Maine Municipal Employees Health Trust

60 COMMUNITY DRIVE, AUGUSTA, MAINE 04330-9486

(207) 621-2645 www.mmeht.org

To: Health Trust Participating Employers
From: Anne Wright, Assistant Director, MMEHT
Date: May 16, 2014
Re: The Affordable Care Act and Health Care Reform –
What Is the Penalty Under the Employer Shared Responsibility Provision?

Please note: Copies of these Health Care Reform updates may be found on the Health Trust website, at www.mmeht.org. Click on the link for Health Care Reform. Updates are at the bottom of the page; simply click on the link for the update you wish to read.

We started our last update by discussing how you will know whether or not you (as a Large Employer) will be subject to the penalty under the ACA's Employer Shared Responsibility provision. First, consider your answers to the following questions:

1. Are you offering **Minimum Essential Coverage** to **substantially all** of your eligible full-time employees (that is, those employees working 30 or more hours per week)?
2. Does the coverage provide **Minimum Value**?
3. Is the coverage **Affordable** for all eligible full-time employees?

If you are a Large Employer (as described in our 2/14/2014 update), and your answer to one or more of the questions listed above is "**no**", then you may be subject to the penalty – **if** one or more of your eligible full-time employees (i.e., an employee working 30 or more hours per week) purchases coverage through the Health Insurance Marketplace or Exchange, **and** receives a premium subsidy to help pay for that coverage.

So …… how will the penalty be calculated? There are two different answers to that question, depending on how you answered the three questions listed above. We've seen these two penalties referred to as the "**Sledgehammer**" and the "**Tack-hammer**", which seems to be a pretty good way to distinguish them.

Remember, you can find definitions of **Minimum Essential Coverage**, **Minimum Value**, and **Affordable** on the Health Trust's website, at www.mmeht.org. Click on the link for Health Care Reform, then refer to the January 31, 2014 update.

The "Sledgehammer" Penalty

If, as a Large Employer:

1. you do not offer Minimum Essential Coverage, Affordable coverage that provides Minimum Value to Substantially All of your eligible full-time employees; **and**
2. at least one of those full-time employees obtains coverage through the Exchange or Marketplace; **and**
3. at least one of those full-time employees covered through the Marketplace or Exchange receives a subsidy to help pay for that coverage;

then, the penalty will be equal to $2,000 annually for each full-time employee that you employ, less the first 30. (Note: For **2015 only**, as part of "transition relief", the penalty will be equal to $2,000 annually for each full-time employee that you employ, less the first **80**. In addition, although "Substantially All" was originally defined as meaning 95%, for **2015 only**, offering coverage to "Substantially All" full-time employees means offering it to **70%** of eligible full-time employees.)

Here's how it would work. Say that Anytown has 130 full-time employees. Anytown does not offer health insurance coverage to its employees. As a result, several of its employees (it really does not matter in this case how many) enroll in health insurance coverage through the Exchange, and, because they meet certain income guidelines, some of them also receive a subsidy to help pay for that coverage.

In this case, Anytown will be assessed the following penalties:

In 2015: 130 – 80 = 50 x $2,000 = $100,000 annual penalty
In 2016 (if Anytown still does not offer coverage): 130 – 30 = 100 x $2,000 = $200,000 annual penalty

The penalty would be calculated the same way, if Anytown did offer coverage to Substantially All of its full-time employees, but the coverage was not Affordable.

The "Tack-hammer" Penalty

If, as a Large Employer:

1. you offer Minimum Essential Coverage, Affordable coverage that provides Minimum Value to Substantially All of your eligible full-time employees; **but**
2. at least one of your full-time employees (i.e., one of those who is not offered the coverage, or for whom the coverage is not Affordable) obtains coverage through the Exchange or Marketplace; **and** receives a subsidy to help pay for that coverage;

then, the penalty will be equal to the **lesser of** $3,000 annually for each full-time employee that enrolls in, and receives a subsidy through, the Exchange; **or** $2,000 annually for each full-time employee that you employ, less the first 30. (Again, for 2015 only, the first 30 becomes the first **80**.)

Here's how it would work. Say that Yourtown has 130 full-time employees. As you know from having carefully read all of these updates over the past several months, the ACA defines a "full-time" employee as one who works 30 or more hours per week. Yourtown offers Minimum Essential, Minimum Value, Affordable health insurance coverage to all employees working 35 or more hours per week. Yourtown has three (3) employees that work between 30 and 34 hours per week; none of these employees are offered coverage. All three of these employees purchase coverage through the Exchange, and all three receive a subsidy to help pay for that coverage.

In this case, Yourtown will be assessed the following penalty:

3 x $3,000 = $9,000 annual penalty

Based on the calculations for Anytown as shown above, it is obvious that the "$3,000 per" penalty is less than the "$2,000 per" penalty, so Yourtown will be subject to the "$3,000 per" – the lesser of the two.

It's important to remember that, if an employee is offered Minimum Value, Minimum Essential, Affordable coverage by his or her employer, that employee **and his or her dependents** will be "locked out" of getting a subsidy through the Exchange. They can still purchase coverage through the Exchange if they want to – they just will not be eligible to receive a subsidy. And no subsidy for the employee = no penalty for the employer.

You should also know that, although the ACA listed the penalties as $2,000 annually and $3,000 annually (as described above), there is also a provision within the law that provides for an increase in penalties after 2014, based on inflation. The IRS website still lists the penalties as $2,000 and $3,000 as of this writing, so it remains to be seen what the final penalty amounts will be.

See: http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act

Please note that the Maine Municipal Association and the Maine Municipal Employees Health Trust are sharing this information to assist you with your compliance planning. We recommend that you contact your legal counsel with specific questions relating to this law.