



STATE OF ALABAMA
STATE EMPLOYEES' INSURANCE BOARD

Local Government Health Insurance Plan

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MEMORANDUM

TO: Local Government Units

FROM: William L. Ashmore *WLA*
State Employees' Insurance Board

SUBJECT: Affordable Care Act Employer Shared Responsibility Provisions

On February 10, 2014, the Treasury Department and the IRS issued final rules regarding the employer shared responsibility provisions of the Affordable Care Act ("ACA"). The employer shared responsibility provisions generally are not effective until January 1, 2015. While the rules issued to date address how non-governmental entities should comply with the ACA, no specific guidance has been issued regarding governmental entities. However, until such guidance is issued, local government units will be required to make a good faith effort to comply with the ACA. The State Employees' Insurance Board ("SEIB") strongly urges each local government unit to immediately take steps to determine if the ACA employer shared responsibility provisions will apply to them in 2015.

The first step each unit should take to ascertain if the ACA employer shared responsibility provisions will apply to them in 2015 is to determine how many full-time employees (including full-time equivalents) it has in 2014. **Units with fewer than 50 full-time employees (including full-time equivalents) in the prior calendar year are not subject to the ACA employer shared responsibility provisions.** For the transition year 2015 only, units with 50-99 full-time equivalent employees may not be subject to the ACA employer shared responsibility provisions if the following conditions are met:

1. **Limited Workforce Size.** A unit must employ on average at least 50 full-time employees (including full-time equivalents) but fewer than 100 full-time employees (including full-time equivalents) on business days during 2014.
2. **Maintenance of Workforce and Aggregate Hours of Service.** During the period beginning on Feb. 9, 2014 and ending on Dec. 31, 2014, a unit may not reduce the size of its workforce or the overall hours of service of its employees in order to qualify for the transition relief. However, a unit that reduces workforce size or overall hours of service for bona fide business reasons is still eligible for the relief.
3. **Maintenance of Previously Offered Health Coverage.** During the period beginning on Feb. 9, 2014 and ending on Dec. 31, 2015, a unit cannot eliminate or materially reduce the health coverage it offered as of Feb. 9, 2014.

See the final rules for more information regarding these conditions.

Identifying full-time employees:

Units will need to use information about the number of employees they employ and their hours of service during 2014 to determine whether they will be subject to the ACA employer shared responsibility provisions in 2015. Under the ACA, a full-time employee is an individual employed on average at least 30 hours of service per week. Units may determine an employee's full-time status using the lookback and stability periods under

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safe harbors set out in the final rules. This approach generally involves a lookback period during which an employer measures an employee's hours of service; an administrative period during which the employer identifies which employees qualify as full-time; and a subsequent stability period during which those employees must be offered coverage. An employer can use a measurement period of six consecutive months in 2014 – rather than the entire calendar year – to determine whether it crosses the 50/100 full-time equivalent threshold for 2015.

Meeting the Employer Shared Responsibility Provisions of the ACA

If a unit is subject to the ACA employer shared responsibility provisions, it could be subject to an employer shared responsibility payment if it:

1. fails to offer health coverage meeting "minimum essential coverage" requirements to a specified percentage of full-time employees; or
2. fails to offer health coverage that is "affordable"; or
3. fails to offer health coverage meeting the ACA's "minimum value" coverage standard.

The SEIB has determined that the Local Government Health Insurance Plan (LGHIP) meets the minimum essential coverage requirement and minimum value standard. Each unit will be required to determine the percentage of its full-time employees and their dependent children that are offered coverage through the LGHIP and whether this coverage is affordable under the ACA. These two aspects of the ACA are further described below:

1.) Percentage of full-time employees who are offered coverage:

For 2015, units with 100 or more full-time equivalent employees during 2014 must offer coverage through the LGHIP to at least 70% of its full-time employees and their dependent children or it may be subject to the employer shared responsibility payment. (This may also apply to units with 50-99 full-time equivalent employees if certain conditions are not met.) In 2016, units with 50 or more full-time equivalent employees must offer coverage through the LGHIP to at least 95% of its full-time employees and their dependent children or it may be subject to the employer shared responsibility payment. **Note:** Under the LGHIP's enrollment rules, all full-time employees working at least 30 hours per week must either enroll in the LGHIP or submit a declination of coverage form.

2.) Determining whether the coverage offered is affordable:

If an employee's share of the individual premium for coverage under the LGHIP would cost the employee more than 9.5% of that employee's annual household income, the coverage is not considered affordable for that employee under the ACA. Because units generally will not know their employees' household incomes, units can take advantage of one or more of the three affordability safe harbors set forth in the final regulations to determine whether coverage is affordable. The safe harbors include the employee's Form W-2 wages, the employee's rate of pay, or the Federal Poverty Level.

If a unit agency fails to comply with one of the above employer shared responsibility provisions it could be subject to a shared responsibility payment if at least one of its full-time employee receives tax-subsidized coverage through the Marketplace.

The brief summary of the ACA employer shared responsibility provisions presented in this memorandum is provided for informational purposes only. The SEIB cannot provide guidance with regard to a local government unit's compliance with the ACA. Accordingly, each unit will be responsible for complying with all of the ACA employer shared responsibility provisions. The SEIB strongly suggests each unit seek legal counsel or guidance from healthcare experts in order to comply with the ACA.