Are you in compliance with the healthcare reform law?

What seniors housing employers need to know about the ACA's new rules in 2015

By Judy Boyette

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Employers in the seniors housing industry will be affected by key issues under the new healthcare reform law that took effect Jan. 1, 2015. For 2015, there are some transition rules that will make compliance with these complex new rules less burdensome, but penalties will be applicable and employers need to prepare for the new compliance and reporting requirements early in 2015 if they have not already done so.

What new ACA rules apply to senior housing employers?

Under the new healthcare reform law — the Patient Protection and Affordable Care Act (ACA) — your operations will be subject to the employer-shared responsibility rules (called "pay or play") if you are a "large employer." For 2015, employers with at least 100 full-time equivalent employees will be considered "large employers" and must offer health coverage to full-time employees and their dependent children or pay a penalty.

Under transition relief, employers with fewer than 100 employees, but at least 50 full-time equivalent employees, will not be subject to penalties until 2016. To be eligible for this delayed effective date, you will be required to certify as part of the annual reporting process in 2016 that you did not reduce the size of your workforce in order to fall within this exception and did not eliminate or materially reduce the health coverage offered to your workforce as of Feb. 9, 2014.

For 2015, you need to determine whether your business and all of the employers in your tax "controlled group" in the aggregate employed an average of 100 or more full-time equivalent employees in 2014. For this purpose, part-time employees must be counted to determine your total full-time equivalent employees.

For 2015, you can use a period of six consecutive months during 2014, rather than the entire calendar year, to determine whether or not you employed an average of 100 or more full-time or full-time equivalent employees.

If you meet the requirement of 100 or more employees, then you must either offer qualified health coverage to 70 percent of your full-time employees and dependent children up to age 26 and ensure that the cost of self-only coverage for your lowest cost plan does not exceed 9.5 percent of income, 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 2016 and subsequent years, the percentage of employees offered qualified coverage must be 95 percent, rather than 70 percent.)

For coverage purposes, "full time" generally means that the employee works or is entitled to be paid for an average of 30 hours per week, or 130 hours per month. The final IRS rules allow an employer to use either the look-back measurement method or the monthly measurement method for determining if an employee meets the full-time criteria.

The optional monthly measurement period determines full-time status on a month-to-month, real-time basis. Under the look-back method, determinations are based on hours worked during a prior measurement period of three to 12 months, with a subsequent administrative period up to 90 days before required coverage must begin for a corresponding period.

The longer period you use to average, the longer the subsequent period of offered coverage has to be. For the 2015 transition period, you can use a six-month look-back period during 2014 (beginning no later than July 1, 2014) and still have a coverage period of 12 months during 2015.

How will any ACA penalty be calculated?

To avoid penalties under the ACA in 2015, you must offer minimum essential coverage to at least 70 percent of your full-time employees and their dependent children under age 26 (offering coverage to spouses is not required) to avoid a $2,000 per year penalty for every full-time employee (less an allowed offset for 80 employees) (the "A Penalty"). For 2016, the 80-employee offset for calculating the penalty decreases to 30.

If you offer minimum essential health coverage to 70 percent of your full-time employees and their dependents (and thereby avoid the A Penalty) in 2015, but the coverage you offer is either not "affordable" or of "minimum value," as defined under the ACA, then you must pay $3,000 per year for each full-time employee who gets subsidized health insurance from a health insurance exchange (the "B Penalty"). You will never pay more under the B Penalty than you would have paid under the A Penalty.

In the case of penalties, all employers in the same tax "controlled group" are not aggregated; each employer is liable for its own penalty. These penalties can represent a significant tax liability for your seniors housing business, particularly in 2016 when the percentage of full-time employees who have to be offered coverage increases significantly (from 70 percent to 95 percent).

If you are attempting to avoid the penalties (or at least the A Penalty), determining whether or not 95 percent of your full-time employees (as defined by the ACA) and dependents will be eligible for your healthcare program will be a critical task during 2015.

Can temporary employees reduce the risk of penalties?

For purposes of the ACA rules, to avoid the penalties you must offer coverage to 70 percent (or 95 percent in 2016) of your full-time "common law" employees. Many employers are concerned that the IRS may claim that staffing agency employees are actually their employees under the common law control test. This could create liability for the employer since the employer would not have offered coverage to those staffing agency employees.

The IRS final ACA rules allow an employer to consider a temporary staffing agency's offer of qualifying coverage to an employee performing services for that employer as if it had been made by the employer, but only if the employer's fee under the staffing agency contract is higher than it would be if the employee did not enroll in health coverage.

You may want to review your temporary staffing agency contracts to determine whether it would minimize risk if you have an option under the contract to pay an increased fee upon your request if it were necessary to avoid ACA penalties in the future.

Employers with less than 100 employees, but at least 50 full-time equivalent employees, will not be subject to penalties until 2016. However, you will be required to certify that you did not reduce the size of your workforce in order to fall within this exception.

What new reporting obligations apply?

In addition to the other requirements described above, the IRS recently issued new complicated reporting forms that must be completed early in 2016 for 2015 (New IRS Forms 1095-B, 1094-B, 1095-C, and 1094-C) associated with the new ACA requirements described above.

You will want to ensure that your payroll, human resources and systems representatives begin early in 2015 to determine what changes may need to be made in order to meet these new and complex compliance and reporting obligations. ■