



Employer Responsibility Requirements

ACTION NEEDED:

The impetus for enacting national health reform was to boost the health of our nation's struggling economy. But now that PPACA is actually law, as an association of business owners who advise other business owners about their health insurance options, instead we see the measure contributing to our nation's current economic uncertainty and limited job growth. NAHU would like to see a number of targeted improvements to the current health reform law to make it much more employer-friendly and spur job development rather than hinder it.

BACKGROUND:

Employers are the backbone of both the national economy and the national private healthcare delivery system. For the majority of Americans under the age of 65, employer-sponsored health insurance is a dependable and cost-effective method for attaining high quality health insurance coverage.

We are very concerned that the current health reform requirements in PPACA will limit the ability of many employers to continue to be able to afford to offer health insurance coverage to their employees, and that many of the provisions of this law are actually contributing to our nation's current economic uncertainty and limited job growth. Erosion of the employer-based health insurance system will make health coverage more expensive for millions of Americans and limit their reliable and efficient access to high-quality health coverage.

Transition Relief

NAHU believes the implementation timeframe specified for the insurance market reforms in PPACA is generally very ambitious. There are a number of areas relative to the employer responsibility requirements where a phased-in enforcement period would be extremely appropriate. Providing employers with transition relief as the new requirements under PPACA become effective will be essential to preserving the existing system of employer-sponsored coverage.

While the ACA did create a mandate for larger employers to provide coverage by 2014, the Administration has delayed the penalties associated with the mandate twice. The first delay was in November of 2013 and was applicable to all employer groups to delay penalties until January 1, 2015. The second delay was issued in February of 2014 and delays the penalties on employers with less than 100 but more than 50 employees until January 1, 2016. While NAHU generally opposes the employer mandate, NAHU lobbied the Treasury Department extensively for leniency and flexibility for employers given that, at this time, the employer mandate is the law of the land. Fortunately, the vast majority of the changes to the employer-mandate rules requested by NAHU and its coalition partners, both in written comments and via many meetings and direct conversations with Treasury officials over the past year, have been included in the final rule.



Employer Responsibility Requirements

NAHU feels strongly that the employer-based system must be at the core of any health reform effort, but that the provision of benefits must be a voluntary action on the part of employers. As such, we support the repeal employer mandate provisions in the legislation.

Failing that, we feel that the threshold for “affordability” penalties in the legislation needs to be raised from the current 9.5% of family income.

Many employers, particularly smaller employers, cannot afford to maintain benefits and increase their degree of contribution to employee coverage. Unless this standard is raised, we will see countless employers penalized and millions of employees leaving the group benefit system and instead seeking subsidized coverage through the health insurance exchanges.

Definition of a Full-Time Employee

The employer responsibility requirements in PPACA have created a new definition of full-time employee of 30 hours per week. This definition is inconsistent with long-standing employer practices and its implementation is creating compliance nightmares for employers nation-wide. NAHU supports a revision to provide employers with needed flexibility to manage their businesses efficiently.

On January 28, 2014, the House Ways and Means Committee held a full committee hearing on PPACA’s definition of a full-time employee. In the hearing, industry representatives critiqued the 30-hour rule, highlighting how it will negatively impact workers, especially those working in restaurants, retail stores and hotels. Because providing health insurance coverage is a great expense to employers, many will be forced to cut worker hours, not because they necessarily want to, but because they simply cannot afford not to. Based on this, Representative Todd Young (R-IN) introduced H.R. 2575 which was later marked up by the committee and passed on a party line vote.

In addition to the definition of a full-time employee issue, the Administration has proposed very convoluted methods for employees to count their full-time and variable hour employees moving forward. Different standards of counting employees need to be used to determine the applicability of the mandate as well as whether or not coverage needs to be offered to employees and dependents. While the varying standards do provide employers with flexibility, they are also intimidating and difficult to administer. NAHU suggests that safe harbor standards be allowed for employers, and that the Congress examine the overall economic impact the employer responsibility requirements are having on American businesses.

Employer Waiting Period Provisions

Action needs to be taken to make PPACA’s employer waiting period provisions more consistent with time tested employer benefit practices.

The 90 day employer waiting period provisions that apply through January 1, 2014 should be revised to allow employers to enroll new employees on the first of the month following 90 days, since that is when benefit periods typically begin.



NAHU also believes that a change should be made to allow employers in high-turnover industries to apply for an employer waiting period requirement waiver through the Department of Health and Human Services to provide for waiting periods of up to 6 months on an as-needed basis.

Auto-Enrollment of Employees in Health Benefit Plans

PPACA requires that employers with more than 200 employees must auto-enroll their employees in their health benefit plans, however, there is much confusion about these requirements in the employer community that needs to be rectified.

First of all, a compliance date as to when auto-enrollment must begin needs to be specified. Also, Congress or regulators should clarify if the requirements apply to all employees or only new employees.

Finally, some technical improvements to the requirement could make it substantially easier on all employers. Employers should be able to enroll employees in one lower-cost default plan option, such as a high-deductible plan. Also, opt-out procedures must be clarified. Ideally, employees who opt out must do so within 30 days of enrollment to reduce employer confusion and cost burden.

Employer Responsibility Requirements Concerning Health Benefit Exchanges

Every day NAHU members encounter employers with questions and concerns about their future roles and responsibilities with regard to potential exchange-eligible employees. Our nation's employers need practical and workable final guidance on these issues as soon as possible so that they can make informed, long-term decisions about their employee benefit offerings.

One concern that many employers have is whether or not voluntary contributions the employer makes to employee Health Savings Accounts will be considered on an equal basis as employer contributions to the cost of health coverage premiums with regard to the affordability test. Similarly, employers would like to know if employer payments in Health Reimbursement Arrangements qualify, and if employers' spending on employee wellness program incentives will qualify as well. NAHU firmly believes that it should be clearly specified that employer contributions to Health Reimbursement Accounts and Health Savings Accounts, as well as employer-provided wellness incentives, should be counted toward the employers' premium contribution for the affordability test.

W-2 Reporting Requirements

Due to PPACA, employers are now required to report on their W-2s the aggregate cost of employer-sponsored health benefits. Enforcement of this provision delayed until this year for larger employers, and delayed indefinitely for those employers who issue less than 250 W-2s in order to give employers and payroll providers more time to adjust. But the compliance burden on employers still looms large as a future cost and difficulty.

One of the challenges is that the new W-2 reporting is required not only for current employees, but also to former employees who are provided with health coverage. This will include early retirees, retirees, terminated employees on COBRA and surviving spouses if they are on the employer's health plan. Many of these individuals would not typically



receive a Form W-2 from the employer, at least not for taxable years following their termination of employment. Accordingly, an employer's overall W-2 reporting requirements may increase dramatically.

Another difficulty for employers is that some of the plans covered by the new reporting requirement, such as on-site medical clinics, are not plans that they have previously valued for COBRA purposes. Now, employers need to come up with reportable values for coverage provided under these programs.

Additional Notification Requirements for Employers

PPACA also establishes a number of new notification requirements for employers, setting timeframes and standards for how they notify their employees of changes to benefits due to PPACA, the existence of health benefit exchanges and other material plan changes. Some of the new notification requirements regarding PPACA-related changes are duplicative and need to be clarified. The new law seems to require both health insurance carriers and employers to notify employers about some plan changes. Who is responsible for providing such notices should be clarified, in order to avoid confusion and reduce administrative costs.

In general, we urge Congress to review all PPACA reporting processes with the goal of keeping them simple. We ask that lawmakers be cognizant of the costs and administrative burdens that complicated and/or redundant reporting requirements will place on our employer-provided health care system. We urge policymakers to look at all new employer reporting requirements collectively and consolidate them to greatest extent possible on an annual basis.