Vermont Education Health Initiative

July, 2013

Questions & Answers about the Affordable Care Act &…

✓ Employer Penalties & Safe Harbor Provisions

✓ Premium Tax Credits & Out-of-Pocket Cost Subsidies

✓ The Individual Mandate & Employer Reporting Obligations

In light of substantial federal regulatory guidance issued over the course of 2013, this VEHI FAQ, originally released in January, has been significantly revised and expanded. Sections that have been revised are so noted, as are those that are new. We also incorporated some standard guidance about "grandfathered" health plans. A few questions in this document may seem more relevant to private-sector employers, but we included them just the same in interests of thoroughness.

Information in this Q&A was pulled from multiple sources, including the Internal Revenue Service's "Notice of Proposed Rule Making" (NPRM) (http://www.irs.gov/pub/newsroom/reg-138006-12.pdf), which was issued on December 28, 2012. This NPRM explicates the employer penalty provisions ("shared responsibility" for employers) under the *Affordable Care Act* (ACA). The IRS issued its own Q&A on this rule (http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act).

Additionally, VEHI has engaged **Gallagher Benefits Services, Inc.** [GBS] to assist us in the providing ACA compliance information to Vermont Schools; their counsel is incorporated here.

IMPORTANT

Because "large" employers are subject to tax penalties under the ACA starting in 2015, there is a potential impact on FY 16 school budgets. The penalty was originally scheduled to go into effect in 2014, but has been delayed a year. VEHI is working with GBS to analyze the cost impact of these penalties. Look for more information later this summer.

This Q&A is for general guidance purposes only—it is NOT legal advice. It is also still a work in progress, and may be revised again when final U.S. Treasury/IRS regulations are issued. If you have questions about the information in this document, please contact Laura Soares, Joseph Zimmerman and Mark Hage, your VEHI Trust Administrators: laura@vsbit.org, 223-5040 (ex. 208); joe@vsbit.org, 223-5040 (ex. 209) & mhage@vtnea.org, 223-6375 (ex. 2420). Thank you.

Employer Obligations Regarding Health Insurance Benefits under the ACA

Question 1: Does the Affordable Care Act require employers to provide health care benefits to employees and their eligible dependents? [Revised]

No. But the ACA does impose tax penalties on some employers if they do not provide affordable or high quality insurance to their full-time employees (those who work an average of 30 or more hours per week).

Question 2: Under the ACA, is it true that employers with more than 200 full-time employees that offer insurance coverage must automatically enroll new full-time employees in an insurance plan (as well as continue enrollment of current employees)? [Revised]

Yes, but implementation is on hold pending further guidance. When it goes into effect, automatic enrollment programs must include adequate notifications and give employees the opportunity to opt out.

Employer Penalties & Full-Time Employment Status under the ACA

Question 3: Which employers are subject to tax penalties under the ACA? [Revised]

*Only "**large**" employers (see Question 8) are subject to tax penalties—or what the ACA calls "employer shared responsibility payments." **In 2015**, a large employer could face financial penalties for each month only if:*

a. *The employer fails to offer **minimum essential** health coverage or offers that coverage to less than 95% of full-time employees, and at least one full-time employee receives a premium tax credit or cost-sharing reduction payment through the state Exchange.*

   OR

b. *The employer offers health coverage to at least 95% of its full-time employees, but at least one full-time employee receives a premium tax credit or cost-sharing reduction payment on the state Exchange, because coverage offered by the employer is either **unaffordable** OR does not provide **minimum value**.*

***After 2014**, according to the IRS, "the rule in paragraph (a) applies to employers that do not offer health coverage or that offer coverage to less than 95% of their full time employees **and the dependents** of those employees."*

***Note:** Initially, this provision was effective January 1, 2014. On July 3, 2013, the government announced that this provision would be delayed until January 1, 2015. Please see our July 3rd correspondence on this issue. Accordingly, large employers must be prepared to offer significantly all full-time employees minimum affordable coverage beginning on January 1, 2015, or be subject to a potential penalty. Please keep in mind when preparing for your FY15 budget that based on current guidance, 2015 employer shared responsibility penalties will **not** be assessed prior to July 1, 2015, and will likely not be assessed until the beginning of 2016.*

Question 4: What is meant by "minimum essential coverage" and "minimum value"? And how does the IRS define "dependents"?

"Minimum essential coverage" is that which is obtained through an employer, a government program like Medicare and Medicaid, a retirement system, or from other sources. (Minimum essential coverage refers to the SOURCE of health benefits, not the benefits themselves.)

"Minimum value" refers to a level of coverage; it is satisfied when an insurance plan covers at least 60% of the total allowed costs of the benefits provided. All VEHI plans meet this threshold.

*"Dependents" under the proposed rule are an employee's **children** who have not attained the age of 26. It follows the definition in the IRS's Revenue Code: a taxpayer's son, daughter, stepson, stepdaughter, eligible foster child or adopted child. The definition expressly **EXCLUDES** spouses or anyone else who is not a child of the employee.*

Question 5: Do HSA or HRA contributions affect the affordability of employer-sponsored coverage, and do stand-alone HRAs constitute "minimum essential coverage"?

HSA contributions do NOT affect the cost of premiums to employees; but HRAs, which can be used to pay for premiums, might be deemed to make employer-sponsored coverage more affordable. More guidance from the IRS is expected soon on this matter.

*Further, an employer who only offers employees access to **a stand-alone HRA**—that is, an HRA that is not coupled to an employer-provided benefit plan—will not be considered to be offering minimal essential coverage under the ACA.*

Question 6: Do VEHI plans meet the minimum value test discussed above (60% actuarial value)?
[Revised] Yes, all VEHI plans satisfy the test for minimum value.

Question 7: Does the ACA mandate any penalties for small employers?

No. Small employers are those that have less than 50 full-time equivalent employees (see Question 13 for how to calculate full-time equivalent) in the preceding calendar year.

Question 8: What is a "large" employer for purposes of calculating and assessing tax penalties?

"Large" is defined as having 50 or more "full-time equivalent" (FTE) employees. This status is determined based on the actual hours of service worked in the preceding calendar year by employees (see Question 13).

Question 9: How many hours per week does an employee have to work to meet the definition of "full-time" in respect to calculating tax penalties on employers?

"Full-time" employment for calculating penalties is defined as working an average of 30 or more hours a week in any given month.

Question 10: How do school employees' summer, spring and winter recess periods affect the calculation of full-time status in the determination of an employer's size and penalty liability?

*In respect to **summer** break, employers, for penalty purposes, must treat school employees' break time as if hours of service were being earned, provided the employees in question worked full-time during the active portions of the normal school year. With **spring and winter** breaks, if they are under four consecutive weeks and paid, they will be factored into the calculation of hours of service. If unpaid, these breaks would not be included in counting service hours. The proposed rule limits, however, the number of total break hours that can be counted toward hours of service to 501 hours.*

Question 11: What about paid leave hours (medical, family, maternity and paternity)?

The proposed rule does not include any limit on paid leave hours when counting hours of service for penalty purposes. As a result, an employee's hours on paid leave will count for purposes of an employer's applicable large employer status and penalty calculations.

Question 12: What about employees on unpaid leave pursuant to the FMLA or on jury duty? [Revised]

Generally, if employers use the look-back measurement method (see Questions 38-41) for counting hours for penalty purposes, they must determine the average hours of service per week for the employee during the measurement period – excluding the unpaid leave – and use that average as the average for the entire measurement period. Alternatively, you can choose to credit the employee with hours of service during the leave equal to the employee's average weekly rate during the weeks in the measurement period that were not unpaid leave.

Question 13: For determining whether an employer will face a penalty, how will full-time equivalents and overall employer size be calculated? [Revised- Please note: VEHI is designing an FTE calculator to assist school districts with this process. Look for more information on this in the future.]

*The ACA states that an employer is "large" if it "employed an **average** of at least **50 full-time equivalent employees** on business days during the **preceding** calendar year. Each month's number of employees is calculated separately and then **aggregated and averaged** for the preceding calendar year.*

In the hypothetical example below, June, July, and August are assumed to have fewer full-time-equivalent employees because of the summer recess, and December has fewer due to the assumption that some education support professionals are not paid for days not worked during winter break.

Monthly Totals of Full-Time (FT) and Full-Time Equivalents (FTE) Employees

for Determining Large or Small Employer Status for a Hypothetical Vermont School

	Jan.	*Feb.*	*Mar.*	*April*	*May*	*June*	*July*	*Aug.*	*Sept.*	*Oct.*	*Nov.*	*Dec.*
FTEs	*13.50*	*13.50*	*13.50*	*13.50*	*13.50*	*6.25*	*5.69*	*13.87*	*13.50*	*13.50*	*13.50*	*10.32*
FTs	*47.00*	*47.00*	*47.00*	*47.00*	*47.00*	*47.00*	*47.00*	*47.00*	*47.00*	*47.00*	*47.00*	*47.00*
Total	*60.50*	*60.50*	*60.50*	*60.50*	*60.50*	*53.25*	*52.69*	*60.87*	*60.50*	*60.50*	*60.50*	*57.32*
Sum of Monthly Totals: 708.13												

The chart above can be broken down as follows:

Step One: Determine the number of FTEs (including seasonal workers). Full-time equivalents *are calculated on a month-by-month basis during the preceding calendar year by adding the number of hours worked by employees who are* ***not*** *full time and then dividing by 120. So, 15 employees each worked 108 hours in January, and they count as 13.50 FTEs: (15 x 108) ÷ 120 = 13.50. (No more than 120 hours for any individual can count for this purpose; if they worked more than 120 hours, they'd be considered full-time.)*

Step Two: Determine the number of full-time employees (those who worked at least 30 hours per week) and add that to the number of FTEs. *There were 47 full-time employees in January, so the grand total for that month is the sum of 47 + 13.50, or 60.50 "full-time" employees. (At this stage of the calculation, fractional equivalents are permitted.)*

Step Three: Aggregate each month total (FTs + FTEs), divide by 12*. The final calculation for the hypothetical school represented in the table above results in an average of 59.01 "full-time" employees, including full-time equivalents, so the employer is considered* ***large****: 708.13 ÷ 12 = 59.01. If the average had turned out to be 49.99, the employer would be considered small, because the regulations call for discarding fractional amounts at the final stage of the calculation.*

Question 14: How does the proposed rule define "failure" to offer coverage to employees and their dependents? [Revised]

The government does NOT require an employer to offer coverage to ***ALL*** *of its employees to avoid the employer penalty. Instead, they indicate that an employer will be considered to have met the requirements of the law if it offers an opportunity for all but 5% of its full-time employees (****and their dependents beginning in 2015****) to enroll. If 5% of its employees would be fewer than 5 individual employees, then the employer must offer coverage to at least 5 employees (and their dependents) to meet the requirements of this part of the law.*

Question 15: How are penalties calculated if a large employer does NOT offer minimum essential health coverage?

If a large employer does ***not*** *offer its full-time employees and their covered dependents an opportunity to enroll in employer-sponsored insurance, but does have one or more full-time employees who receive premium credits or cost-sharing reductions for Exchange-based coverage, the penalty would be the number of full-time employees (****excluding*** *part-time workers), minus 30, multiplied by $2,000 (****assessed monthly,****1/12th). That's* ***all*** *full-time employees, not just those who receive credits/reductions. So, an employer in this category who had 100 full-time employees would pay as follows: (100-30) x $2,000 =*

$140,000.

Question 16: How is a penalty calculated if a large employer offers coverage that is either unaffordable or does not provide minimum value?

*If an employer **offers** minimum essential coverage and has one or more full-time employees who receive premium credits or cost-sharing reductions for Exchange-based coverage, the penalty would be the **LESSER** of the preceding calculation [(100-30) x $2,000] **OR** the exact number of full-time employees who receive the credits/reductions multiplied by $3,000 **(assessed monthly**, 1/12th**)**.*

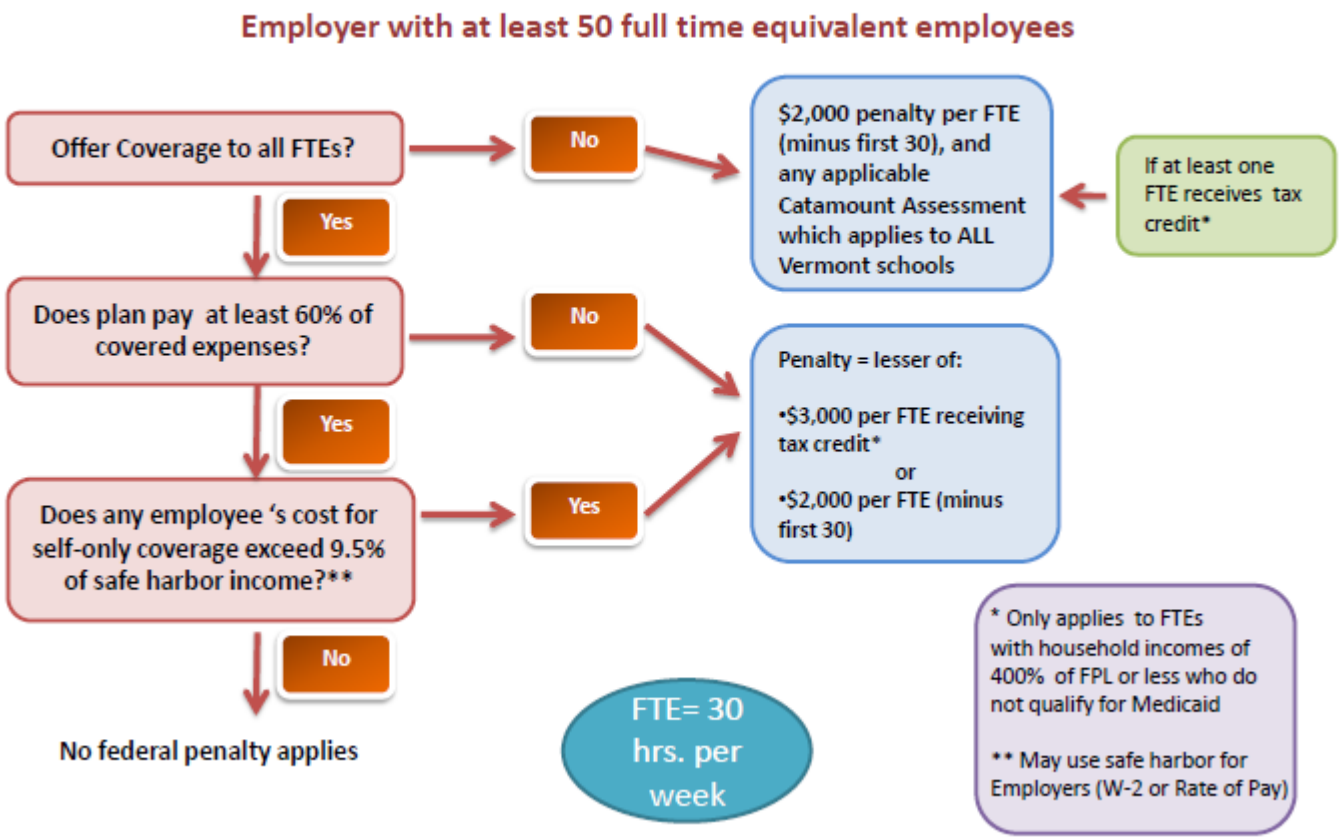
Question 17: If our employee qualifies for tax credits with respect to one of his/her dependent children, will the employer be liable for a penalty? [NEW]

No. An employee's receipt of a premium tax credit or cost-sharing reduction with respect to coverage for a dependent will not result in liability for you.

Question 18: Will states screen applicants to see if they eligible for Medicaid or another program?

States must "screen and enroll" all individuals who apply for premium credits. If eligible for such programs, they are to be enrolled and premium credits will not be an option. Additionally, an employer will not be subject to a penalty.

Employee Penalty Flowchart



School employees eligible for Medicaid will NOT be counted in the large-employer penalty assessment.

Question 19: Are employers ever required to pay a penalty for any part-time worker or full-time equivalent, even if that part-time/FTE employee receives a premium credit?

No.

Heads up: *There is more guidance to come on these provisions.*

Employer "Safe Harbors" & Potential Penalty Assessments

Question 20: What are employer penalty "safe harbors"? [Revised]

"Safe harbors" are provisions of a law or regulation that provide protection from a penalty or liability if certain conditions are met. An employer who meets the safe harbor conditions won't face a penalty, even if the employer-sponsored coverage is unaffordable based on the definition of affordability in the ACA, or if an employee receives premium credits or cost-sharing reductions in the Exchange. In other words, if the conditions of a safe harbor are met, an employer's insurance plans are essentially deemed "affordable." When determining cost of coverage for your employees, keep in mind that employers must offer affordable coverage beginning on January 1, 2015, or they will be subject to a potential penalty. Please review the following affordability safe harbors when determining employee contributions for coverage in 2015.

What follows are three scenarios in which no penalty would be assessable:

W-2 Safe Harbor: *Conditions for this safe harbor will be met if the employer offers employees (and their dependents) the opportunity to enroll in employer-sponsored coverage that provides minimum value for self-only coverage and if the employee's required contribution for the calendar year for the lowest-cost self-only coverage that provides minimum value does not exceed 9.5 percent of the employee's Form W-2 wages. Form W-2 wages would be the amount reported in Box 1 of the form. Coverage in this context would not include COBRA or other continuation coverage. Application of this safe harbor is determined after the end of the calendar year.*

Rate-of-Pay Safe Harbor: *an employer would (1) take the hourly rate of pay for each hourly employee who is eligible to participate in the health plan as of the beginning of the plan year, (2) multiply that rate by 130 hours per month, and (3) determine affordability based on the resulting monthly wage amount. Specifically, the employee's monthly contribution amount (for the self-only premium of the employer's lowest cost coverage that provides minimum value) is affordable if it is equal to or lower than 9.5 % of the computed monthly wages. For salaried employees, monthly salary would be used instead of hourly salary multiplied by 130. An employer may use this safe harbor only if the employer did not reduce the hourly wages or monthly wages of the employees during the year.*

Federal Poverty Line Safe Harbor: *This safe harbor relies on the federal poverty level (FPL). Conditions for this safe harbor will be met if the employer offered employees (and their dependents) the opportunity to enroll in employer-sponsored coverage that provides minimum value for self-only coverage and if the employee's required contribution for the calendar year for the lowest-cost* ***self-only*** *coverage that provides minimum value* ***does not exceed 9.5 percent of the FPL for a single individual****. The calculation would be done on a monthly basis using the annual FPL determination divided by 12. The FPL used would be the one relevant to the state in which the employee worked and the one based on most recent FPL determination as of the first day of the plan year. For 2012, the FPL for an individual in the 48 contiguous states or the District of Columbia was $11,170. In Alaska, it was $13,970; in Hawaii, $12,860.*

For More Information in this FAQ on Employer Penalties under the ACA

The "safe harbor" provisions discussed in Question 20 are likely to be the most relevant to "large" Vermont school districts. However, the ACA provides additional and somewhat more complex "safe harbor" mechanisms when determining who is a full-time employee for purposes of assessing penalties on "large" employers. These are geared to private- and public-sector employers that routinely contract with variable-hour employees. The great majority of Vermont school employees, on the other hand, work a set number of contracted hours weekly. We decided, however, to provide guidance on these matters just the same (see Questions 38-47), because some "large" Vermont schools may have employees—bus drivers or substitutes, for instance—who do have variable hours on a consistent basis.

Premium Tax Credits, Cost-Sharing Subsidies & the ACA's Individual Mandate

Question 21: Who can receive premium tax credits and cost-sharing subsidies under the ACA and how do they work?

The ACA provides a federal premium tax credit (a premium "subsidy," in other words) for individuals and families:

(a) who are not otherwise eligible for minimum essential coverage (other than through an Exchange) for a given month, ***OR***

(b) are eligible for minimum essential coverage that they elect not to take or disenroll from, and, in either case, is deemed "unaffordable," ***AND***

(c) have household incomes between 138% - 400% of the federal poverty level (FPL).

The premium tax credit lowers the cost of premiums on the Exchange for workers who qualify for them.

The ACA also provides cost-sharing subsidies for those with household incomes up to 250% FPL. These subsidies will help lower-income workers and their families pay for out-of-pocket costs, like deductibles and co-insurance charges.

The definition of "household" includes all persons whom the taxpayer claims as dependents under IRS Section 151 for the taxable year. Modified Adjusted Gross Income (MAGI) will be used to determine eligibility for premium tax credits and cost-sharing subsidies starting in 2014.

Question 22: How are the portions of the premium paid by the government and the amount of tax credits an employee is eligible for on the Exchange calculated?

The premium tax credit paid by the government for purchasing a product on the Exchange represents the difference between what employees must pay based on a percentage of their household income and the cost of the monthly premium of the second lowest-cost silver plan (a plan with an actuarial value of 70%). The ACA limits premium contributions by employees to between 2% and 9.5% of household income.

The premium tax credit is paid monthly directly to the insurer by the federal government. The FPL used to calculate the credit will be the one in effect on the first day of enrollment for the taxable year (usually the FPL for the year prior to the year in which the credit is awarded).

For example:

1. Take the income for an individual at 225% FPL: $2,095/month. On the Exchange, a person at this FPL will pay 8% of income toward premium contributions, or $167.60

2. Let's say the monthly premium for the second lowest cost silver plan is $500/month

3. The enrollee, then, pays $167.60 monthly premium and the federal government will pay a premium tax credit of $332.40/month directly to insurer ($500 minus $167.60 = $332.40).

An individual who chooses to enroll in a less expensive plan than the second-lowest cost silver plan will pay a lower premium and a person who chooses a more expensive plan on the Exchange will pay a higher premium.

Question 23: When do employees offered minimum essential coverage qualify for premium tax credits?

Employees in this scenario are eligible to receive premium tax credits if their employer's least expensive single plan is either:

(a) ***unaffordable*** *(this means, after taking into account an employer's premium contributions, an employee's contributions for* ***SELF-ONLY*** *coverage exceed 9.5% of the employee's* ***household*** *income),*

or

(b) ***fails to provide minimum value*** *(this means a plan's share of the total allowed costs of benefits is less than 60% of those costs—in other words, the plan's premium pays for less than 60% of medical costs incurred).*

Heads up: *The IRS may revisit the question of affordability of employer coverage for "related individuals (i.e., family members)—at present the affordability test, as noted above, is linked to self-only coverage.*

Question 24: We pay 100% of the employee-only cost, but only pay 50% of the family cost. Is our plan considered "affordable"? [NEW]

Yes. Your plan will be affordable because the determination of affordability is based on the employee's required contribution for ***self-only coverage****. Because your employees pay less than 9.5% of their household income towards the cost of* ***employee-only*** *coverage, the plan is considered affordable. This is the case even if the employee contribution for family coverage exceeds 9.5% of the employee's household income.*

Question 25: If an employee enrolls in employer-sponsored minimum essential coverage, can s/he receive premium tax credits or cost-sharing reductions if the employer's coverage is unaffordable or fails to provide minimum value? What if an employer's plan is deemed "affordable" and provides minimum essential value, and an employee disenrolls and moves to the Exchange—is this individual eligible for premium tax credits and cost-sharing reductions?

In respect to the first question, the answer is ***No****. In this situation, the employee can qualify for tax credits and cost-sharing reductions only by* ***discontinuing*** *employer-based coverage and purchasing an insurance plan on the Exchange. Of course, the employee would have to meet the household income test*

for federal financial assistance.

Now, as for the second question, if an employer's plan is deemed ***"affordable"*** *and* ***provides minimum essential coverage,*** *an employee who disenrolls from it and enters the Exchange will* ***NOT*** *be eligible for premium tax credits and cost-sharing reductions.*

Question 26: Does the ACA require individuals to have health insurance?

Yes, in most cases. This was one of the key issues examined by the Supreme Court, and the court decided the law's individual mandate was constitutional. The ACA requires, starting in 2014, that individuals maintain "minimum essential coverage." That's coverage obtained through an employer, Medicare, Medicaid, the individual market, a health insurance exchange, a retirement system, or in other ways. Minimum essential coverage, again, doesn't describe the level of benefits, ***just the source****. Some people will NOT need to comply with this requirement, including those not in the country lawfully, people who are incarcerated, and people with qualifying religious and/or financial hardship exemptions.*

Question 27: What will it cost workers who do not obtain health coverage beginning in 2014 and are subject to the individual mandate?

The law creates a penalty for some people who don't have minimum essential coverage. Penalties will be the greater of a percentage of income or a flat dollar amount, but in no instance will they be higher than the national average premium for a bronze-level, Exchange-based plan. The ***percentage-based penalty*** *is based on an adjusted household annual income and will be 1 percent in 2014, 2 percent in 2015, and 2.5 percent in subsequent years. The* ***flat dollar amount*** *will be assessed on the taxpayer and any dependents at the rate of $95 in 2014, $325 in 2015, and $695 in 2016 and subsequent years.*

Individuals and their dependents won't face a penalty, even if they don't have coverage, if they have been determined to have suffered a hardship with respect to obtaining coverage, although we don't yet know how that determination will be made. Also, individuals (and their dependents) won't face a penalty if their income is low enough so that they are below the federal tax filing thresholds or if the employee contribution requirement for self-only coverage is above 8 percent of household income (with the 8 percent adjusted after 2014 to reflect increases in premiums). In this case, self-only coverage refers to an employer-sponsored plan or the lowest-cost individual plan available on a health insurance exchange in the state in which the individual resides.

If a taxpayer fails to pay the penalty, the Internal Revenue Service can attempt to collect it by reducing the amount of any future tax refund. No other civil or criminal sanction is possible.

Question 28: How will employers be notified if an employee receives a premium tax credit, and when must they pay an assessed penalty?

The IRS will notify employers if an eligible employee has been granted a premium tax credit and, thus, triggered an employer penalty. The IRS may assess penalties on a monthly basis, and the monthly penalty will be 1/12th of the annual penalty. Employers will be notified in 2014 if an eligible employee was granted a premium tax credit; however, no penalty will be assessed for failing to offer minimum affordable health coverage in 2014. Penalties will be assessed in 2015.

Heads up: *It is still unclear as to how long employers will have to pay a penalty after receiving notice, which is seminal to answering the question of how to factor these potential costs into school budgets. More guidance on this will be forthcoming.*

Question 29: Will we be able to file an appeal if we disagree with the Exchange's determination that our employee qualifies for premium tax credits or cost-sharing reductions because our plan does not offer qualifying coverage? [NEW]

Yes. HHS intends to make an appeal process available that will allow you to appeal a determination that your employee is eligible for premium tax credits or cost-sharing reductions in part because your plan is either unaffordable or the plan's share of the total allowed cost of benefits is less than 60%.

You will have 90 days from the date you are notified that one of your employees qualified for premium tax credits to file your appeal. You will be permitted to submit evidence to support your appeal, including information pertaining to whether coverage was offered to the employee, whether the employee had elected such coverage, the employee's portion of the lowest-cost, minimum value plan you offer, and whether or not the employee is in fact employed by you.

Premium Cost-Sharing & Employer Reporting Obligations

Question 30: Does the ACA indicate who has to pay for whatever increased benefit costs may result from health care reform?

No.

Question 31: Do employers have reporting obligations to employees regarding eligibility for and the services of the Exchange, premium tax credits and cost-sharing subsidies?

*Under the ACA, schools must provide **each employee** a **written notice** concerning the Exchange.* ***VEHI will send out a model notice with instructions in early September.***

Question 32: Are there any other reporting requirements to employees? [Revised]

Yes, two.

***First,** beginning in 2015, **large** employers will have reporting requirements with respect to their **full-time** employees. According to the Congressional Research Service, this includes: "…the name, address, and employer identification number; a certification as to whether the employer offers its full-time employees (and dependents) the opportunity to enroll in minimum essential overage under an eligible employer-sponsored plan; the length of any waiting period; the months coverage was available; monthly premiums for the lowest-cost option; the employer plan's share of covered health care expenses; the number of full-time employees; and the name, address, and tax identification number of each full-time employee. Additionally, an employer offering coverage will have to provide information about the plan for which the employer pays the largest portion of the costs (and the amount for each enrollment category). The employer must also provide each full-time employee with a written statement showing contact information for the person required to make the above return, and the specific information included in the return for that individual."*

Employers may work with insurance carriers to provide this information. VEHI will provide more information on reporting requirements as it becomes available.

Second, *the ACA requires a modified COBRA notification to inform COBRA-eligible employees of their options on the Exchange [now called a "marketplace"]. VEHI will provide districts with a model notice in early September, which they can begin using no later than October 1 when the state Exchange (Vermont Health Connect) opens for enrollment.*

Heads Up: *Employer reporting requirements (excluding the Exchange Notice and COBRA notification) have been delayed until 2015. The government indicated that regulations regarding employer reporting requirements will be issued Summer, 2013. Further, though employers are not required to report in 2014, the government is encouraging employers to voluntarily participate in the reporting requirements, which will hopefully allow both the government and employers to work towards an efficient and workable reporting system.*

Question 33: Will we have to report anything to the government regarding our plan's coverage or contributions?

Yes. There are two new reporting requirements that apply in 2015 for coverage provided (i.e., the first filings will be in 2016). The IRS has indicated that for employers that may be subject to both requirements, they will try to establish rules that allow the employer to coordinate the filings to avoid duplication.

First, if you employed an average of at least 50 full-time equivalent employees, you must file an annual return with the IRS starting in 2015. You must report whether you offer full-time employees the opportunity to enroll in coverage and provide certain other information including:

- *The employer's name, the date, and the employer's EIN;*
- *A certification that you offer full-time employees the opportunity to enroll in "minimum essential coverage";*
- *The number of full-time employees you had for each month of the calendar year;*
- *The name, address, and taxpayer ID of each full-time employee employed during the year and the months during which the employee and dependents were covered under your group health plan;*
- *The months coverage was available under the plan;*
- *The monthly premium for the lowest cost option in each enrollment category;*
- *Your share of total allowed costs of benefits provided under the plan;*
- *The length of your plan's waiting period;*
- *The plan option for which you pay the largest portion of the cost and the portion of the cost you paid for each enrollment category under that option.*

A written statement will also have to be provided to each full-time employee named in the return that includes the name, address and contact information of the entity that filed the return and the information in the return pertaining to that individual.

A written statement will also have to be provided to each individual named in the return that includes the name, address and contact information of the entity that filed the return and the information in the return pertaining to that individual.

At this time we have limited information as to how this reporting will occur. Once we have further guidance, we will communicate it to you.

Grandfathered Status & Waiting Periods for Insurance Coverage

Question 34: Our plan is grandfathered. What benefit changes will we have to make? And by when? [Revised: Please note that the changes controlled by VEHI have all been addressed.]

The Affordable Care Act includes the following mandates which all grandfathered group health plans, including collectively bargained plans, will have to comply with effective with the first plan year starting on or after September 23, 2010:

- *Provide coverage to dependent children until they turn age 26 unless they are eligible for any other employer-provided coverage that is not a group health plan of a parent*
- *Eliminate lifetime aggregate dollar limits on "essential benefits"*
- *Eliminate annual dollar limits on "essential benefits"(unless permitted by the Secretary)*
- *Eliminate preexisting condition exclusion for enrollees up to age 19*
- *Prohibit the rescinding of coverage except in the case of fraud, intentional misrepresentation, or nonpayment of premiums*

Starting in 2014, grandfathered plans must:

- *Eliminate annual aggregate benefit limits*
- *Provide coverage of dependents to age 26 regardless of eligibility for other coverage**
- *Eliminate preexisting condition limitations for adults*
- *Eliminate waiting periods of greater than 90 days**

** The implementation of these provisions of the ACA is the requirement of school districts.*

Question 35: Is there anything that we can do as an individual district that would cause our plan(s) to lose grandfathered status?

Yes. A decrease in the employer contribution towards the cost of coverage by more than 5% from what it was on March 23, 2010, will cause the plan to lose grandfathered status.

***Note about linking the employer's premium contribution to the cost of a particular plan:** If a district's cost-sharing arrangement is linked to the Dual Option plans and employees have the option to buy up to another plan (normally the JY Plan), make sure that this cost-sharing arrangement does not exceed the 5% threshold for either Dual Option or JY participants.*

***Note about enrollment and grandfathered status:** if a VEHI plan has had no one enrolled in it for 12 consecutive months, the ACA does NOT allow the plan to retain grandfathered status. VEHI will be contacting schools with more information about this in the near future.*

If you have more questions about grandfathered status, please contact VEHI.

Question 36: We currently have a 180-day waiting period before coverage is effective. When will that have to be changed?

For plan years starting on or after January 1, 2014, your waiting period cannot be longer than 90 days.

Question 37: Can we change our waiting period to three months instead of 90 days?

No. *This is not permitted because three consecutive months in some cases may result in a waiting period that is more than 90 days. All* ***calendar days*** *are counted toward the 90-day limit, beginning on the employee's start date, including weekends and holidays.*

More on Employer Penalties and ACA Mechanisms for Determining Who is a Full-Time Employee

This section is applicable to "large" school districts that employ variable-hour workers. As noted above, the great majority of school employees are contracted for a set number of hours. However, there may be categories of employees— for example, bus drivers who regularly cover additional driving duties (field trips and sporting events) beyond their normal runs, and, perhaps, substitutes who are not on a long-term contract but work, on average, 30 hours per week covering multiple work situations for the same employer.

Question 38: The federal government gives employers the option of employing a "look-back" or "measurement" period to determine if and how much they may owe in penalties. How does this work? [Revised]

*The ACA, as noted above, called for employer penalties to be assessed on a monthly basis based on the number of full-time individuals employed during that month (****excluding*** *part-time/FTE workers). The idea of a monthly penalty calculation based on the number of full-time individuals is complex, because the number of full-time employees could change during the year, which could make it difficult for employers to determine in advance what their exposure to penalties might be. So, the IRS is developing an optional* ***"look-back"*** *or* ***"measurement" period*** *mechanism to determine how much should be paid in penalties.*

In general, the IRS is planning to permit employers to "look back" over a period of ***no less than three and no more than 12 months*** *to calculate whether, on average, an employee worked at least 30 hours a week. The hours worked during the look back period would be averaged over the whole period,* ***not*** *on a month-to-month basis. So, if an employee worked at least an average of 30 hours a week during the look-back period, the employer would classify the employee as full time into the future for at least as long as the look-back period. If the employee was deemed part time during the look-back period, the employee would be considered part time moving forward until the next required measurement period. Many specific situations that we don't discuss here are also addressed in proposed safe harbor regulations, including how to deal with employees who are newly hired and workers who are rehired after losing a job.*

Keep in mind that this "look-back" period would be ***optional****. An employer could always just recognize that its employees were full time for purposes of the penalty. The IRS has also indicated that employers could apply alternative approaches to calculating employees' hours, including assuming that eight hours were worked in any day in which at least one hour was worked.*

Question 39: If employers use look-back/measurement periods, which hours must be counted when calculating the number of hours worked in the period? [NEW]

For hourly employees, you must calculate actual hours of service and hours for which payment is made or due for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or

leave of absence.

For non-hourly employees (for example: if a school bus driver is paid by route, or if a coach receives a stipend), you are permitted to calculate the number of hours of service by using one of three methods. You may apply different methods for different classifications of non-hourly employees, so long as the classifications are reasonable and consistently applied. The three methods are:

1. Counting actual hours of service (as in the case of hourly employees) and hours for which payment is made or due for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence; or

2. Using a days-worked equivalency method whereby the employee is credited with eight hours of service for each day; or

3. Using a weeks-worked equivalency of 40 hours of service per week.

*However, you **cannot** use the days-worked or weeks-worked equivalency method if the result would be to substantially understate an employee's hours of service (e.g., employees working three 10-hour days).*

Question 40: Do we have to make the look-back/measurement period the same for all employees? [NEW]

No. You may use measurement and stability periods that differ either in length or in their starting and ending dates for the following categories of employees:

1. Each group of collectively bargained employees covered by a separate collective bargaining agreement;

2. Collectively bargained and non-collectively bargained employees;

3. Salaried employees and hourly employees;

4. Employees whose primary places of employment are in different States.

Question 41: At what point would an employer have to stop using the initial look-back/measurement periods and transition employees to ongoing status? [NEW]

Once a new employee, who has been employed for an initial measurement period, has been employed for an entire standard measurement period, the employee must be tested for full-time status, beginning with that standard measurement period, at the same time and under the same conditions as other ongoing employees.

***Example:** If you have a calendar year, standard measurement period that also uses a one-year initial measurement period beginning on the employee's start date, you would test a new variable hour employee whose start date is February 12 for full-time status first based on the initial measurement period (February 12 through February 11 of the following year) and again based on the calendar year standard measurement period (if the employee continues in employment for that entire standard measurement period) beginning on January 1 of the year after the start date.*

If you determine the employee is a full-time employee during the initial measurement period or standard

measurement period, then he or she must be treated as a full-time employee for the entire associated stability period. This is the case even if the employee is determined to be a full-time employee during the initial measurement period, but determined not to be a full-time employee during the overlapping or immediately following standard measurement period. In that case, you may treat the employee as a part-time employee only after the end of the stability period associated with the initial measurement period. Thereafter, the employee's full-time status would be determined in the same manner as that of other ongoing employees.

In contrast, if you determine the employee is not a full-time employee during the initial measurement period, but IS determined to be a full-time employee during the overlapping or immediately following standard measurement period, you must treat the employee as a full-time employee for the entire stability period that corresponds to that standard measurement period (even if that stability period begins before the end of the stability period associated with the initial measurement period). Thereafter, the employee's full-time status would be determined in the same manner as that of other ongoing employees.

Question 42: We intend to adopt a 12-month measurement period and a 12-month stability period but are facing time constraints in getting our systems set up to be ready to enroll full-time employees on January 1, 2014. Are there any other options? [NEW]

Yes. Solely for purposes of stability periods beginning in 2014, you may adopt a transition measurement period that is shorter than 12 months but no less than 6 months long and that begins no later than July 1, 2013, and ends no earlier than 90 days before the first day of the plan year beginning on or after January 1, 2014 (90 days being the maximum permissible administrative period). For example, you could use a measurement period from April 15, 2013, through October 14, 2013 (six months), followed by an administrative period ending on December 31, 2013, with a 12-month stability period starting on January 1, 2014.

In 2015, a transition measurement period may not be used. Therefore, if a 12-month measurement period is used, a 12-month stability period must also be used.

Question 43: Can we change the timing or duration of our standard measurement and stability periods? [NEW]

You may change your standard measurement period and stability period for subsequent years, but you may not change them once the standard measurement period has begun.

Question 44: If a new variable-hour employee is promoted to a permanent full-time position during his/her initial measurement period, how should his/her eligibility for coverage be treated? [NEW]

For a new variable-hour or seasonal employee who changed employment status to full-time during his/her initial measurement period, you should treat him/her as a full-time employee as of the first day of the fourth month following the change in employment status.

Question 45: We have variable-hour employees whose contracts are terminated and then they are rehired at a later date. Can we treat them as new employees and start the measurement period over again for purposes of determining if they are a full-time employee? [NEW]

It will depend on the length of the non-employment period. If the period of non-employment is at least

26 consecutive weeks, you may treat the rehired employee as a new employee.

You can also use the "rule of parity," which says an employee may be treated as a new employee if the period of non-employment (of less than 26 weeks) is at least four weeks long and is longer than the employee's period of employment immediately preceding the period of non-employment. For example, if an employee works six weeks, terminates employment, and is rehired ten weeks later, that rehired employee is treated as a new employee because the ten-week period of non-employment is longer than the immediately preceding six-week period of employment.

Question 46: We occasionally hire temporary employees on a full-time, 40-hour schedule. How should we classify them in order to determine if we should be offering them coverage? [NEW]

Effective January 1, 2015, if you hire a temporary employee working 30 or more hours per week (does not include seasonal employees), you will have to treat them the same as any other full-time employee and coverage would have to be offered if their full-time employment extends beyond three months (or sooner if you have a shorter waiting period).

Question 47: What happens if the change in employment status occurs during a stability period? [NEW]

An ongoing employee's change in employment status during the stability period would not affect his or her status as a full-time employee or non-full-time employee for the remainder of that stability period.