

Senior Care Employers Should Start Today to Prepare for Health Care Reform

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On January 1, 2014, "pay or play" under Health Care Reform goes into operation. "Large" employers must offer adequate health coverage or may have to pay substantial penalties. Many of California's senior care communities will be considered "large" employers under the rules. In the worst case, you could both pay for employees' health coverage and *also* pay as much as \$2,000/year penalty for *every* full time employee (less 30)—even those who received coverage from the employer.

These new rules are very complex, and compliance depends on application of the rules to your particular facts. This article is only intended to give you a high-level understanding of the financial risk this new law presents to your business operations—and why you need to start preparing for it today.

Whether your senior care operation will be considered a "large" employer in 2014 depends on whether you employed an average of 50 or more full-time equivalent employees in the prior year. For this purpose, part-time employees must be counted to determine your total full-time equivalent employees. "Pay or play" refers to the new rules that covered employers must either offer qualified health coverage to substantially all their full-time employees and dependents, which would be considered "playing," or be assessed penalties under the tax rules for failing to offer required health coverage, which would be "paying." For coverage purposes, "full time" generally means that the employee works an average of 30 hours per week or 130 hours per month. Because determinations for 2014 are based on hours worked in 2013, employers must begin immediately to set up systems for tracking employee hours worked.

Senior care communities may have special issues under the "pay or play" rules. Both in determining if you are a large employer and then for determining which employees meet the definition of full-time so these employees and their dependents must be offered coverage, senior care communities have workforce issues that may present challenges. Employers who have a substantial number of part-time employees, low-wage employees, high-turnover employees, seasonal employees, or perhaps "contractors," will have administrative difficulties in ensuring compliance with the new rules. Each of these types of employee can cause special "pay or play" issues that must be watched carefully to avoid incurring significant penalties.

Every employer needs to start preparing right now for the January 1, 2014 operational date. To meet this date, the typical employer with health care open enrollment in Fall 2013 needs to start in early April 2013 to count each employee's 2013 hours of service in accordance with the "pay or play" rules. To count hours under the rules, you should review your IT and payroll systems well before April 1st because it takes time to change these, if required. Before deciding whether to change your payroll and HR systems, you need to know what to count and why, so you will need to develop your strategy to meet pay or play. Gathering the required information, understanding the rules, applying the rules to your particular situation, as well as assessing your tax risk, will take time. In order to avoid last-minute scrambling, you need to start now to avoid

penalties beginning January 1, 2014. The IRS will enforce the health care reform penalties and, unfortunately, the information that the IRS will get for enforcement from the newly created state and federal health exchanges almost certainly will not be accurate. The burden will be on each employer to demonstrate to the IRS that no penalties are due, or that, if any are due, the correct amount is being assessed. In order to prevail with the IRS, good records are critical.

Addressing information gathering and strategy development to best reduce your senior living community's risk can be supported by immediately putting together a team from HR, IT and payroll, finance, and legal to deal with your particular "pay or play" issues. The first action is to take a precise and thorough inventory of what health care coverage is offered, to whom it is offered (and not), the premiums charged to employees, and their W-2 wage levels. This will give the baseline data needed to develop your "pay or play" strategy. Simultaneously, IT and payroll must understand the records available, how existing data can be used, and what changes may be needed to capture additional data needed for implementation/compliance (and for any future IRS audit). In many cases, the most logical testing period to determine which employees will need to be offered coverage as of January 1, 2014, would be a six-month period beginning in April, 2013. This would allow capturing the data in time to determine which employees have to be offered health care during the Fall 2013 open enrollment period to meet the new rules.

Because the IRS has already indicated informally that it is planning to audit for health care reform compliance, it is important not only to capture the data that is needed for compliance on January 1, 2014, but also to capture information in a way that meets the IRS audit requirements. The time to start preparing for this complicated new tax law is today.



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