Frequently Asked Questions

The Affordable Care Act and Employer Shared Responsibility Provision

General

What is the Affordable Care Act?

The Affordable Care Act (ACA), the federal health care law, was enacted in March 2010 to ensure that all Americans have access to quality and *affordable* health care. It includes many provisions that will take place between 2010 and 2020. Some provisions including the creation of the *Health Insurance Marketplace*, implementation of the *Individual Mandate*, and the establishment of *premium tax credits* went into effect in 2014. Beginning in 2015, the *Employer Shared Responsibility* provision and reporting requirements go into effect and other provisions of the ACA will be phased in over the next several years.

What is the Health Insurance Marketplace and why is it important?

The Health Insurance Marketplace was established in October 2013 to provide individuals an opportunity to shop for quality and affordable health coverage beginning in 2014. The State of California established its own state-based Marketplace, known as Covered California.

Qualified individuals who purchase health coverage through Covered California may be eligible for a premium tax credit to help pay for the cost of coverage.

Who qualifies for a premium tax credit to purchase individual coverage through Covered California?

Individuals and families with a household income between 133 percent and 400 percent of the federal poverty level ($23,850-$95,400 for a family of four in 2014) may qualify for a premium tax credit for purchasing coverage through Covered California. These individuals must not be eligible for employer-sponsored health coverage (that is affordable and provides minimum value) and must not be eligible for coverage through a government program, such as Medicaid or Medicare.

Individual Mandate

What is the Individual Mandate?

Beginning in 2014, most individuals are required to maintain minimum essential health coverage (e.g., employer-sponsored coverage, individual coverage, or coverage through a government program) for themselves and their dependent children, or they may be subject to penalties.

Employer Mandate

What is the Employer Shared Responsibility Provision (Employer Mandate)?

The Employer Shared Responsibility provision of the ACA requires large employers with 50 or more full-time employees to offer health coverage to at least 95 percent of its full-time employees (70 percent in 2015), defined as those that work on average 130 or more hours per month, and their dependent children. The health coverage must meet the law's affordability and minimum value standards.

Employers may be subject to Employer Shared Responsibility penalties if at least one of its full-time employees receives a premium tax credit for purchasing individual coverage through Covered California.

Impact to the State of California

How does the Affordable Care Act impact the State of California?

The ACA includes many employer-administered provisions that have and will continue to impact the State of California, as an employer. In 2013, the state implemented the W-2 reporting on the cost of employer-sponsored health coverage and employer Notice of Exchange requirements. Beginning in 2015, the state will be subject to the Employer Shared Responsibility provision and reporting requirements. In addition, the state will be required to provide a statement to each full-time employee, by January 31 each year, with information about the health coverage that was provided for each month during the calendar year. Other provisions including automatic enrollment of new hires and implementation of the 40 percent excise tax on high-cost benefits are set to take effect over the next few years.

The state may be subject to penalties for failure to comply with these ACA's employer-administered provisions.

How does the Employer Shared Responsibility provision impact the State of California?

The Employer Shared Responsibility provision of the ACA requires the state to offer affordable health coverage that provides minimum value to at least 95 percent of its full-time employees, those that work on average of 130 or more hours per month. All state departments and entities are considered one employer for the purposes of the Employer Shared Responsibility provision. Failure to comply with the Employer Shared Responsibility provision could result in significant penalties to the state if at least one of its full-time employees obtains health coverage through Covered California and receives a premium tax credit.

To demonstrate compliance, the state will be required to file annual reports with the Internal Revenue Service (IRS), beginning January 2016, via the State Controller's Office (SCO), identifying each full-time employee and whether or not health coverage (that meets the law's affordability and minimum value standards) was offered to the employee and their dependent children for the 2015 plan year. Most state employees will not be affected by the affordable coverage or minimum value provisions as the state's health coverage meets the law's requirements.

Not all data the state will be required to report to the IRS is currently captured in the state's payroll system. The California Department of Human Resources and SCO are updating business processes and procedures to align with the requirements of the ACA so that departments can capture the necessary data on its employees.

How does Employer Shared Responsibility provision impact my department?

Although there are no changes to the state's health eligibility rules, it will be critical for departments to follow appropriate business processes and procedures to ensure that necessary data is captured in the state's payroll system on employees for the state to report to the IRS. Departments will also be required to monitor these business practices to ensure compliance.

If the state does not comply with the Employer Shared Responsibility provision of the ACA, it will be assessed penalties. These penalties may impact departmental budgets.

What are the roles and responsibilities of state entities?

California Department of Human Resources (CalHR)—As the state employer, CalHR is responsible for carrying out statewide implementation activities to ensure the state's compliance with the Employer Shared Responsibility provision and reporting requirements. CalHR is also responsible for:

- Developing and implementing sound personnel policies and business processes and procedures that align with ACA requirements;
- Providing ongoing support and guidance to departments on ACA-related business processes and procedures;
- Monitoring departments' compliance efforts on new ACA-related business processes and procedures;
- Monitoring the state's health coverage to ensure it meets the law's affordability and minimum value standards;
- Monitoring where the state stands in relationship to the 95 percent threshold to offer health coverage to its full-time employees; and
- Ensuring the state fulfills the annual ACA reporting requirements

California Public Employees' Retirement System (CalPERS)—As the administrator of the state's health benefits program, CalPERS ensures that its offers health plan products that meet the law's minimum value standards. CalPERS also develops policy to ensure that CalPERS and its contracted health plans comply with the requirements of the ACA. Additionally, CalPERS ensures that the Public Employees' Retirement Law statutes and the Public Employees' Medical and Hospital Care Act regulations conform to the ACA.

California State Controller's Office (SCO)—The SCO is responsible for reporting on all full-time employees to fulfill the state's annual reporting obligations under the Employer Shared Responsibility provision. The SCO is also responsible for:

- Reporting to employees the cost of employer-sponsored health coverage on their W-2 forms;
- Providing the annual employee statements on health coverage that was provided to them by January 31 each year. The first statements are to be provided to employees by January 31, 2016;

- Monitoring departments' compliance efforts on new ACA-related business processes and procedures; and
- Responding to IRS inquiries on data that was submitted on health coverage offered to employees, when necessary. SCO may need to reach out to respective departments to validate data captured on employees in the state's payroll system.

State Departments and Entities—Responsible for following appropriate business processes and procedures to ensure that necessary data is captured on its employees in the state's payroll system for the state to report to the IRS. In addition, it is critical that state departments and entities provide ongoing monitoring of these business practices to ensure compliance and reduce the risk of significant penalties.

Compliance

How will the IRS determine if an individual has complied with the Individual Mandate?

Health Insurers and employers that self-insure group health plans will be required to file reports with the IRS annually, identifying individuals that were enrolled in minimum essential coverage and the months they were covered during the year. The IRS will use the information reported by insurers and employers to ensure that individuals are complying with the Individual Mandate and to identify individuals who may be eligible for premium tax credits because they lack minimum essential coverage.

How will the IRS determine if an employer has complied with the Employer Shared Responsibility provision?

Employers will be required to file reports with the IRS annually, identifying each full-time employee and whether or not they offered affordable health coverage that provided minimum value to the employee and their dependent children. The IRS will use the information reported by employers to ensure that employers are complying with the Employer Shared Responsibility provision and to identify individuals who are ineligible for premium tax credits because they have been offered affordable health coverage that provides minimum value by their employer.

How will the IRS determine if an employer offered "affordable" health coverage to its full-time employees?

Health coverage is deemed affordable if the employee's contribution for self-only coverage (for lowest cost plan that provides minimum value) does not exceed 9.5 percent of the employee's monthly salary or the employee's wages as reported on Form W-2, Box 1 for the calendar year, or the annual federal poverty level, divided by twelve for single-member household (for applicable calendar year). Employers will be required to report the employee's share of the lowest cost monthly premium for self-only coverage providing minimum value offered to the employee under an eligible employer-sponsored health plan, by calendar month.

How will the IRS determine if an employer offered "minimum value" coverage to its full-time employees?

Health coverage is deemed to provide minimum value if the health plan covers at least 60 percent of the plan's share of the total allowed costs of benefits provided under the plan. Employers will be required to certify that their employer-sponsored health plan provides minimum value.

Penalties

What penalties are at risk for individuals who don't comply with the Individual Mandate?

Individuals who do not comply with the Individual Mandate will be subject to the following penalties. These penalties will be phased in over the next three years as follows:

- 2014–$95 per adult and $47.50 per child, with a maximum penalty of $285 per family (or 1 percent of family income, whichever is greater).
- 2015–$325 per adult and $162.50 per child, with a maximum penalty of $975 per family (or 2 percent of family income, whichever is greater).
- 2016 (and beyond)–$695 per adult and $347.50 per child, with a maximum penalty of $2,085 per family (or 2.5 percent of family income, whichever is greater).

What penalties are at risk for employers who fail to comply with the Employer Shared Responsibility provision?

Employers who do not comply with the Employer Shared Responsibility provision may be subject to the following penalties if at least one of its full-time employees receives a premium tax credit for purchasing individual coverage through Covered California:

- Penalty A: No Coverage Penalty–If a large employer does not offer health coverage to at least 95 percent of its full-time employees (70 percent in 2015), it may be subject to an

Employer Shared Responsibility penalty of $2,000 per every full-time employee, minus the first 30 full-time employees (minus the first 80 full-time employees in 2015).

- Penalty B: Inadequate Coverage Penalty—If a large employer offers health coverage to at least 95 percent of its full-time employees (70 percent in 2015), it may be subject to an Employer Shared Responsibility penalty in the amount of $3,000 for any full-time employee that receives a premium tax credit for purchasing health coverage through Covered California for not meeting the law's affordability or minimum value standards.