HEALTH CARE REFORM: Legislative Brief

ACA Mandates – Different Measures of Affordability

Several key reforms under the Affordable Care Act (ACA) measure the affordability of employer-sponsored health coverage. Effective for 2014, the affordability of an employer's health plan may be assessed in the following three contexts:

- The **shared responsibility penalty** for large employers;
- The **premium tax credit** for low-income individuals to purchase health coverage through an ACA Exchange; and
- The tax penalty imposed on individuals who fail to obtain health insurance coverage, or the **individual mandate**.

Although all of these ACA mandates involve an affordability determination, the test for affordability varies for each provision. This Legislative Brief summarizes the different measures of affordability for these key ACA mandates.

OVERVIEW

The following table provides an overview of the three ACA reforms that measure whether an employer's health coverage is affordable.

ACA Mandate	Summary	Affordability Measure for Employees	Affordability Measure for Family Members
Employer Shared Responsibility Penalty	Large employers that do not offer health coverage to their full-time employees and dependents, or offer coverage that is either unaffordable or does not provide minimum value, may be subject to a penalty.	Coverage is affordable if the employee portion of the premium for the lowest-cost, **self-only coverage** that provides minimum value does not exceed **9.5 percent of an employee's W-2 wages, rate-of-pay income or the federal poverty level for a single individual**.	Coverage is affordable if the employee portion of the premium for the lowest-cost, **self-only coverage** that provides minimum value does not exceed **9.5 percent of an employee's W-2 wages, rate-of-pay income or the federal poverty level for a single individual**. The cost of family coverage is not taken into account.
Premium Tax Credit	The premium tax credit helps eligible individuals and families purchase health insurance through an ACA Exchange. Employees (and their family members) who	Coverage is affordable if the employee's cost for **self-only coverage** does not exceed **9.5 percent of household income**.	Coverage is affordable if the employee's cost for **self-only coverage** does not exceed **9.5 percent of household income**. The cost of family coverage is not taken into

	are eligible for coverage under an employer-sponsored plan that is affordable and provides minimum value are not eligible for ACA's premium tax credit.		account.
Individual Mandate	Most individuals must obtain health coverage for themselves and their family members or pay a penalty. However, individuals who lack access to affordable minimum essential coverage are exempt from the individual mandate.	Coverage is affordable if the required contribution for the lowest-cost, **self-only coverage** does not exceed **eight percent of household income**.	Coverage is affordable if the required contribution for the lowest-cost **family coverage** does not exceed **eight percent of household income**.

EMPLOYER SHARED RESPONSIBILITY PENALTY

Under ACA's "pay or play" requirements, large employers that do not offer health coverage to their full-time employees and dependents, or offer coverage that is either unaffordable or does not provide minimum value, may be subject to a penalty.

A "large employer" for purposes of ACA's shared responsibility penalty is one with **50 or more full-time employees**, or an equivalent combination of full-time and part-time employees.

Affordability Determination

The affordability of health coverage offered by a large employer is a key point in determining whether the employer will be subject to a shared responsibility penalty.

The coverage is considered affordable if the employee's portion of the **self-only premium** for the employer's lowest- cost coverage that provides minimum value does not exceed **9.5 percent** of the employee's household income for the tax year.

This determination applies regardless of whether the employee is eligible for another level of health plan coverage, such as family coverage. Thus, the cost of family coverage is not taken into account to determine whether an employer's health plan is affordable for purposes of the shared responsibility penalty.

Safe Harbors

Because employers may be largely unaware of the income levels of their employees' family members, they could find it difficult to assess whether the coverage they offer would be considered affordable. To address this issue, a proposed rule on ACA's shared responsibility penalty includes **three affordability safe harbors:** Form W-2 safe harbor, rate- of-pay safe harbor and federal poverty line (FPL) safe harbor.

These safe harbors allow an employer to determine the affordability of its health coverage without knowing an employee's household income, as follows:

- *Form W-2* – Under the Form W-2 safe harbor, an employer compares the cost of self-only health coverage to an employee's wages from that employer that are required to be reported in Box 1 of the employee's Form W-2 to determine whether the cost exceeds 9.5 percent of income.

- *Rate-of-Pay* – Under the rate-of-pay safe harbor, affordability is determined by comparing the cost of self-only coverage to an employee's rate of pay. For salaried employees, the employer would use the employee's monthly salary to determine affordability. For hourly employees, the employer would multiply the employee's hourly rate of pay by 130 hours per month and determine affordability based on the resulting monthly wage amount.
- *FPL* – The FPL safe harbor measures affordability based on the FPL for a single individual.

PREMIUM TAX CREDIT

ACA created the premium tax credit to help eligible individuals and families purchase health insurance through an ACA Exchange. By reducing a taxpayer's out-of-pocket premium costs, the credit is designed to make coverage through an Exchange more affordable.

Eligibility for Tax Credit

To be eligible for the premium tax credit, a taxpayer:

- Must have household income for the year between 100 percent and 400 percent of the FPL for the taxpayer's family size;
- May not be claimed as a tax dependent of another taxpayer; and
- Must file a joint return, if married.

In addition, to receive the premium assistance, a taxpayer must enroll in one or more qualified health plans through an Exchange.

Also, the taxpayer **cannot be eligible for minimum essential coverage** (such as coverage under a government-sponsored program or an eligible employer-sponsored plan). Employees who may enroll in an employer-sponsored plan, and individuals who may enroll in the plan because of a relationship with an employee, are generally considered eligible for minimum essential coverage if the plan is affordable and provides minimum value.

Affordability Determination

Employees (and their family members) who are eligible for coverage under an employer-sponsored plan that is affordable and provides minimum value are not eligible for ACA's premium tax credit.

To determine an employee's eligibility for a tax credit, ACA provides that employer-sponsored coverage is considered affordable if the employee's cost for **self-only coverage** does not exceed **9.5 percent** of the employee's household income for the tax year.

On Feb. 1, 2013, the IRS released a final rule to confirm that an employer-sponsored plan is affordable for family members if the portion of the annual premium the employee must pay for **self-only coverage** does not exceed **9.5 percent of the taxpayer's household income** for the tax year. Thus, the affordability determination for families is based on the cost of self-only coverage, not family coverage.

INDIVIDUAL MANDATE

Beginning in 2014, ACA requires most individuals to obtain health coverage for themselves and their family members or pay a penalty. Because this provision has the effect of "requiring" individuals to have coverage, it is often referred to as the "individual mandate."

Minimum Essential Coverage

The penalty will be assessed against an individual for any month during which he or she does not maintain minimum essential coverage, beginning in 2014 (unless an exemption applies). The requirement to maintain minimum essential coverage applies to individuals of all ages, including children.

Minimum essential coverage includes coverage under:

- A government-sponsored program, such as coverage under the Medicare or Medicaid programs, CHIP, TRICARE and certain types of veterans health coverage;
- An eligible employer-sponsored plan (including COBRA and retiree coverage);
- A health plan purchased in the individual market; or
- A grandfathered health plan.

Minimum essential coverage does not include specialized coverage, such as coverage only for vision care or dental care, workers' compensation, disability policies, or coverage only for a specific disease or condition.

Under the ACA, minimum essential coverage also includes any additional types of coverage that are designated by the Department of Health and Human Services (HHS) or when the sponsor of the coverage follows a process to be recognized as minimum essential coverage.

Affordability Exemption

ACA includes a number of exemptions from the requirement to obtain minimum essential coverage. Under one of these exemptions, individuals who **lack access to affordable minimum essential coverage** are not subject to the individual mandate penalty. This exemption avoids making an individual pay a tax penalty if his or her only health coverage option is unaffordable.

On Feb. 1, 2013, the Internal Revenue Service (IRS) issued a proposed rule on the individual mandate's affordability exemption. The proposed rule would implement the following affordability measures for employees and family members:

- Coverage is unaffordable to an employee who is eligible to purchase coverage through his or her employer if the required contribution for the lowest-cost, **self-only coverage** would be more than **eight percent of household income.**
- For family members who are eligible to purchase coverage through an employer-sponsored plan, coverage is unaffordable if the required contribution for the lowest-cost, **family coverage** would exceed **eight percent of household income.**

Thus, unlike the employer shared responsibility penalty and the premium tax credit, the individual mandate's measure of affordability for family members takes into account the cost of family coverage.

Under the individual mandate's exemption rules, the required contribution for self-only coverage under an employer-sponsored plan may cost less than eight percent of household income, while the required contribution for family coverage under the same employer plan may cost more than eight percent of household income. In this case, the employee is not exempt from ACA's individual mandate, while the employee's spouse and other dependents would be exempt.

MORE INFORMATION

Please contact your Clarke & Company Benefits, LLC representative if you would like more information on ACA's shared responsibility penalty, premium tax credit or individual mandate requirements.