical, Health FSA, HRA and HSA but
- may (uncertain) exclude stand-alone dental and vision.

Increasing employee cost-sharing will not avoid tax.

Affordable Care Act – Tax Issues and Guidance
Other new taxes effective in 2013

1. Medicare tax for high-income employees:
   - The employee portion of the hospital insurance tax part of FICA increases from 1.45% to 2.35% of wages over:
     - $200,000 for single filers and
     - $250,000 for a joint return or surviving spouse

2. Medicare 3.8% Surtax on investment income

3. 2.3% tax on sold price of medical devices such as stents, prosthetics, pacemakers, etc. (Increased premiums?)

2. Itemized deductions threshold for medical expenses:
   - increases from 7.5% to 10% of adjusted gross income
   - seniors age 65 will be exempt in 2013-2016.

2013 Employee Benefits Legal Compliance Update

DDI benefits

Thank You!

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