New Jersey Hospital Association

# ISSUE BRIEF

**The Employer Shared Responsibility Provision**

**Issue Brief**

**(Updated 7/8/14)**

The Patient Protection and Affordable Care Act (ACA) created the Employer Shared Health Provision (ESHP). Under this provision, if employers do not offer affordable health coverage that provides a minimum level of health coverage to their full-time employees, they may be subject to an Employer Shared Responsibility Payment, if at least one of their full-time employees receives a premium tax credit for purchasing individual coverage on the Marketplace. The Employer Shared Responsibility Provision will apply to businesses with 100 or more full-time employees beginning in 2015, and employers with 50 or more full-time employees beginning in 2016. Small employers with less than 25 employees will not be required to offer health coverage to their employees and will not be penalized if they choose not to offer health coverage to their employees.

A health plan meets minimum value if the plan's share of the total costs of covered services is at least 60 percent. Health plans must meet the basic requirements of health plans sold on the Marketplace. If employers purchase a group plan using the Small Businesses Health Options Marketplace (SHOP), that health plan should qualify as providing minimum value. To help determine whether any other coverage meets minimum value, employers can use the minimum value calculator provided by the U.S. Department of Health and Human Services (HHS). When employers input certain information about the plan into the calculator, like deductibles and copayments, it will help them determine if the plan covers at least 60 percent of the total allowed costs of benefits provided under the plan.

To be subject to these employer shared responsibility provisions, an employer must have at least 50 full-time employees or a combination of full-and part-time employees that is equivalent to at least 50 full-time employees (for example, 100 half-time employees equals 50 full-time employees). A full-time employee is an individual employed on average at least 30 hours per week (so half-time would be 15 hours per week). For employers with over 50 full-time employees, Employer Shared Responsibility Payments will not be assessed for 2014. Employers will need to determine the number of employees they employ and their hours of service during

2014 to determine whether they employ enough employees to be a large employer for either 2015 or 2016. For example, if an employer has at least 50 full-time employees (including full-time equivalents) for 2014, it will be considered a large employer for 2015.

To gradually phase-in the provision and to assist employers to whom the provision does apply, the rules for 2015 are as follows:

- The Employer Shared Responsibility Provision will apply to larger firms with 100 or more full-time employees starting in 2015 and employers with 50 or more full-time employees starting in 2016.
- To avoid a payment for failing to offer health coverage, employers need to offer coverage to 70 percent of their full-time employees in 2015 and 95 percent in 2016 and beyond, helping employers that may offer coverage to employees with 35 or more hours, but not yet to that fraction of their employees who work 30 to 34 hours.

**Affordability**

If an employee's share of the premium for employer-provided coverage costs the employee more than 9.5% of that employee's annual household income, the coverage is not considered affordable for that employee. Because employers generally will not know their employees' household incomes, employers can take advantage of one or more of the three affordability safe harbors set forth in the Internal Revenue Service (IRS) regulations that are based on information the employer will have available, such as the employee's Form W-2 wages or the employee's rate of pay. If an employer meets the requirements of any of these "safe harbors", the offer of coverage will be considered affordable for purposes of the Employer Shared Responsibility Provisions regardless of whether it was affordable to the employee for purposes of the premium tax credit.

**Affordability Safe Harbors**

Safe harbors make it easy for employers to determine whether the coverage they offer is affordable to employees. These safe harbors permit employers to use the wages they pay, their employees' hourly rates, or the federal poverty level in determining whether employer coverage is affordable under the ACA. The three affordability safe harbors are (1) the Form W-2 wages safe harbor, (2) the rate of pay safe harbor, and (3) the federal poverty line safe harbor. These safe harbors are all optional.

**Employer Shared Responsibility Payment**

Large employers will be subject to an Employer Shared Responsibility payment if at least one of their full-time employees receives a premium tax credit. A premium tax credit is only available to eligible individuals who obtain health coverage through the Marketplace. An employee will not be eligible for a premium tax credit if the employer has offered that employee health coverage that is affordable and that provides minimum value, even if that employee rejects the offer of coverage and instead enrolls in health coverage through a Marketplace or enrolls in Medicare or Medicaid. If no full-time employee receives a premium tax credit, the employer will not be subject to an Employer Shared Responsibility Payment.

For employers that offer health coverage to at least 95 percent of their full-time employees (and their dependents), but has one or more full-time employees who receive a premium tax credit, the payment is computed separately for each month. The amount of the payment for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of $3,000. The amount of the payment for any calendar month is capped at the number of the employer's full-time employees for the month (minus up to 30 employees) multiplied by 1/12 of $2,000. The cap ensures that the payment for an employer that offers coverage can never exceed the payment that employer would owe if it did not offer health coverage

For an employer that offers health coverage for some months but not others during the calendar year, the payment is computed separately for each month for which health coverage was not offered. The amount of the payment for the month equals the number of full-time employees the employer employed for the month (minus up to 30 employees) multiplied by 1/12 of $2,000.

The IRS will be adopting procedures that ensure employers receive certification that one or more employees have received a premium tax credit. The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made. Any contact by the IRS for a given calendar year will not occur until after the due date for employees to file individual tax returns for that year claiming premium tax credits and after the due date for applicable large employers to file the information returns identifying their full-time employees and describing the health coverage that was offered (if any).

If it is determined that an employer is liable for an Employer Shared Responsibility payment after the employer has responded to the initial IRS contact, the IRS will send a notice and demand for payment. That notice will instruct the employer on how to make the payment. Employers will not be required to include the Employer Shared Responsibility Payment on any tax return that they file. Employer Shared Responsibility Payments will not be assessed for 2014. However, Employer Shared Responsibility Payment amounts will be increased over time.

**Transition Period**

There will be transition relief available for employers with at least 50 but fewer than 100 full-time employees (including full-time equivalents) in 2014. In order to be eligible for the relief, employers must certify that they meet the following conditions: limited workforce size; no reductions of workforce and in overall hours of service; and continuance of previously offered health coverage.

Additionally, rather than requiring employers to use the full 12 months of 2014 to measure whether they have 50 full-time employees (or an equivalent number of part-time and full-time employees), they may measure using any six-consecutive-month period in 2014. For example, employers may use the period from January 1, 2014, through June 30, 2014, and then have six months to analyze the results, determine whether it needs to offer health coverage, and, if so, choose and establish health coverage.

**Employers with 100 or More Employees**

The majority of larger employers with 100 or more employees already offer quality coverage. The Employer Shared Responsibility rules will phase in the percentage of full-time workers that employers need to offer coverage to from 70 percent in 2015 to 95 percent in 2016, and beyond. Large employers will have to submit annual reports to HHS on the terms and conditions of healthcare coverage provided to their full-time employees. The report should include: duration of waiting period, the monthly premium for the lowest cost option offered to employees, employer's premium share and a list of employees. Employers in this category that do not meet these standards will have to make an employer responsibility payment for 2015. Businesses with over 100 full-time employees will not be eligible to use the Marketplace to purchase health coverage for their employees.

**Conclusion**

The ACA has emphasized a shared responsibility for achieving health coverage and employers' commitment will be critical to its success and viability over time. Employers roles in the nation's health insurance system is necessary to implement the changes necessary under the law to ensure that all of their workers have access to coverage that is comprehensive and affordable.