



Employers for Flexibility in Health Care

Summary of Comments Submitted to Departments of
Treasury and HHS on October 31, 2011

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Overview of the Coalition

- ▶ The Employers for Flexibility in Health Care (“EFHC”) is a Coalition of leading trade associations and businesses in the retail, restaurant, hospitality, construction, temporary staffing, and other service-related industries, as well as employer-sponsored plans insuring millions of American workers.
- ▶ Members of the EFHC Coalition are dedicated to the common goal of advocating for solutions for both large and small employers and are working to help ensure that employer-sponsored coverage – the backbone of the US health care system – remains a competitive and affordable option for employers and for employees whether full-time, part-time, temporary, or seasonal workers.
- ▶ The employer requirements under the Patient Protection and Affordable Care Act (“PPACA”) pose unique challenges for employers and many administrative complexities. The Coalition focuses on legislative and regulatory solutions on key issues under PPACA including the definition of full-time employee, wait periods, auto-enrollment, affordability and minimum value standards, employer reporting requirements, interaction with state insurance Exchanges and federal agencies, and the imposition of federal tax penalties.

Affordability Test and Proposed Safe Harbor

- ▶ *“We strongly endorse the following aspects of Treasury’s August 17 notice:*
 - ▶ *Clarifying that the statutory language specifies that the affordability of employer coverage is based on the employee premium paid for “self-only” coverage;*
 - ▶ *Basing the calculation of the safe harbor on an employee’s current wages and thus allowing for the comparison of current premiums to current wages, rather than comparing current premiums to employee household income from prior years;*
 - ▶ *Permitting employers to apply the affordability safe harbor prospectively; and*
 - ▶ *Retaining the general affordability rule that individual eligibility for premium tax credits and employer liability for penalty assessments will be based on household income, which in most circumstances will likely be a more generous standard, for those employers who cannot meet the affordability safe harbor due to the cost of their plans.”*

Estimates for Affordability Safe Harbor

“Many Coalition members are concerned based on their 2011 estimates that it will be challenging for them to offer coverage with a monthly premium share for employees that fits within the proposed affordability safe harbor based on current wages. In order to offer a plan of minimum value that meets the affordability test, employers’ contribution to the plan also must be affordable for the employer.”

Estimates for Individual Eligibility for Medicaid or Tax Credits and Affordability Safe Harbor¹					
Scenario	Percent of federal poverty level	Annual income	Hourly wage⁴	Affordability test safe harbor (9.5% of current wages)	Estimated employee premium share for self-only coverage for affordability test safe harbor⁵
Minimum wage worker² eligible for Medicaid	~104%	\$11,310	\$7.25	Medicaid eligible	n/a
Statutory upper limit for Medicaid eligibility	133%	\$14,484	\$9.28	\$1,376 per year	\$115 per month
Effective upper limit for Medicaid eligibility³	138%	\$15,028	\$9.63	\$1,428 per year	\$119 per month
Upper limit for eligibility for tax credits	400%	\$43,560	\$27.92	\$4,138 per year	\$345 per month

1. Based on 2011 HHS Federal Poverty Guidelines for one person (\$10,890).

2. Federal minimum wage (\$7.25 per hour)

3. PPACA §2002 (as added by HCERA §1004(e)(2)) requires states to apply an “income disregard” of five percent of the federal poverty level in meeting the income test, resulting in an effective income threshold of 138% of FPL for Medicaid eligibility.

4. Based on the PPACA threshold for classification as a full-time employee (average 30 hours per week) multiplied by 52 weeks.

5. 9.5% of current wages divided by 12 months

Minimum Value Calculation

- ▶ *“The minimum value requirement included in PPACA is not a benefit mandate locking employers that provide voluntary coverage into a prescribed package of benefits or rigid cost-sharing structure. Any attempt to create a backdoor mandate through the minimum value standard is a misapplication of the law.”*
- ▶ *“We strongly recommend that the Administration consider providing multiple methodologies for employers seeking to comply with the minimum value test.”*

Transition Relief

- ▶ *“The EFHC Coalition strongly encourages the Administration to consider delaying the implementation of the penalties under IRC §4980H until 2016 to allow the Administration time to evaluate at least one year of data and to provide time for employers to adjust their plan designs as needed. This dry run will help the Administration evaluate the impact of the standards and prevent employers from reactively dropping coverage if it is determined that revisions to the rules are necessary once all of the provisions are effective.”*