Maine Municipal Employees Health Trust

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To: Health Trust Participating Employers
From: Anne Wright, Assistant Director, MMEHT
Date: February 7, 2014
Re: The Affordable Care Act and Health Care Reform –
What Is The Penalty Under "Play Or Pay"?

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.

As outlined in last week's update, the Employer Shared Responsibility (also known as "Play or Pay") provision of the Affordable Care Act will go into effect on January 1, 2015. This provision will affect only **"large employers"**, defined by the ACA as those employers with 50 or more full-time employees, including full-time equivalent (FTE) employees. Employers with fewer than 50 full-time / full-time equivalent employees will **not** be subject to this provision.

Last week's update described when a large employer might find itself subject to the penalty under the Employer Shared Responsibility provision. This week, we will discuss how the penalty will be calculated.

First, a quick recap of last week's update. Remember: A large employer can avoid the penalty by providing **Minimum Essential, Minimum Value, Affordable** health insurance coverage to at least **95%** of all eligible **full-time employees** (those working 30 or more hours per week). A large employer will **only** be subject to the penalty **if** at least one full-time employee enrolls in health insurance coverage, **and** receives a premium subsidy, through the Health Insurance Marketplace.

There are two different scenarios under which a large employer might be subject to the penalty under the Employer Shared Responsibility provision of the ACA. The penalty will be calculated differently, depending upon which scenario applies.

<u>Scenario #1</u>. The employer **does not offer** Minimum Essential, Minimum Value, Affordable health insurance coverage to **at least 95%** of eligible full-time employees, **and** at least one full-time employee enrolls in health insurance coverage **and** receives a premium subsidy through the Marketplace.

In this scenario, the penalty will be equal to **$2,000 annually for each full-time employee** employed by the employer, **not counting the first 30 full-time employees**.

Obviously, if a large employer does not offer any health insurance coverage to its eligible full-time employees, the employer would be subject to the penalty if at least one full-time employee receives a subsidy through the Marketplace. But there are also a number of instances where a large employer does offer coverage, but is still subject to the penalty because the coverage does not meet all of the criteria listed above (minimum essential, minimum value, and affordable, as well as offered to at least 95% of eligible full-time employees).

Here's an example. Say that Anytown is a Large Employer with 100 full-time employees. Anytown offers minimum essential, minimum value coverage to all of its full-time employees (working 30 or more hours per week), but the coverage does not meet the definition of Affordable under the ACA. (Refer to the attachment to last week's update for an explanation of what constitutes "affordable" coverage.) If at least one of Anytown's eligible full-time employees enrolls in coverage and receives a premium subsidy through the Marketplace, Anytown will be subject to the penalty, calculated as follows:

100 full-time employees – the first 30 = 70 full-time employees;
70 full-time employees x $2,000 = $140,000 annual penalty.

For another example, say that Anytown only offers coverage to 70 of its 100 full-time eligible employees. Since Anytown has not met the "substantially all" test (because Anytown does not offer coverage to at least 95% of its eligible full-time employees), Anytown will be subject to the "$2,000 per employee less the first 30" penalty, calculated as above.

<u>**Scenario #2**</u>. The employer **does offer** Minimum Essential, Minimum Value, Affordable health insurance coverage to **at least 95%** of eligible full-time employees, **and** at least one full-time employee **who is not eligible for the employer-sponsored coverage** enrolls in health insurance coverage **and** receives a premium subsidy through the Marketplace. (Remember, if an employee is eligible to enroll in minimum value, affordable coverage offered by his employer, he will not be eligible to receive a subsidy through the marketplace – and neither will any of his family members.)

The penalty will be equal to **the lesser of**:

> **$2,000 annually for each full-time employee** employed by the employer, **not counting the first 30 full-time employees**, **or**
>
> **$3,000 annually for each full-time employee** that enrolls in coverage, and **receives a subsidy,** through the Marketplace.

In this example, let's say that Anytown has 100 full-time employees, and offers minimum value, affordable coverage to 95 of them (thus meeting the "substantially all", or 95% requirement). However, two of those five full-time employees who are not offered coverage enroll in coverage through the Marketplace, and receive premium subsidies. Anytown will now be subject to the penalty, calculated as follows:

The lesser of:
100 full-time employees – the first 30 = 70 full-time employees;
70 full-time employees x $2,000 = $140,000 annual penalty.

Or:
2 full-time employees receiving subsidies through the Marketplace x $3,000 = $6,000 annual penalty.

In this instance, Anytown would be subject to a $6,000 annual penalty.

Although final regulations have not yet been issued regarding enforcement of the Employer Shared Responsibility provision, under the ACA, this responsibility will fall to the IRS. The IRS will send the employer a notice and demand for payment of the penalty. The notice will explain how the employer is to make the payment. This will all be done separately from any employer tax return. In addition, any penalty paid under this provision will not be a deductible expense. More details on how this penalty will be collected will be provided once the final regulations have been issued.

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.