

Healthcare Reform Provisions Unique to Small Employers (10/1/2019)

Nancy L. Farnam, J.D., Area Senior Vice President, Compliance Counsel
Gallagher Benefit Services, Inc.

While most healthcare reform provisions apply to employers uniformly, regardless of size, there are a few provisions that may benefit small employers. These include an exemption from the employer mandate penalty, the availability of coverage through state exchanges, health insurance tax credits, exemption from reporting health costs on W-2s, and the use of a SIMPLE Cafeteria Plan. These benefits are discussed below, and outline the employer size requirements for each.

Are you exempt from the employer mandate penalty?

The employer mandate requires a “large employer” to offer health coverage to at least 95% of its full time employees, or pay a penalty. If you employed fewer than 50 full time and full-time equivalent employees during the prior calendar year, you are exempt from the employer mandate penalty. These rules are applied on a controlled group basis, meaning that all employees of all employers within the controlled group are taken into account. How do you determine if you have 50 or more? First, count the number of full-time employees (those working 30 or more hours per week) for each calendar month in the preceding year. Then count all of your part-time employee hours for each month (but only up to 120 hours) and divide by 120. Add the number of full-time employees and full-time equivalents for each month, and divide by 12. This is the average number of full-time employees for the prior year. For example, if you have 35 employees working 30 or more hours per week and 25 employees working 80 hours for each month during the prior year, you would take 25 multiplied by 80 and then divide that by 120 hours per month, for a result of 16.67 full time equivalent employees. ($25 \times 80 = 2,000$, and $2,000 \div 120 = 16.67$). That would mean you employed 57 full time equivalent employees in the prior year (35 full time employees + 17 full time equivalent employees = 57), which would subject you to penalty if you did not offer health care to at least 95% of your full-time employees. If you have fewer than 50, and you offer health care, it must comply with the coverage mandates under the healthcare reform law (i.e., coverage for dependents to age 26, first dollar coverage of preventive care, no annual or lifetime limits on essential benefits, etc.). However, there is no requirement that you offer coverage or that such coverage be “affordable,” and no penalty is assessed if you fail to do so.

Are there special rules for coverage on state exchanges?

If you are eligible to purchase a small group health insurance product (currently limited to employers that have 2 to 50 employees in Minnesota), you will be able to enroll your employees in health coverage through the Small Business Health Options Program (“SHOP”). Options for enrolling in SHOP insurance are through an insurance company or with the assistance of a SHOP-registered agent or broker. More information on SHOP coverage in Minnesota is available through the MNsure website (<https://www.mnsure.org/>)

Do I have to report health care costs on my employee’s W-2?

If you file fewer than 250 W-2’s in the year prior, you are exempt from reporting health care costs on your employee’s W-2. The IRS has indicated that this exemption will apply until they provide further guidance, and has promised to give at least 6 months for employers to modify practices if they need to begin reporting this information in the future.

What is a SIMPLE cafeteria plan?

An employer with 100 or fewer employees during either of the two preceding years may adopt a SIMPLE Cafeteria Plan to allow employees to pay for eligible health, dental, vision and other employer sponsored plan premiums on a pre-tax basis without worrying about nondiscrimination rules or testing. To qualify, the small employer must make contributions to the plan (a) that are equal to a uniform percentage (not less than 2 percent) of the employee’s compensation for the plan year, or (b) equal to twice the employee’s salary reduction contributions, up to a maximum of 6% of the employee’s compensation for the plan year. SIMPLE cafeteria plans must also comply with eligibility and participation requirements.

What other healthcare reform requirements or changes apply to all employers?

1. There is a limit on medical care flexible spending accounts that did not exist prior to this year. As of plan years beginning on or after 1/1/2019, the new limit is \$2,700 per person. The 2020 limit is expected to be released in the fall of 2019.
2. Health insurance issuers and group health plans are required to provide covered employees with an easy-to-understand summary about a health plan’s benefits and coverage. This is called a Summary of Benefits and Coverage, or SBC.
3. The law prohibits health plans from placing a lifetime and annual dollar limit on most benefits, specifically those determined to be essential health benefits.
4. If an employer health plan covers children, employees can add or keep their children on your health insurance policy until they turn 26 years old. Children may join or remain on an employer plan even if they are: married, not living with the employee, are attending school, are not financially dependent on the employee, or are eligible to enroll in their employer’s plan.

5. Employers must disclose certain information regarding the health insurance exchanges to all employees within 14 days of hire. A model notice is available.
6. The Cadillac Tax is delayed until 2022.

There are other provisions and compliance issues associated with healthcare reform for all employers such as requirements for coverage of preventive care, prohibitions against pre-existing exclusions, essential benefits, and other employee protections. Your city should check with your health insurance carrier or consultant to ensure that it is following all health plan benefit requirements. The League will continue to partner with Gallagher Benefits Services to provide updates as new information and resources regarding compliance requirements become available.

Can I get a special health insurance tax credit?

The good news for some small employers is that you might be entitled to a tax credit if you provide health insurance to your employees if you buy SHOP insurance. The maximum credit is 50 percent of premiums paid in 2019 by eligible small business employers and 35 percent of premiums paid by eligible employers that are tax-exempt organizations. The credit is specifically targeted to help small businesses and tax-exempt organizations that primarily employ low and moderate income workers. It is generally available to employers that have fewer than 25 full-time equivalent (FTE) employees paying wages averaging less than \$54,200 (in 2019) per employee per year. Because the eligibility formula is based in part on the number of FTEs, not the number of employees, many businesses will qualify even if they employ more than 25 individual workers.

Eligible small businesses can claim the credit as part of the general business credit on their income tax returns. Tax-exempt employers are also offered the opportunity to claim the credit.

More information on SHOP insurance and the tax credit is available at:
<https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/SHOP.html>.

General

This sample document is for a hypothetical organization and is provided for illustrative purposes only; GBS does not guarantee or warrant its accuracy or applicability to your company's circumstances. It should not be used "as is" for any purposes as it may not apply to your factual situation. Consult your legal counsel if you wish to use this sample as a starting point for your organization.

Coverage Notice

This proposal (analyses, report, etc.) is an outline of the coverages proposed by the carrier(s) based upon the information provided by your company. It does not include all the terms, coverages, exclusions, limitations, and conditions of the actual contract language. See the policies and contracts for actual language. This proposal (analyses, report, etc.) is not a contract and offers no contractual obligation on behalf of GBS.

Legal Notice

The intent of this analysis [report, letter, etc.] is to provide you with general information regarding the status of, and/or potential concerns related to, your current employee benefits environment. It should not be construed as, nor is it intended to provide, legal advice. Laws may be complex and subject to change. This information is based on current interpretation of the law and is not guaranteed. Questions regarding specific issues should be addressed by legal counsel who specializes in this practice area.

Consulting and insurance brokerage services to be provided by Gallagher Benefit Services, Inc. and/or its affiliate Gallagher Benefit Services (Canada) Group Inc. Gallagher Benefit Services, Inc., a non-investment firm and subsidiary of Arthur J. Gallagher & Co., is a licensed insurance agency that does business in California as “Gallagher Benefit Services of California Insurance Services” and in Massachusetts as “Gallagher Benefit Insurance Services.” Investment advisory services and corresponding named fiduciary services may be offered through Gallagher Fiduciary Advisors, LLC, a Registered Investment Adviser. Gallagher Fiduciary Advisors, LLC is a single-member, limited-liability company, with Gallagher Benefit Services, Inc. as its single member. Certain appropriately licensed individuals of Arthur J. Gallagher & Co. subsidiaries or affiliates, excluding Gallagher Fiduciary Advisors, LLC, offer securities through Kestra Investment Services (Kestra IS), member FINRA/SIPC and or investment advisory services through Kestra Advisory Services (Kestra AS), an affiliate of Kestra IS. Neither Kestra IS nor Kestra AS is affiliated with Arthur J. Gallagher & Co., Gallagher Benefit Services, Inc. or Gallagher Fiduciary Advisors, LLC. Neither Kestra AS, Kestra IS, Arthur J. Gallagher & Co., nor their affiliates provide accounting, legal, or tax advice.