



An Interlocal Service of the Massachusetts Municipal Association

AFFORDABLE CARE ACT UPDATE

NOVEMBER, 2014

We write, again, to update you regarding additional developments under the Affordable Care Act (ACA).

I. ACA Reporting Requirements

It is important for you to be aware of preliminary instructions that have recently been issued dealing with completion and distribution of reporting forms pertinent to the ACA. The purpose of the forms is provide the IRS and other Federal agencies with information to enforce and administer the requirements of the ACA's Employer Mandate and Individual Mandate. Although these forms will first be required to be issued and filed with the IRS in 2016, they will describe the coverage offered and/or utilized by employees during calendar year 2015. Employers that are subject to the Employer Mandate should collect, during calendar year 2015, the information that must be provided on the forms in 2016. Further explanation follows.

Pursuant to Section 6056 of the Internal Revenue Code, employers subject to the Employer Mandate, i.e. employers with at least 50 full-time employees (averaging 30 hours per week) or 50 full-time equivalents, are required to provide the IRS with information regarding the coverage (if any) that they offer to their full-time employees. The information reported will enable the IRS to determine whether the employer owes penalties for not offering its employees the coverage required by the ACA. The reporting information will also assist the agencies to determine employee eligibility for premium tax credits. Employers will provide the required information on a Form 1095-C. A Form 1095-C (or its equivalent) will be provided to each of the Employer's full-time (*i.e. averaging at least 30 hours per week*) employees and copies of the Forms 1095-C for each full-time employee will be transmitted to the IRS along with a transmittal form (Form 1095-B). The form is to be completed for each full-time employee even if that employee is not enrolled in the employer's health plan.

IRS Section 6055 requires that an insurance issuer, a self-insured employer or a multi- employer plan (such as the MIIA Health Benefits Trust) report to the IRS information regarding the type and period of coverage offered to individuals who are provided coverage through employer-sponsored plans. This information will be supplied to each covered employee on Form 1095-B while copies of Form 1095-B for each employee will be transmitted to the IRS with a transmittal form (Form 1094-B).

As mentioned previously, these forms will first be required to be issued and filed with the IRS in 2016 and will describe the coverage offered and/or utilized by employees during calendar year 2015. However, employers that are subject to the Employer Mandate will be advised to collect, during calendar 2015, the information that must be provided on the required forms in 2016. To that end, we suggest that covered employers contact their payroll vendors to review vendor familiarity with the reporting requirements and vendor capability for supplying the necessary information, or to otherwise plan to record the required information.

It is expected that the Trust will be issuing and filing Forms 1094-B and 1095-B for the enrolled employees of its members. However, as Form 1095-C requires information that the Trust does not maintain (e.g. information regarding full-time employees who decline coverage), the Trust will not be able to issue and/or file Forms 1095-C and 1094-C for its members.

The instructions and forms that the IRS has issued to date are preliminary and the IRS has acknowledged that they may be modified over the next 12 months. We will notify you when the final instructions and forms are issued and provide further guidance.

II. Does My Town Employ 50 Full-Time Equivalents (FTEs)

Trust members that employ fewer than 50 full-time employees or 50 “full-time equivalents” will not be subject to the ACA’s Employer Mandate and will not be required to issue or file Forms 1095-C and 1095-B.

This leaves the question of how “full-time equivalents” are determined.

First, an employer must determine how many of its employees averaged at least 30 hours per week. These are the Employer’s full-time employees. Once that determination is made the Employer must calculate the total of all of the hours worked by its other employees during that month and divide that total by 120.

EXAMPLE: The Town of Somewhere has 60 employees. Of those employees, 15 average 40 hours per week, 15 average 35 hours per week and the remaining 30 employees average less than 30 hours per week. The 15 employees who average 40 hours per week and the 15 employees who average 35 hours per week are full-time employees. The hours worked by the remaining 30 employees during a month must be totaled and then divided by 120. The number is then added to the 30 full-time employees to determine the Employer’s full-time equivalents for that month.

The calculation must be performed for each of the 12 months of the calendar year. The numbers of FTEs for each of the 12 months are then added together and divided by 12. If the resulting number is 50 or more, the Employer is subject to the Employer Mandate for the succeeding calendar year.

III. The Cadillac Tax

Section 9001 of the Affordable Care Act imposes a forty percent (40%) excise tax upon premium amounts for employer-sponsored health plans that exceed certain benchmarks. This excise tax is commonly referred to as the “Cadillac Tax.”

While the Cadillac Tax is not scheduled to be effective until 2018, it has been the subject of considerable attention. For that reason, we wanted to share with you our observations. The tax is intended to apply to premium payments for employer-sponsored health coverage that exceeds \$10,200.00 for self-only coverage and \$27,500.00 for two-person or Family coverage. Those amounts may be subject to an inflation adjustment for 2018 and will be subject to an inflation adjustment for succeeding years. Also, the threshold for (1) non-Medicare eligible retirees over age 65, and (2) employees covered by a plan where the majority of employees are engaged in a “high risk profession” is increased by \$1,650.00 for self-only coverage and \$3,450.00 for two-person or Family coverage. The statute also allows for an adjustment to the thresholds for plans with disproportionate age and gender characteristics. (The parameters of those adjustments await the issuance of regulations.) A forty percent (40%) excise tax will be assessed upon the amount by which an employer’s premiums for health coverage exceed those thresholds. In determining the amount of the employer’s premiums, the law requires that any amount contributed by an employer under any salary reduction election under a flexible spending account be included.

The tax is payable by the employer if the employer provides self-insured coverage. If the employer provides coverage on a premium basis, the tax is payable by the insurer (but it can be expected that the expense will be passed-on to the Employer). While the statute authorizes the Secretary of the Treasury to issue regulations “necessary to carry out” the provisions, no regulations have yet been issued.

The excise tax has served as an impetus for many private sector employers to consider plan design changes to their health plans. In particular, employers have been considering significant deductibles and co-insurance features that could be expected to reduce premium cost.

At this time it is uncertain how the excise tax will be implemented in 2018 and whether Congress or the Administration will move forward with the tax as currently framed by the ACA.

As with other provisions of the ACA that affect our members, we will keep you advised of all relevant developments regarding the Cadillac Tax.