

# Questions & Answers from Aflac's Webinar

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“What the Affordable Care Act Means to Your Business.”



# Thank you

for joining Aflac for the webinar “What the Affordable Care Act (ACA) Means to Your Business”. Here are answers to the frequently asked questions, as well as several “unique” situation questions.

▶ **Question** **If an employer offers a plan that is affordable for single coverage, but the family qualifies for subsidies in the exchange can the employee not enroll in the employer plan without consequences to the employer?**

**Answer** Correct. The employer's responsibility is to offer affordable health insurance based on self-only coverage. Note, however, that even though the IRS ruled that even if an employee would otherwise qualify for exchange subsidies for family coverage, the fact that the employee has access to affordable employer-provided coverage means that employee will not be eligible for exchange subsidies. The employer would not be subject to pay or play penalties.

▶ **Question** **What is an exchange?**

**Answer** A health insurance exchange is a web portal where individuals and businesses can shop for and buy health insurance. There will be two types of exchanges throughout the U.S. that will impact employee benefits:

- 1 | Public exchanges facilitated by the state and/or federal government.
- 2 | Private exchanges facilitated by private industry stakeholders (insurance providers, brokers or benefits consultants).

▶ **Question** **Will an employee be able to go to a different state exchange and shop all the states?**

**Answer** No. For individual market coverage, an employee will have access to the exchange (state or regional, if applicable) in the state where the employee resides and is living. For SHOP (small business) coverage, employers may offer coverage to employees through the SHOP serving either

- 1 | the employer's principal business address, or
- 2 | the employee's primary worksite.

▶ **Question** **Is the employer penalized if an employee doesn't take the employer's insurance and doesn't pick insurance through the exchange?**

**Answer** As long as coverage is offered by the employer to all full-time employees, penalties cannot arise for employees who decline coverage and do not enroll in the exchange.

▶ **Question** **Who covers children when both parents work for different employers?**

**Answer** Presuming both parents have access to employer-provided family coverage, it does not matter which parent adds the children to their health plan.

► **Question** **Can those with pre-existing conditions be charged a higher rate?**

**Answer** No; beginning in 2014 (2014 plan years for group coverage) rates for small group and individual coverage can only vary based on family size, location, age and tobacco usage. Issuers in the large group market may have more flexibility with regard to rates, but cannot discriminate with regard to health status or pre-existing conditions.

► **Question** **Can you explain tax subsidies more clearly?**

**Answer** Tax subsidies are only available through a public exchange. Only public exchanges assess and determine an individual or small business' eligibility for a premium tax credit to help off-set the cost of coverage and defray some costs associated with using health care services.<sup>1</sup> Therefore, subsidies and credits may not be available to individuals and employers purchasing coverage through a private exchange.

**Tax Credits and Penalties**

- **Individual credits:** Individuals with household incomes between 100% and 400% of the federal poverty level are eligible for tax subsidies if they are not offered affordable employer-provided coverage.<sup>1</sup>
- **Small business credits:** The tax credit, which is effective immediately, can cover up to 35 percent of the premiums a small business pays to cover its workers. In 2014, the rate will increase to 50 percent of their premium payments if they have 25 or fewer full-time equivalents whose average annual wages are no more than \$50,000. While it is still too early to tell exactly how competitive the exchanges will be, tax credits coupled with the options in the exchanges may help your business to provide cost-effective workplace benefits.<sup>2</sup>
- **Penalties:** Employers with at least 50 full-time equivalents must offer minimum essential health coverage to their full-time employees or face a penalty.<sup>3</sup> Discuss the strategy that is right for your business with your broker or benefits advisor.

► **Question** **What about employees who are based outside of the US?**

**Answer** The following information on Expatriate Health Plans comes from the three federal agencies charged with implementing the ACA.

The departments recognize that expatriate health plans may face special challenges in complying with certain provisions of the Affordable Care Act. In particular, challenges in reconciling and coordinating the multiple regulatory regimes that apply to expatriate health plans might make it impossible or impracticable to comply with all the relevant rules at least in the near term. For example, independent review organizations may not exist abroad, and it may be difficult for certain preventive services to be provided or even be identified as preventive, when such services are provided outside the United States

by clinical providers that use different code sets and medical terminology to identify services. Further, expatriate issuers may face challenges and delays in communicating with enrollees living abroad, and, due to the complex nature of these plans, standardized benefits disclosures can be difficult for issuers to produce. Expatriate health plans may require additional regulatory approvals from foreign governments, and, in some circumstances, it is possible that domestic and foreign law requirements conflict.

While the departments gather further information and analyze these challenges to determine what actions may be appropriate regarding the current requirements under the Affordable Care Act, the departments have determined that, for plans with plan years ending on or before December 31, 2015, with respect to expatriate health plans, the departments will consider the requirements of subtitles A and C of Title I of the Affordable Care Act satisfied if the plan and issuer comply with the pre-Affordable Care Act version of Title XXVII of the Public Health Service Act.

References to subtitles A and C of Title I of the Affordable Care Act also include the corresponding provisions imported into section 715 of the Employee Retirement Income Security Act (ERISA) and section 9815 of the Internal Revenue Code.

For purposes of this temporary transitional relief, an expatriate health plan is an insured group health plan with respect to which enrollment is limited to primary insureds who reside outside of their home country for at least six months of the plan year and any covered dependents, and its associated group health insurance coverage.

This definition is also the definition of “expatriate health coverage” under 45 CFR 153.400(a)(1)(iii) during this temporary transitional period (that is, for plans with plan years ending on or before December 31, 2015).

Expatriate health plans must, as a condition of this transitional relief, comply with the pre-Affordable Care Act version of Title XXVII of the PHS Act and other applicable law under ERISA and the Internal Revenue Code, including, for example, the mental health parity provisions, the HIPAA nondiscrimination provisions, the ERISA section 503 requirements for claims procedures, and any reporting and disclosure obligations under ERISA Part 1.

The departments note that coverage provided under an expatriate group health plan is a form of minimum essential coverage (MEC) under section 5000A of the Internal Revenue Code. An individual that has MEC is not subject to the individual mandate penalty. Further, an employee that is offered “affordable” coverage that meets MEC requirements is not eligible for subsidies in the exchange; nor will the employer be subject to the shared responsibility payment (“employer mandate” or “pay or play” penalty). Finally, it is worth noting that the pay or play provision does not apply with respect to non-resident and foreign employees.

► **Question** **Is eligibility of the Small Employer Tax Credit per corporation?**

**Answer** This answer is from IRS Instructions for Form 8941.

**Employers treated as a single employer.**

Treat the following employers as a single employer to figure the credit.

- Employers who are corporations in a controlled group of corporations.
- Employers who are members of an affiliated service group.
- Employers who are partnerships, proprietorships, etc., under common control. (See Regulations sections 1.414(c)-2, 1.414(c)-3, and 1.414(c)-4 for details.)
- Tax-exempt employers under common control. (See Regulations section 1.414(c)-5.) For details, see section 45R(e)(5)(A).

*No more than one Form 8941 can be filed with a tax return, unless the exception described in Example 2 below applies.*

**Example 1** | You are a sole proprietor with two separate businesses and you file a separate Schedule C (Form 1040) for each business. You must treat both businesses as a single employer to figure the credit. You will file one Form 8941 for both businesses.

**Example 2** | You and your spouse are both sole proprietors and file a separate Schedule C (Form 1040) for each of your separate businesses. Neither spouse was an employee of the other spouse or participated in the management of the other spouse's business at any time during the tax year. No more than 50 percent of the gross income of either business was derived from royalties, rents, dividends, interest, and annuities and you otherwise meet the requirements listed in Regulations section 1.414(c)-4(b)(5)(ii). Do not treat both businesses as a single employer to figure the credit. If you and your spouse are both eligible small employers, you can file two Forms 8941 with a jointly filed Form 1040.

► **Question** **Where can I find additional information about the Affordable Care Act?**

**Answer** Aflac will continue to provide helpful information through the *HCR* section of *Aflac.com*; additional information is also available at:

- *Healthcare.gov*
- *Kaiser on Health Care Reform*
- *U.S. Small Business Administration/Health Care*
- *http://cciio.cms.gov*
- *irs.gov*

**Sources**

- <sup>1</sup> Congressional Research Service (2012). Health Insurance Exchanges Under the Patient Protection and Affordable Care Act (ACA), accessed on November 9, 2012, from <https://www.fas.org/sgp/crs/misc/R42663.pdf>.
- <sup>2</sup> The White House, Small Business Health Care Tax Credit, accessed on August 8, 2012, from [whitehouse.gov/healthreform/small-business/tax-credit](http://whitehouse.gov/healthreform/small-business/tax-credit).
- <sup>3</sup> Congressional Research Service (2010). Summary of Potential Employer Penalties under the Patient Protection and Affordable Care Act (ACA), accessed on November 9, 2012, from <http://www.ncsl.org/documents/health/EmployerPenalties.pdf>.

