



Maine Municipal Employees Health Trust

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To: Health Trust Participating Employers
From: Anne Wright, Assistant Director, MMEHT
Date: July 3, 2013
Re: The Affordable Care Act and Health Care Reform –
Employer Shared Responsibility (“Play or Pay”)
Implementation Postponed

One of the most difficult, and in many ways controversial, provisions of the Affordable Care Act (ACA) is the Employer Shared Responsibility provision. This provision, frequently referred to as “Play or Pay”, states that Large Employers may be subject to a penalty for either a) not offering health insurance coverage to “substantially all” of their full-time employees; or b) offering coverage to substantially all full-time employees, but such coverage is unaffordable or does not meet minimum essential coverage requirements.

The penalty imposed would be either \$2,000 per employee (less the first 30 employees) for employers that do not offer coverage at all, or offer coverage to less than 95% of full-time employees; or \$3,000 per employee that receives coverage and a subsidy under the Exchange, for those Large Employers that offer coverage that is found to be unaffordable (as defined by the ACA), or that does not meet minimum requirements.

Within that brief summary of “Play or Pay” are several terms that require explanation, as follows:

- “Large Employers” are defined as having 50 or more full-time employees, including full-time equivalents.
- “Full-time employees” are defined as working at least 30 hours per week.
- “Substantially all” full-time employees means at least 95% of full-time employees.
- The Exchange, or “Health Insurance Marketplace”, is an online marketplace where individuals and families (and small businesses) can find health insurance coverage. Exchanges will either be run by individual states or by the federal government. The exchanges are supposed to be operational by October 1, 2013, with enrollment effective starting January 1, 2014.
- “Unaffordable” means that the employee’s contribution for self-only coverage exceeds 9.5% of household income (although there are several “safe harbors” that may be used in place of household income for determining affordability, including using the employee’s W-2 wages, hourly pay, or the federal poverty level).
- “Minimum Essential Coverage” is defined as health insurance coverage having an actuarial value of at least 60%. This means that the plan covers at least 60% of all eligible expenses. (Note: All of the Health Trust health insurance plans provide Minimum Essential Coverage.)

The Employer Shared Responsibility provision of the ACA was scheduled to become effective January 1, 2014. This has caused a great deal of confusion and consternation among employers both large and small, as they tried to determine whether or not they would be subject to the provision, how many full-time employees (and full-time equivalents) they had, and whether or not they had to begin offering coverage to more employees – and how they would pay for it if they did.

Bills have been introduced in Congress over the past month or so, to try to amend the Employer Shared Responsibility. One such bill, introduced in the Senate by Susan Collins of Maine and Joe Donnelly of Indiana, proposed changing the definition of “full-time employees” to mean those employees working at least 40 hours per week. Another bill, introduced in the House by Luke Messer of Indiana, would change the definition of “Large Employer” to mean employers with 100 or more full-time employees.

In response to the concerns expressed by employers, and perhaps in response to political concerns as well, the Obama administration announced on July 2 that **implementation of the Employer Shared Responsibility (“Play or Pay”) provision of the Affordable Care Act will be postponed until January 1, 2015.** This should provide more time for the Exchanges to be up and running. This should also provide Large Employers with more opportunity to determine whether or not they will be subject to a penalty, and perhaps to develop strategies around how to avoid any potential liabilities. We expect that further guidance from the Department of Health and Human Services, Department of Labor, and the Treasury Department will be forthcoming.

This topic will be addressed in more detail in later ACA updates, as well as during the Health Care Reform workshops scheduled for later this summer.

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.