



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

7700 East First Place Denver, CO 80230

phone (303) 364-7700 fax (303) 364-7800

www.ncsl.org

ACA Requirements for Medium and Large Employers to Offer Health Coverage Applicable in part to states, state legislatures and local governments as employers

Compiled by Richard Cauchi, NCSL Health Program

Updated edition: June 22, 2016

The federal Affordable Care Act (ACA) includes a requirement that most “large employers” must offer health insurance. The implementation of this broad provision depends on a combination of federal statute, agency regulations and plain language guidance, including exemptions, postponed deadlines, promulgated and announced during 2012 to 2015.

These substantive policy changes have an impact on states and employers in every region.

Q - Do the Employer Shared Responsibility provisions apply to government entities?

A – “Yes. There is no exclusion from the Employer Shared Responsibility provisions for government entities. All employers that are applicable large employers are subject to the Employer Shared Responsibility provisions, including federal, state, local, and Indian tribal government employers.”

(Source: [Q & A, #8 by IRS](#), reviewed Mar. 2, 2016)

The majority of the information within this memo is excerpted from guidance and regulations from the Department of Health and Human Services (HHS), the Treasury Department and the Department of Labor. This memo focuses on issues that may be applicable to state legislatures as employers. However, the exact size and structure of distinct employment units within state government can affect requirements, such as the actual number of full time equivalent (FTE) positions.

Large employers with 100 or more employees (about 2 percent of employers):

The ACA requires that large employers, defined as those with 100 or more full-time or full time equivalent (FTE) employees, must offer health insurance or coverage beginning January 1, 2015. This postponed the requirement by one year from the original date January 1, 2014 and was announced July 2, 2013 and modified in February 2014, as described below.

- The majority of companies with 100 or more employees already offer “quality health coverage” to their employees
- **2015-16 Action Required:** Revised rules phase in the percentage of full-time workers for whom employers need to offer coverage from 70 percent in 2015 to 95 percent in 2016 and beyond. Employers in this category that do not meet these standards will make an “employer responsibility payment” for 2015.
- The offered insurance must meet the minimum essential coverage (MEC) requirement, a once a year determination.

Medium-sized employers with 50 employees to 99 employees (about 2 percent of employers):

Those employers that do not yet provide “quality, affordable health insurance” to their full-time workers were required to report to the Treasury Department on their workers and coverage in 2015, but had until 2016 before any employer responsibility payments could apply.

- Companies with 50 to 99 FTE employees include about 7 percent of the private workforce.
- **2015-16 Action Required:** These employers must offer health insurance or coverage beginning January 1, 2016. On Feb. 10, 2014, the Treasury Department postponed by one additional year the original requirement that employers with between 50 to 99 workers meet the mandate to offer health insurance. The new rules also require 70 percent of workers to be covered in 2016, the first year of implementation.

Small businesses with fewer than 50 employees (about 96 percent of all employers):

Under the Affordable Care Act, employers that have fewer than 50 employees **are not required** to offer or provide coverage or fill out detailed forms under the Affordable Care Act.

- **Small Employer Health Care Tax Credit:** The law also assists some small businesses and small tax-exempt organizations afford the cost of covering their employees’ health insurance. If a small business has fewer than 25 employees and provides health insurance it may qualify for a small business tax credit of up to 50 percent (up to 35 percent for non-profits) to offset the cost of insurance, starting with the 2014 federal tax year. See IRS explanation of tax credit [Small Business Health Care Tax Credit and the SHOP Marketplace](#) (Updated Jan. 6, 2016)
- **Small Business Health Options Program (SHOP):** Small business exchanges have a framework set by federal rules, including options for how employers can provide contributions toward employee coverage that meet standards for small business tax credits. SHOP Exchanges are designed to serve as a marketplace for small employers’ with one to 100 workers, or up to 50 workers if a state chooses that approach. HHS: [Healthcare.Gov for small business](#); HHS: [Overview and explanations](#)

Read the U.S. Treasury Department Descriptions:

1. **Fact Sheet for Employers.** [online](#) (3 pp.; updated Sep. 2, 2015)
2. **Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act.** (56 questions, updated Mar. 2, 2016) See: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>
3. **Final Regulations,** (Effective Feb. 12, 2014) 59 pp., [online](#).

NCSL Report: Small and Large Business Health Insurance: State & Federal Roles. (Updated June 22, 2016)
See: <http://www.ncsl.org/research/health/small-business-health-insurance.aspx>

Employer Requirements to Offer Coverage

<p>Medium and Large Employers (with 50 or more full time employees [FTEs])</p> <p>[Note delayed deadlines, announced July 2, 2013 and Feb 10, 2014 by the Treasury Department]</p>	<p>Employers with 50 or more employees, including for-profit, non-profit and government entity employers, generally are required to offer health insurance to each full-time employee. For 2015 and after, employers employing at least a certain number of employees (generally 50 full-time employees or a combination of full-time and part-time employees that is equivalent to 50 full-time employees) will be subject to the Employer Shared Responsibility provisions under section 4980H of the Internal Revenue Code (added to the Code by the Affordable Care Act). As defined by the statute, a full-time employee is an individual employed on average at least 30 hours of service per week. An employer that meets the 50 full-time employee threshold is referred to as an applicable large employer.</p> <p>Under the Employer Shared Responsibility provisions, if these employers do not offer affordable health coverage that provides a minimum level of coverage to their full-time employees (and their dependents), the employer may be subject to an Employer Shared</p>
---	--

Responsibility payment if at least one of its full-time employees receives a premium tax credit for purchasing individual coverage on one of the new Affordable Insurance Exchanges, also called a Health Insurance Marketplace (Marketplace).

- For employers with 50 to 99 FTEs, **this requirement was delayed for two years, to January 1, 2016**, based on Treasury Department rules released Feb 10, 2014.]
- For employers with 100 or more FTEs, **this requirement was delayed for one year, to January 1, 2015**, as stated in [Treasury Department announcements](#) in July 2013.

The offered insurance must meet the minimum essential coverage (MEC) requirement, defined as "Bronze level" where the health insurer plan will pay at least 60 percent of the cost of each health service or treatment; higher levels of coverage include "Silver" with 70% insurer payment, "Gold" at 80% insurer payment and "Platinum" at 90%, and are permitted.

Fees or penalties for Non-compliance: Such employers who do not offer coverage and do have at least one full-time employee who receives a premium tax credit will be assessed a fee of **\$2,000 per full-time employee**, but this excludes the first 30 employees from the assessment. Such employers that offer coverage but that have at least one full-time employee receiving a premium tax credit (available up to 400% annual FPL) will be required to pay **the lesser of \$3,000 for each employee** receiving a premium credit or \$2,000 for each full-time employee, excluding the first 30 employees.

Internal Revenue Code Section 4980D, added under the ACA, imposes penalties of **\$100 per employee/per day** on employers offering insurance that fails to meet certain group health plan requirements. The federal agencies overseeing the ACA had previously issued guidance in this area, including a [DOL Technical Release](#) and two separate IRS FAQs.

Treasury Department and the IRS [final regulations](#) Issued February 12, 2014: **(26 CFR Parts 1, 54, and 301)** on the **Employer Shared Responsibility provisions** [full text = 59 pages] [Includes excerpts]

- Starting in 2014 (but postponed until Jan. 1, 2015, or Jan 1. 2016), tax code Section 4980H, added by ACA, requires employers with at least 50 full-time and/or full-time equivalent employees to offer affordable health care coverage that provides a minimum level of coverage, or pay a penalty. According to Section 4980H, an employee is considered to be full time if he or she works at least 30 hours per week, and the proposed regulations "would treat 130 hours of service in a calendar month as the monthly equivalent of 30 hours of service per week."
- "Coverage for an employee under an employer-sponsored plan is affordable if the employee's required contribution for self-only coverage does not exceed 9.5 percent of the employee's household income."
- Under the rules, employers must offer coverage to employees and must offer coverage to dependents as well, starting in 2015. The regulations define an employee's dependents for purposes of section 4980H as an employee's child who is under 26 years of age. "Dependent does not include the spouse of an employee."
- If an employer offers MEC under an eligible employer-sponsored plan to its full-time employees (and their dependents), it will not be subject to the penalty under section 4980H(a), regardless of whether the coverage it offers is affordable to the employees or provides minimum value.

Additional Source:

IRS web report: [Affordable Care Act Tax Provisions](#). Includes general information on all tax related provisions including tax credits and deductions. Revised June 22, 2016.

Q4. I understand that the Employer Shared Responsibility provisions apply only to employers employing at least a certain number of employees. How many employees must an employer have to be subject to the Employer Shared Responsibility provisions?

A - To be subject to the Employer Shared Responsibility provisions for a calendar year, an employer must have employed during the previous calendar year at least 50 full-time employees or a combination of full-time and part-time employees that equals at least 50. For example, an employer that employs 40 full-time employees (that is, employees employed 30 or more hours per week on average) and 20 employees employed 15 hours per week on average has the equivalent of 50 full-time employees, and would be an applicable large employer.

Seasonal workers are taken into account in determining the number of full-time employees. However, if an employer's workforce exceeds 50 full-time employees (including full-time equivalents) for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not considered an applicable large employer. Seasonal workers are workers who perform labor or services on a seasonal basis as defined by the Secretary of Labor, and retail workers employed exclusively during holiday seasons. For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker." Employers will determine each year, based on their current number of employees, whether they will be considered an applicable large employer for the next year. For example, if an employer has at least 50 full-time employees (including full-time equivalents) for 2014, it will be considered an applicable large employer for 2015. Note that because employers will be performing this calculation for the first time to determine their status for 2015, there is a transition rule intended to make this first calculation easier. See question 31 for a discussion of this transition rule for 2015 determination of applicable large employer status. Employers average their number of employees across the months in the year to see whether they will be an applicable large employer for the next year. This averaging can take account of fluctuations that many employers may experience in their work force across the year. The final regulations provide additional information about how to determine the average number of employees for a year, including information about how to take account of salaried employees who may not clock their hours.

Q7. Do the Employer Shared Responsibility provisions apply only to large employers that are for-profit businesses or to other large employers as well?

A - All employers that are applicable large employers are subject to the Employer Shared Responsibility provisions, including for-profit, non-profit, and government entity employers.

Q8. Do the Employer Shared Responsibility provisions apply to government entities?
(Also highlighted on page 1 of this report)

A - Yes. There is no exclusion from the Employer Shared Responsibility provisions for government entities. All employers that are applicable large employers are subject to the Employer Shared Responsibility provisions, including federal, state, local, and Indian tribal government employers.

[Source: Q & A by IRS, Reviewed Mar. 3, 2016]

	<p>Q1 (Part 22): My employer offers employees cash to reimburse the purchase of an individual market policy. Does this arrangement comply with the market reforms?</p> <p>No. If the employer uses an arrangement that provides cash reimbursement for the purchase of an individual market policy, the employer's payment arrangement is part of a plan, fund, or other arrangement established or maintained for the purpose of providing medical care to employees, without regard to whether the employer treats the money as pre-tax or post-tax to the employee. Therefore, the arrangement is group health plan coverage within the meaning of Code section 9832(a), Employee Retirement Income Security Act (ERISA) section 733(a) and PHS Act section 2791(a), and is subject to the market reform provisions of the Affordable Care Act applicable to group health plans. Such employer health care arrangements cannot be integrated with individual market policies to satisfy the market reforms and, therefore, will violate PHS Act sections 2711 and 2713, among other provisions, which can trigger penalties such as excise taxes under section 4980D of the Code. Under the Departments' prior published guidance, the cash arrangement fails to comply with the market reforms because the cash payment cannot be integrated with an individual market policy. (Source: Q & A by Department of Labor, Part 22, Nov. 6, 2014; accessed June 22, 2016)</p>
<p>Under 50 employees</p>	<p>ACA exempts all employers with up to 50 full-time employees from any of the penalties or taxes applied above to 50+ employers.</p>
<p>Over 200 Employees (Repealed)</p>	<p>ACA originally required employers with 200+ employees to automatically enroll employees into health insurance plans offered by the employer. The employees could opt-out of enrolling in such coverage. On Nov. 2, 2015, the Bipartisan Budget Act of 2015 was enacted which, among other things, repealed the automatic enrollment requirement. Accordingly, the DOL guidance link is included for archival reference only.</p>

Sources: CMS/CCIIO notices and guidance, 2/10/2014, 6/2/2014; [Q & A](#) by IRS, Mar. 3, 2016; [Summary of Health Reform Law](#), Kaiser Family Foundation April 23, 2014; accessed June 22, 2016.

State Employee Health Benefit Programs

Excerpt from NCSL's online report at: http://www.ncsl.org/research/health/state-employee-health-benefits-ncsl.aspx#ACA_News

CMS overview of "Self-Funded Non-Federal Government Plans" "The Affordable Care Act has given Americans new rights and benefits, by helping more children get health coverage, ending lifetime and most annual limits on care, allowing young adults under 26 to stay on their parent's health insurance, and giving patients access to recommended preventive services without cost."

Prior to enactment of the Affordable Care Act, sponsors of self-funded, non-federal governmental plans were permitted to elect to exempt those plans from, or "opt out of," certain provisions of the Public Health Service (PHS) Act. This election was authorized under section 2722(a)(2) of the PHS Act (42 USC § 300gg-21(a)(2)). The Affordable Care Act made a number of changes, with the result that sponsors of self-funded, non-federal governmental plans can no longer opt out of as many requirements of Title XXVII. On May 16 2014, the Department of Health and Human Services, Centers for Medicare and Medicaid Services, published a final rule titled Patient Protection and Affordable Care Act: "[Exchange and Insurance Market Standards](#)," with details on "Non-Federal Governmental Plans." related to exemptions listed below.

This section is intended to provide information about this opt out provision. The information in this section will be of interest to state and local governmental employers that provide self-funded group health plan coverage to their employees, administrators of those group health plans, and employees and dependents who are enrolled, or may enroll, in those plans. Although self-funded nonfederal governmental plans may still opt out of certain

provisions of the PHS Act, they are not exempt from other requirements of the law including the restrictions on annual limits and other provisions of the Patient's Bill of Rights.

Provisions subject to opting out included:

- limitations on preexisting condition exclusion periods; requirements for special enrollment periods; prohibitions on health status discriminations;
- newborn and mother benefits standards; mental health and substance abuse disorder benefit parity requirements; coverage of reconstructive surgery after mastectomy requirements; and coverage of dependent students on medically necessary leave of absence.

Under the ACA, self-funded non-federal governmental plans may no longer opt out of the first three of these requirements, although they may still opt out of the later four. Group health plans maintained pursuant to a collective bargaining agreement ratified before March 23, 2010, however, that were exempted from any of the first three requirements do not need to come into compliance with any of these provisions until the first plan year following the expiration of the last plan year governed by the collective bargaining agreement. These changes had earlier been implemented by guidance, but the proposal would modify the existing rule to bring it into conformity with the statutory provisions. The amendment would also require electronic submission of the opt-out.

State Law Restrictions on State Employees Enforcing ACA Fines or Penalties

The individual and employer coverage mandates have been a focal point for individual state opposition. Between 2010 and 2016, [18 states](#) passed statutory or state constitutional language providing that the state government does not support mandates requiring the purchase of insurance by individuals or payments by employers. Because the U.S. Supreme Court upheld the employer mandate and the individual coverage mandate, which generally do not require a state role, the federal law applies.

Three states (Idaho, Montana and Tennessee) currently have laws that establish a prohibition on state agencies and employees enforcing ACA fines or penalties.

Idaho - [HB 391](#) signed as Chapter 46 of 2010; Effective 07/01/10.

(Section 399003.) Amend and add to existing law to establish the Idaho Health Freedom Act, stating in part, "that every person within the state of Idaho is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty."

(Section 399004.) ENFORCEMENT. "No public official, employee, or agent of the state of Idaho or any of its political subdivisions, shall act to impose, collect, enforce, or effectuate any penalty in the state of Idaho that violates the public policy set forth in section 399003(2), Idaho Code.

(Section 399002 DEFINITIONS (*excerpt*) (3) "Penalty" shall mean any civil or criminal fine, tax, salary or wage withholding, surcharge, fee or any other imposed consequence, established by law or rule of the federal government of the United States of America or its subdivision or agency, that is used to punish or discourage the exercise of rights protected under this chapter.

Montana - [S 125](#), signed as Chapter 402, May 13, 2011.

Opposes elements of federal health reform, providing that by state law state agencies "may not implement or enforce in any way the provisions" or any federal regulation or policy implementing federal health reform "that relates to the requirement for individuals to purchase health insurance and maintain minimum essential health insurance coverage."

Montana - S 418, passed House and Senate; enacted as Chapter 310 and sent to the Secretary of State, May 4, 2011. Prohibits, by state statute, the federal and state government from mandating the purchase of health insurance coverage; also prohibits imposing penalties related to health insurance decisions.

Tennessee - [S 79](#) was signed as Chapter 9, March 18, 2011.

A statute declaring it state public policy that every person within the state "shall be free to choose or to decline to choose any mode of securing health care services without penalty or threat of penalty;" it requires that no state or local public official, employee, or agent "shall act to impose, collect, enforce, or effectuate any penalty in this state."

Richard Cauchi is a Health Program Director covering Health Insurance, Financing and Pharmaceuticals [\[email\]](#)

LEGAL NOTE: The information contained in this document is intended for informational purposes and does not constitute legal advice by the National Conference of State Legislatures (NCSL). Some material summarizes laws or legislation and is the property of NCSL and is intended as a reference for state legislators and their staff. NCSL makes no warranty, expressed or implied, or assumes any legal liability or responsibility for third party use of this information. © 2015 NCSL

Rev 5 -6/22/2016