ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: February 24, 2014

AGENDA ITEM No. 14-02-(2)-13

ACTION ITEM: (Y/N) N

SUBJECT: Affordable Care Act

INFO. CONTACT Dr. Marcie Holland **PHONE**: 919-732-8126

ATTACHMENT: 1. Tharrington-Smith PowerPoint Presentation
2. Notice of Coverage Options document

PURPOSE: The purpose of this item is to provide the Board of Education an opportunity to hear about the Patient Protection and Affordable Care Act, also known as the Affordable Care Act (ACA), and implications for the ACA on the school district. This agenda item was tabled at the January 27, 2014 board meeting and is being brought back for presentation.

BACKGROUND: The Protection and Affordable Care Act was signed into law by President Obama on March 23, 2010. The original implementation for the Affordable Care Act was to take effect January 1, 2014. However, it has been delayed until January 1, 2015. One component of the Affordable Care Act that remained in place for the current year is the Notice of Coverage Options which employers were required to provide to all full time employees by October 1, 2013. A copy of the Notice of Coverage Options was provided to all OCS employees with the September, 2013, paychecks. Additionally, all new hires receive the Notice of Coverage Options form in their new hire packets.

The "Employer Mandate" of the Affordable Care Act, which has been delayed until January 1, 2015, requires that employers with more than 50 employees provide health insurance to all fulltime employees. The Affordable Care Act defines fulltime employees as those working an average of at least 30 hours per week or 130 hours per month. If an employer fails to offer health insurance to at least 95% of its full time employees, the employer would owe a penalty of $2,000 per employee (minus 30). Additionally, employers are subject to a $3,000 penalty for any employee who is not offered coverage and subsequently goes out to the Health Insurance Marketplace and receives a tax credit to help pay for their individual coverage. Orange County Schools currently has approximately 1,200 full and part time employees.

The school district may choose to use a look-back measurement "safe-harbor" period to manage the risk of penalties under the Affordable Care Act and to provide stability to operations. The look-back period can range from three to twelve months in length. If the school system chooses to utilize a look-back period, the school system then has a 90-day administrative period during which the school system will be able to review employees' eligibility and offer insurance to those who qualify. Employees who work 30 hours or more per week and accept the school system's offer of insurance remain on the school system's health insurance plan for the stability period, which is generally a 12-month period.

Points to Consider:

- The hours regarding this fulltime requirement will specifically affect the substitute teachers, temporary employees, tutors, part-time employees, contracted employees and non-faculty coaches. Of significant concern is tracking the hours for individuals in these positions, particularly those who serve in two or more of these positions, such as substitute and hourly tutor. Other school systems have chosen to cap the number of hours these groups of employees can work.
- The Affordable Care Act was originally scheduled to be effective January 1, 2014, but the deadline has changed to January 1, 2015.

continued

FINANCIAL IMPACT: The potential impact if the district fails to offer 95% of full time employees (as defined by the ACA) health insurance is $2,350,000.00. The impact (if limitations are not put on employees such as substitutes, temporary employees, hourly tutors, part-time employees, contracted employees, and non-faculty coaches) is unknown at this time as we cannot predict how many of these individuals will be eligible for health insurance beginning January 1, 2015. Based on a review of these position types for the 2012-2013 time period, it is estimated that the district would have had to cover an additional 20-25 employees, which would have been at a cost of $110,000 to $137,500. The estimated cost of health insurance for the 2014-2015 fiscal year is $5,500 per employee.

RECOMMENDATION: The Superintendent requests the Board of Education's guidance in moving forward with the following items:

1. Establishing a look-back period: Staff are proposing a 12-month look-back period from October 3, 2013 through October 2, 2014. This would be followed by an administrative period during which staff can determine which employees who meet the 30 hours per week or 130 hours per month threshold must be offered insurance, as well as offer insurance to those eligible and enroll those who accept the offer.
2. Consider instituting caps for certain classifications of employees (substitute teachers, temporary employees, tutors, part-time employees, contracted employees and non-faculty coaches).

Affordable Care Act:
Implications for School Systems

Orange County Public Schools
December 16, 2013

Colin Shive
Tharrington Smith, LLP

Hasn't This Been Put Off for a Year?

- Yes and No: Certain Provisions of the ACA relevant to school systems have been delayed until January 1, 2015. However, some immediate actions may be necessary to prepare for the Act's implementation.
- Political and regulatory climate are uncertain, but certain key components of the law and proposed regulations appear (for now) to be here to stay.

What Does the ACA Require of School Systems?

- Employer Mandate:
  - Schools systems with 50 or more employees will be required to provide insurance to all full-time employees or pay a penalty.
  - Full-time defined by the ACA as 30 hours or more per week.

What Does the ACA Require of School Systems?

- Section 6056 Information Reporting:
  - Requires districts to provide the IRS with certain information regarding the insurance offered to employees.
  - Causes employers to become the intermediaries for a huge amount of information.

What Does the ACA Require of School Systems?

- Notice of Coverage Options: Employers required to provide a notice to employees regarding the health insurance marketplace by October 1, 2013.

Employer Mandate: Section 4980H Penalties

- Delay in Enforcement
  - Treasury Department Blog Post: "Continuing to Implement the ACA in a Careful, Thoughtful Manner"
    - Announced that Section 4980H penalties will be delayed until January 1, 2015. Employers will therefore not be liable for any penalty for failing to over coverage to full-time employees until January 1, 2015.
    - Legality of delay has been questioned, but it is unlikely that a plaintiff could successfully challenge the delay.
    - Current events in D.C. …

Employer Mandate: Section 4980H Penalties

- Liberty Univ., Inc. v. Lew, 10-2347, 2013 WL 3470532, at *1 (4th Cir. July 11, 2013)
  - "[W]e find that the employer mandate is no monster."
  - Fourth Circuit Court of Appeals holds that the employer mandate is constitutional.
  - The Supreme Court ruled on the individual mandate only, and thus the issue of the constitutionality of the employer mandate had been left unresolved.

Employer Mandate: Section 4980H Penalties

- Section 4980H(a) – the "no coverage penalty"
  - 95% Rule – employers must offer coverage to 95% of their full-time employees or pay this penalty
  - Penalty = $2,000 X (total number of full-time employees -- 30)

Employer Mandate: Section 4980H Penalties

- No Coverage Penalty Example
  - School district A offers coverage to 94 out of 100 full-time employees. Because district A has not met the 95% threshold, it is liable for the no coverage penalty. The district would owe a penalty of $140,000 ((100 full-time employees – 30 = 70) X $2,000)).
  - Note: If the district offered coverage to 95% of its full-time employees for part of the year, the penalty would be calculated on a per month basis for those months in which the 95% threshold was not met.

Employer Mandate: Section 4980H Penalties

- Section 4980H(b) – the "inadequate coverage penalty"
  - Applies if 95% threshold reached
  - Penalty = $3,000 X total number of full-time employees who enrolled in coverage offered through an exchange and received a premium tax credit

Employer Mandate: Section 4980H Penalties

- Inadequate Coverage Penalty Example:
  - School district B offers coverage to 96 out of its 100 full-time employees. Of the four full-time employees who were not offered coverage, two of those employees purchased insurance on an exchange and received a premium tax credit. The inadequate coverage penalty would only apply for those two employees. Accordingly, the district would have to pay a penalty of $6,000.
  - Note, this is assuming the district failed to offer coverage to these employees for the entire year. If the district offered the employees insurance for part of the year, then the penalty would be calculated on a monthly basis ($250/month).

Employer Mandate: Section 4980H Penalties

- The school system's role
  - House Bill 232
    - "For purposes of this section, the full-time status of an employee will be determined by the employing unit in accordance with section 4980H of the Internal Revenue Code and the applicable regulations, as amended."
      - Effective January 1, 2015
    - School systems are thus responsible for determining who qualifies as full-time under the ACA.

Employer Mandate: Section 4980H Penalties

- Who is a full-time employee?
  - Statute says 30 hours or more per week
  - IRS and Treasury Department have issued *proposed* regulations (final rule forthcoming), which establish a complex set of rules for determining who qualifies as full-time.

Employer Mandate: Section 4980H Penalties

- Who is a full-time employee
  - Proposed Regulations establish two ways to determine full-time status:
    - Month-to-month
      - 30 hours per week or 130 hours per month
      - Would have to determine employees' full-time status on a monthly basis or risk penalty
    - Look-back measurement safe harbor

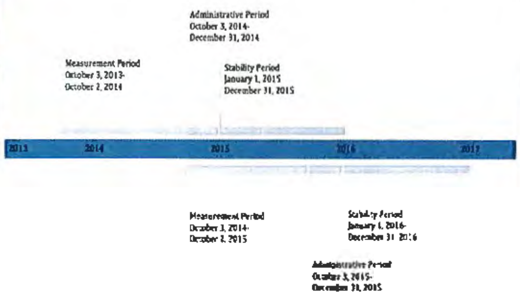
Employer Mandate: Section 4980H Penalties

- Look-back measurement safe harbor
  - Allows employers to average an employee's hours of service over the course of a three to twelve month period. This is called the "Measurement Period."
    - Employers can choose the length of the measurement period within these parameters.
  - At the end of the measurement period, employers are allowed up to 90 days to determine which employees qualify as full-time. This is called the "Administrative Period."
  - At the end of the administrative period, once an employee's full-time status has been determined, the employee remains in that status for a "Stability Period." The length of the stability period cannot be shorter than 6 months or the length of the measurement period, whichever is longer.

Employer Mandate: Section 4980H Penalties

- Look-back measurement safe harbor
  - The rules are different for ongoing employees and new hires.
    - All ongoing employees have the same measurement period, administrative period, and stability period.
    - Each new hire who is a seasonal or variable hour employee initially has his or her own measurement period, administrative period, and stability period.

Ongoing Employee Safe Harbor



Employer Mandate: Section 4980H Penalties

- Look-back measurement safe harbor
  - Important Caveats:
    - Summer months excluded
    - Re-hired employees
    - Calculating hours of service

Employer Mandate: Section 4980H Penalties

- Look-back measurement safe harbor
  - Do you need to use?
    - Remember 95% rule
    - Potentially troublesome categories
      - Temporary, full-time employees
      - **Substitute teachers**
      - **Retirees**
      - "Part-time" employees
      - Independent contractors
      - Coaches
      - Elected officials
    - Documentation required?

Employer Mandate: Section 4980H Penalties

- Look-back measurement safe harbor
  - What do we need to do to institute the safe harbor?
  - Can/Should we cap our employees' hours?
    - Only employees not currently receiving benefits
  - If we cap employees hours do we still need to use the safe harbor?
  - When do we need to begin capping?

Reporting Requirements Under Section 6056

- Delay in enforcement until January 1, 2015. Voluntary compliance encouraged during 2014.
- Statute requires that employers provide certain information every year regarding the insurance coverage offered to employees. Employers must provide this information both to the IRS and to individual employees.
- Designed to assist with administration of employer mandate.

Reporting Requirements Under Section 6056

- *Proposed* Regulations: Under proposed rules, employers must file a yearly return with the IRS that includes all of the following information:
  - A certification as to whether the employer offers insurance to full-time employees
  - The number of the employer's full-time employees during each month of the calendar year
  - For each full-time employee, the months during the calendar year for which coverage under the employer's plan was available
  - For each full-time employee, the employee's share of the lowest cost monthly premium for coverage offered to that employee
  - The name, address, and taxpayer identification number of each full-time employee and the months, if any, during which the employee was covered under an employer-sponsored plan
- Must provide to employee information pertinent to that employee.
- Use of form W-2?

Notice to Employees of Coverage Options

- Technical Release No. 2013-02 – *temporary* guidance
  - Districts were required to provide to current employees by October 1, 2013
  - For employees hired after October 1, must provide within 14 days of an employee's start date
  - Penalty?
  - Delivery
    - Email
    - New hire packet
- Draft Notice
  - Eligible employees are … ?
  - Likely questions

Conclusion

- Only current requirement is Notice to Employees of Coverage Options
- Prepare for data collection for measurement periods and for section 6056 reporting requirements
- Stay tuned for final rules

New Health Insurance Marketplace Coverage Options and Your Health Coverage

Form Approved
OMB No. 1210-0149
(expires 11-30-2013)

PART A: General Information

When key parts of the health care law take effect in 2014, there will be a new way to buy health insurance: the Health Insurance Marketplace. To assist you as you evaluate options for you and your family, this notice provides some basic information about the new Marketplace and employment-based health coverage offered by your employer.

What is the Health Insurance Marketplace?

The Marketplace is designed to help you find health insurance that meets your needs and fits your budget. The Marketplace offers "one-stop shopping" to find and compare private health insurance options. You may also be eligible for a new kind of tax credit that lowers your monthly premium right away. Open enrollment for health insurance coverage through the Marketplace begins in October 2013 for coverage starting as early as January 1, 2014.

Can I Save Money on my Health Insurance Premiums in the Marketplace?

You may qualify to save money and lower your monthly premium, but only if your employer does not offer coverage, or offers coverage that doesn't meet certain standards. The savings on your premium that you're eligible for depends on your household income.

Does Employer Health Coverage Affect Eligibility for Premium Savings through the Marketplace?

Yes. If you have an offer of health coverage from your employer that meets certain standards, you will not be eligible for a tax credit through the Marketplace and may wish to enroll in your employer's health plan. However, you may be eligible for a tax credit that lowers your monthly premium, or a reduction in certain cost-sharing if your employer does not offer coverage to you at all or does not offer coverage that meets certain standards. If the cost of a plan from your employer that would cover you (and not any other members of your family) is more than 9.5% of your household income for the year, or if the coverage your employer provides does not meet the "minimum value" standard set by the Affordable Care Act, you may be eligible for a tax credit.

Note: If you purchase a health plan through the Marketplace instead of accepting health coverage offered by your employer, then you may lose the employer contribution (if any) to the employer-offered coverage. Also, this employer contribution -as well as your employee contribution to employer-offered coverage- is often excluded from income for Federal and State income tax purposes. Your payments for coverage through the Marketplace are made on an after-tax basis.

How Can I Get More Information?

For more information about your coverage offered by your employer, please check your summary plan description or contact Cathy Gillispie email: cathy.gillispie@orange.k12.nc.us or by Phone: 919-732-8126 x 13010

The Marketplace can help you evaluate your coverage options, including your eligibility for coverage through the Marketplace and its cost. Please visit for more information, including an online application for health insurance coverage and contact information for a Health Insurance Marketplace in your area.

PART B: Information About Health Coverage Offered by Your Employer

This section contains information about any health coverage offered by your employer. If you decide to complete an application for coverage in the Marketplace, you will be asked to provide this information. This information is numbered to correspond to the Marketplace application.

3. Employer name Orange County Schools		4. Employer Identification Number (EIN) 56-6001090
5. Employer address 200 East King Street		6. Employer phone number 919-732-8126
7. City Hillsborough	8. State NC	9. ZIP code 27278
10. Who can we contact about employee health coverage at this job? Cathy Gillispie		
11. Phone number (if different from above) 919-732-8126 x 13010	12. Email address cathy.gillispie@orange.k12.nc.us	

Here is some basic information about health coverage offered by this employer:

- As your employer, we offer a health plan to:
  - ☐ All employees.
  - ☑ Some employees. Eligible employees are:

    All permanent full-time and part-time teachers and state employees - For a complete list of eligibility rules, please see the State Health Plan's benefit booklet.

- With respect to dependents:
  - ☑ We do offer coverage. Eligible dependents are:

    An employee's spouse and/or a natural, legally adopted or foster child of the subscriber or spouse up to age 26. For a complete list of dependent eligibility rules, please see the State Health Plan's benefit booklet.

  - ☐ We do not offer coverage.

☑ If checked, this coverage meets the minimum value standard, and the cost of this coverage to you is intended to be affordable, based on employee wages.

** Even if your employer intends your coverage to be affordable, you may still be eligible for a premium discount through the Marketplace. The Marketplace will use your household income, along with other factors, to determine whether you may be eligible for a premium discount. If, for example, your wages vary from week to week (perhaps you are an hourly employee or you work on a commission basis), if you are newly employed mid-year, or if you have other income losses, you may still qualify for a premium discount.

If you decide to shop for coverage in the Marketplace, HealthCare.gov will guide you through the process. Here's the employer information you'll enter when you visit HealthCare.gov to find out if you can get a tax credit to lower your monthly premiums.

If you decide to shop for coverage please contact Cathy Gillispie at 919-732-8126 x 13010 or by email at: cathy.gillispie@orange.k12.nc.us for additional information.