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**September 12, 2013**

**TO:** Chief Executive Officers of Pennsylvania Community Health Centers  and Rural Health Clinics

**FROM:** Cheri Rinehart, President & CEO

**SUBJECT:** Employer Requirements Under ACA

**SUMMARY:** Under the Affordable Care Act, there are legal requirements imposed on employers regarding health insurance coverage for employees. As all Community Health Centers  are also employers, PACHC is providing the following information to support you in compliance with the law.

**BACKGROUND:** The Affordable Care Act (ACA) includes a number of provisions that have been of interest to Community Health Centers, including but not limited to the Community Health Center Trust Fund (which expires in 2015), creation of health insurance exchanges (also known as insurance marketplaces), expansion of Medicaid for individuals between 100 and 138 percent of Federal Poverty Level (subsequently made optional for states per the U.S. Supreme Court), and multiple requirements for insurance coverage through Qualified Health Plans (QHP). Much attention and controversy has surrounded a mandate for individuals to obtain some form of insurance coverage or face penalties from the Internal Revenue Service (IRS). There are also several requirements for employers in the ACA which health centers should be cognizant of as we realize full implementation of the law.

The following will act as a visual timeline of what can be expected as a health center employer in the near future under the ACA:

| Date        | Required Action   |
|-------------|---|
| <b>2013</b> | <b>Medicare Payroll Tax:</b> The Medicare Part A tax rate on wages will increase from 1.45% to 2.35% on earnings over \$200,000 for individual taxpayers and \$250,000 for married couples filing jointly.  |
|             | <b>Medicare Part B:</b> Tax deduction for employers that receive retiree drug subsidy payments will be eliminated.  |
|             | <b>Health Insurance Exchange (HIX)/Insurance Marketplace Enrollment:</b> On October 1, 2013, the HIX/insurance marketplace will go live and individuals can enroll for insurance coverage under Qualified Health Plans (QHPs) in a bronze, silver, gold or platinum plan that each have specified benefits. Individuals will also be able to determine if they qualify for subsidies to offset the cost of purchasing coverage based on their income. |

| Date | Required Action  |
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| 2014 | <p><b>Individual Coverage Mandate:</b> All individuals will now be required to have a form of insurance or will be subject to a penalty from the IRS. Coverage can be obtained through an employer (this can be the same plan as it exists today or obtained in the same manner); purchased through Pennsylvania’s federally-facilitated Health Insurance Exchange (HIX)/Insurance Marketplace; or purchase commercial insurance privately. Failure to obtain coverage will be subject to penalties from the IRS. For 2014, the penalty will be the greater of \$95 per year or 1% of taxable income.</p> <p>Exceptions for the individual mandate may be made for individuals that: cannot afford coverage based on formulas contained in the law; have income below the federal income tax filing threshold; are members of Indian tribes; were uninsured for short coverage gaps of less than three months; reside outside of the United States; have religious conscientious objections; are currently incarcerated; or have received a financial hardship waiver from the Secretary;</p>  |
|      | <p><b>Health Insurance Marketplace:</b> On October 1, 2013, the Marketplace will go live but coverage will not become effective until January 1, 2014.</p>   |
|      | <p><b>Employee Notification of Marketplace:</b> Employers must provide all current employees and new hires with a written notice about the Health Insurance Marketplace. Current employees must be notified by October 1, 2013 and new hires after the effective date must receive a notice within 14 days.</p> <p>In general the notice must: inform employees about the existence of the Marketplace and give a description of the services provided by the Marketplace; explain how employees may be eligible for a premium tax credit or a cost-sharing reduction if the employer’s plan does not meet certain requirements; inform employees that if they purchase coverage through the Marketplace, they may lose any employer contribution toward the cost of employer-provided coverage, and that all or a portion of this employer contribution may be excludable for federal income tax purposes; and include contact information for the Marketplace and an explanation of appeal rights.</p> <p>Notices/Disclosures - The Department of Labor (DOL) provided the following model Marketplace notices:</p> <ul style="list-style-type: none"> <li>• A <a href="#">model Marketplace notice</a> for employers who do not offer a health plan; and</li> <li>• A <a href="#">model Marketplace notice</a> for employers who offer a health plan to some or all employees.</li> </ul> <p>Employers may use one of these models, as applicable, or a modified version, provided the notice meets the content requirements described above. The notice may be provided by first-class mail, or may be provided electronically if the requirements of the DOL’s electronic disclosure safe harbor are met. Federal agencies plan to issue more specific guidance on this notice requirement.</p> |
| 2015 | <p><b>Employer Coverage Mandate (effective January 1, 2015):</b> Employers with 50+ full-time employees must offer coverage that pays at least 60% of benefits covered by the plan and an employee’s contribution is less than 9.8% of <i>household</i> income.</p> <p>Employers that have 50+ employees that <i>do not offer insurance</i> and have an employee receive federal subsidies for purchasing insurance will face financial penalties. For the first year, the monthly penalty will be equal to the number of full-time employees (minus 30), multiplied by 1/12 of \$2,000 for any applicable month. This penalty is calculated by the number of employees in the workforce, <i>NOT</i> the number of employees receiving a subsidy.</p>  |

| Date | Required Action  |
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| 2015 | <p style="text-align: right;"><i>Employer Coverage Mandate, Continued:</i></p> <p>Employers that have 50+ employees that <i>do offer insurance</i> and have an employee receive federal subsidies for purchasing insurance off the Marketplace because the employer-based coverage was unaffordable will face financial penalties on a separate formula. This penalty will be calculated at \$3,000 per employee receiving the subsidy. Employers with fewer than 50 employees are exempt from the coverage mandate, although not some of the other provisions of the law. Further information on how to define a full-time employee is available through the IRS by <a href="#">clicking here</a>.</p> <p>Because employers generally will not know their employees' household incomes, employers can take advantage of one of the affordability safe harbors set forth in the proposed regulations. Under the safe harbors, an employer can avoid a payment if the cost of the coverage to the employee would not exceed 9.5 percent of the wages the employer pays the employee that year, as reported in the W2 form, or if the coverage satisfies other design-based affordability safe harbors.</p> <p>The IRS and HHS developed a minimum value calculator that will work similar to the <a href="#">actuarial value calculator</a> that HHS has made available through its Center for Consumer Information &amp; Insurance Oversight (CCIIO) to help make these determinations.</p> <p><i>*Earlier this year, HHS deferred the original 2014 implementation of this mandate for 1 year</i></p> |
|      | <p><b>Employer Free Choice Vouchers:</b> Employers that provide coverage must provide “free choice vouchers” to employees with incomes less than 400% Federal Poverty Level if their contribution for employer-sponsored coverage exceeds 8% but is less than 9.8% of the household income and chose to seek coverage on the Marketplace. The voucher will be equal to what the employer would have paid to provide coverage under the employer’s plan.</p>  |
|      | <p><b>Automatic Enrollment:</b> Employers with 200+ employees are required to automatically enroll employees in the employer’s health insurance plans but employees may opt out if they wish</p>   |
|      | <p><b>Small Business Tax Credit:</b> A tax credit of up to 50% of the employer’s contribution for insurance premium is open for eligible small employers that match the tax credit. The credit itself will be available for 2 years.</p>   |
|      | <p><b>Small Business Health Insurance Options Program (SHOP) Enrollment</b> (<i>effective January 1, 2015</i>): A system similar to the health insurance exchange made available exclusively to employers with 50 or fewer full-time-equivalent employees (FTEs). States that have a state-based Marketplace may see the SHOP enrollment begin in 2014 whereas states like Pennsylvania that have a federally-facilitated exchange will not have the SHOP operational until 2015.</p> <p><i>*Earlier this year, HHS deferred the original 2014 implementation of this mandate for 1 year</i></p>   |
|      | <p><b>Individual Mandate Penalty Increase:</b> The penalty on individuals that lack coverage increases to the greater of \$325 or 2% of taxable income.</p>  |
| 2016 | <p><b>Individual Mandate Penalty Increase:</b> The penalty on individuals that lack coverage increases to the greater of \$695 or 2.5% of taxable income.</p>  |
| Date | Required Action  |
| 2017 | <p><b>State-Based Health Insurance Exchange Expansion:</b> States are allowed to open state-based Marketplace to employers with more than 100 employees to purchase coverage.</p>  |
|      | <p><b>State Waivers for Health Insurance Requirements:</b> States may obtain a 5-year waiver for new health insurance requirements if the state demonstrates that it provides all residents with coverage that is at</p>   |

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| least as comprehensive as the QHPs available on the exchange and will not increase the federal budget deficit. |
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| For example, this waiver applies for states seeking creative approaches to Medicaid expansion if they have not yet opted into Medicaid expansion under the ACA. |
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**MEMBER ACTION:** To ensure full compliance with the law, not only as a provider under the ACA, but also as an employer, pay very close attention to the wording of the law. In particular, examine how the law defines “full-time” and “full-time equivalent” employees to make an assessment on how your benefits program is structured for the employees in your organization. Information on these definitions is available at <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>.

Be mindful that employers have been required to report the value of health benefits on W2 forms, although small employers (those filing fewer than 250 W2 forms) are exempt from this requirement until further guidance is provided by HHS and/or IRS. All other employers should be complying with this requirement beginning with the 2012 tax year for forms issued in 2013.

Moving forward, it will be best to be conservative to ensure compliance and consult HHS’s website dedicated to implementation of the ACA at [www.healthcare.gov](http://www.healthcare.gov) if you need further guidance. You may also contact their regional office at [rophiora@cms.hhs.gov](mailto:rophiora@cms.hhs.gov) for specific questions not provided on their website or regulations.

**FOR MORE INFORMATION:** Please continue to follow PACHC’s *News Community Health Centers Can Use* newsletter and website for educational programming updates on these requirements or contact our Director of Policy and Partnership, Jim Willshier, at [jim@pachc.com](mailto:jim@pachc.com) or (717) 761-6443, ext. 206 for more information at any time.