**ORANGE COUNTY**
**BOARD OF EDUCATION**

**AGENDA ITEM ABSTRACT**

**Meeting Date: April 28, 2014**

**AGENDA ITEM No. 14-04-(2)-11**

**ACTION ITEM: (Y/N) Y**

**SUBJECT:** Affordable Care Act

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

**ATTACHMENT:** 1. Tharrington-Smith PowerPoint Presentation – Updated April 8, 2014
2. Notice of Coverage Options document

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**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.

**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. A copy of this form follows this abstract as well.

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 full time employees. While the Affordable Care Act does not specifically define full time employee, it does specify that employers may define full time employees within the guidelines outlined by the Internal Revenue Service. These guidelines explain that full time employees are those that work 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 "no coverage" penalty of $2,000 per employee (minus 30). On February 12, 2014, the federal government did announce a delay in this penalty for employers with more than 100 employees, and in the 2015 year the penalty will only be applied if employers do not offer health insurance to at least 70% of their eligible employees.

Additionally, employers are subject to an "inadequate coverage" penalty of $3,000 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. On February 12, 2014, the federal government announced that employers will not be subject to this penalty for 2015.

Orange County Schools currently has approximately 1,200 full and part time employees, for whom eligibility must first be determined, then monitored and tracked on an on-going basis. Each year, employers must submit a report to the IRS that includes information specific to the ACA and the health insurance coverage offered to employees. It is referred to as Section 6056 Information Reporting.

continued

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.

Additionally, there are special rules that govern educational organizations that exclude the summer break from the measurement period.

Points to Consider:

- The hours regarding this full time 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. How will we track these employees?
- The Affordable Care Act was originally scheduled to be effective January 1, 2014, but the deadline has changed to January 1, 2015, with additional changes made as recently as February 12, 2014, that impact the penalties employers may be charged.

**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 recommends the Board of Education provide staff 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).
3. Consider putting in place a requirement that the above mentioned groups of employees begin using the school system's electronic timesheet, TimeKeeper, to track their actual hours worked in any position so as to have the most accurate picture of their time worked.

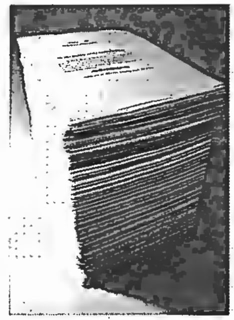
# Affordable Care Act:
## Impact and Implementation

Presented at the 2014 Spring PANC Conference

April 8, 2014

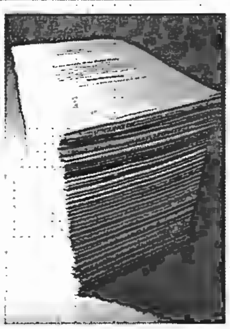
Colin Shive
Tharrington Smith, LLP

## What Does the ACA Require of School Systems?



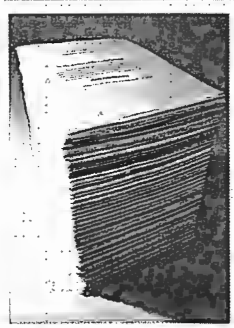
- Employer Mandate:
  - Schools systems with 50 or more employees will be required to offer insurance to all full-time employees or pay a penalty.
  - Full-time defined by the ACA as 30 hours or more per week.

## 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:
  - Hopefully you have already done this!
  - Employers required to provide a notice to employees regarding the health insurance marketplace by October 1, 2013.

## Where Are We Now?

- Delays, delays, more delays
  - Initial date for compliance was January 1, 2014
    - July 2, 2013 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.

## Where Are We Now?

- Delays, delays, more delays
  - February 12, 2014 – Final Rules published that delay employer mandate for <u>some</u> employers until January 1, 2016 and make compliance easier for the remaining employers in 2015
- This is not the only part of the ACA that has been delayed.
  - http://www.politico.com/story/2014/03/obamacare-affordable-care-act-105036.html

## Where Are We Now?

- Delays, delays, more delays
  - February 12, 2014 final rules provide that employers with between 50 and 100 full-time employees will not be subject to the employer mandate during 2015.
  - Employers with over 100 full-time employees will not receive a "no-coverage" penalty unless they fail to offer coverage to at least 70% of their full-time employees in 2015.
    - <u>Inadequate coverage penalty not affected for these employers during 2015.</u>

## 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 in 2016. 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.
  - Note: During 2015, the district would not receive a no coverage penalty as long as it offered coverage to at least 70 (or 70%) of its employees.

## 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 regulations that establish a complex set of rules for determining who qualifies as full-time.
  - Final regulations issued on February 12, 2014 keep most of the relevant provisions from the proposed rules

## Employer Mandate: Section 4980H Penalties

- Who is a full-time employee?
  - Regulations establish two ways to determine full-time status:
    - Monthly Measurement Method
      - 130 hours per month
      - Would have to determine employees' full-time status on a monthly basis or risk penalty
    - Look-back Measurement Method

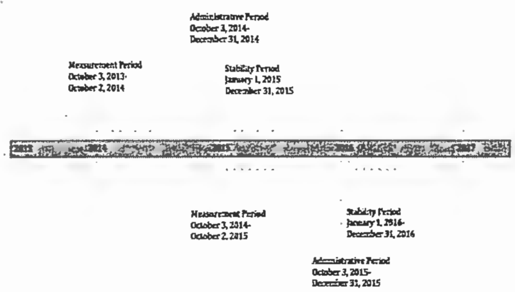
## Employer Mandate: Section 4980H Penalties

- Look-back measurement method
  - 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.

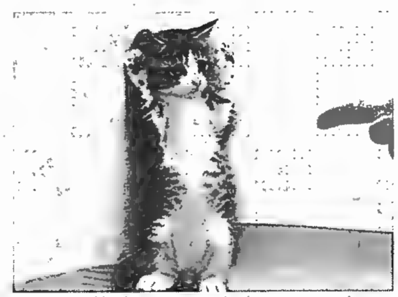
## Employer Mandate: Section 4980H Penalties

- Look-back measurement method
  - 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 has his or her own measurement period, administrative period, and stability period, <u>at first</u>. (See example).

## Ongoing Employee Safe Harbor




## New Variable Hour or Seasonal Employee



Don't Shoot the Messenger (please!)

## New Variable Hour or Seasonal Employees

- Cannot have a combined initial measurement period and administrative period that lasts beyond the final day of the first calendar month beginning on or after the one-year anniversary of the employee's start date.
- The Double Counting Problem (overlap between initial measurement period for new variable hour and seasonal employees and measurement period for ongoing employees)
  - Employer must test the new hire's full-time status using <u>both</u> their own unique measurement period and the standard measurement period (even when they overlap).

## New Variable Hour or Seasonal Employees

- Initial Three Months of Employment
  - An employer will not be penalized under section 4980H for failing to offer coverage during the first three months of employment.
- Are they reasonably expected to be full-time when hired?
  - Factors: (1) Whether the employee is replacing a full-time employee; (2) whether other employees in the same or comparable position are full-time; (3) whether the job was advertised as requiring hours of service that would average 30 or more per week.
  - The employer <u>cannot</u> consider the likelihood that the employee may terminate employment before the end of the measurement period.
- What is seasonal?
  - Employee in a position for which the customary annual employment is six months or less.

## New Variable Hour or Seasonal Employees: Example

Employer R uses an 11-month initial measurement period for new variable hour, new seasonal, and new part-time employees with an administrative period that lasts from the end of the initial measurement period through the last day of the first calendar month beginning on or after the first anniversary of the employee's start date. Employer R uses a standard measurement period of October 15 through October 14, and an administrative period of October 15 through December 31. Employee H is hired as a variable hour employee on October 20, 2015, with an initial measurement period of October 20, 2015, through September 19, 2016, and an administrative period lasting through November 30, 2016. Employee H is a full-time employee based on the hours of service in the initial measurement period, and Employee H's stability period for the initial measurement period is December 1, 2016, through November 30, 2017. Employee H's first full standard measurement period begins on October 15, 2016, with an associated stability period beginning on January 1, 2018. The standard measurement period beginning on October 15, 2015, does not apply to Employee H because Employee H is not hired until October 20, 2015.

## New Variable Hour or Seasonal Employees: Example

Conclusion: For the period after the stability period associated with the initial measurement period and before the stability period associated with Employee H's first full standard measurement period (that is December 1, 2017, through December 31, 2017), Employer R must treat Employee H as a full-time employee because the treatment as a full-time employee (or not a full-time employee) that applies during the stability period associated with the initial measurement period continues to apply until the beginning of the stability period associated with the first full standard measurement period during which the employee is employed.

## Look-back Measurement Method: Special Rules for Educational Organizations

- Employment Break Period (Summer Months)
  - Must exclude from measurement period (or credit average number of hours for) any period of at least four consecutive weeks during which an employee is not credited with hours of service.
- Rehired Employees
  - 26 week rule applies for educational organizations (13 weeks for other employers)
  - Can treat as a "new employee" if break in service of 26 weeks or more
  - Rule of parity

## Tracking Considerations

- How to calculate hours of service
  - "each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence"
  - Hourly vs. Non-Hourly employees
    - Non-hourly employees
      - Can use days-worked or weeks-worked equivalency
      - Can use different method for different categories of employees and can change method from year-to-year

Tracking Considerations

# How Are We Supposed to Keep Up With This?!

## Potentially Troublesome Categories of Employees

- Temporary, full-time employees
  - If less than three months, OK
  - More than three months and expected to be full-time at the time of hire, problematic
- Substitute teachers
  - How to track?
  - Long-term substitutes
- "Part-time" employees, especially those working in multiple positions
- Child nutrition staff
- Independent contractors
- Coaches
- Re-hired retirees

## Capping Hours

- http://news.investors.com/politics-obamacare/020314-669013-obamacare-employer-mandate-a-list-of-cuts-to-work-hours-jobs.htm
- Should we cap? Can we cap?
- When should we start capping? Is it too late?
- How do we cap?
  - Weekly basis
  - Monthly basis
  - Yearly basis

## 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.
- Final regulations issued March 2014

## 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

- No easy answer for tracking issues
- Burdens imposed by rules for new hires appear to be greatest
- Be on the look-out for "part-time" employees working in more than one position
- Balancing instructional and fiscal concerns at the heart of decisions regarding capping

# 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.[1]

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 HealthCare.gov for more information, including an online application for health insurance coverage and contact information for a Health Insurance Marketplace in your area.

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[1] An employer-sponsored health plan meets the "minimum value standard" if the plan's share of the total allowed benefit costs covered by the plan is no less than 60 percent of such costs.

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