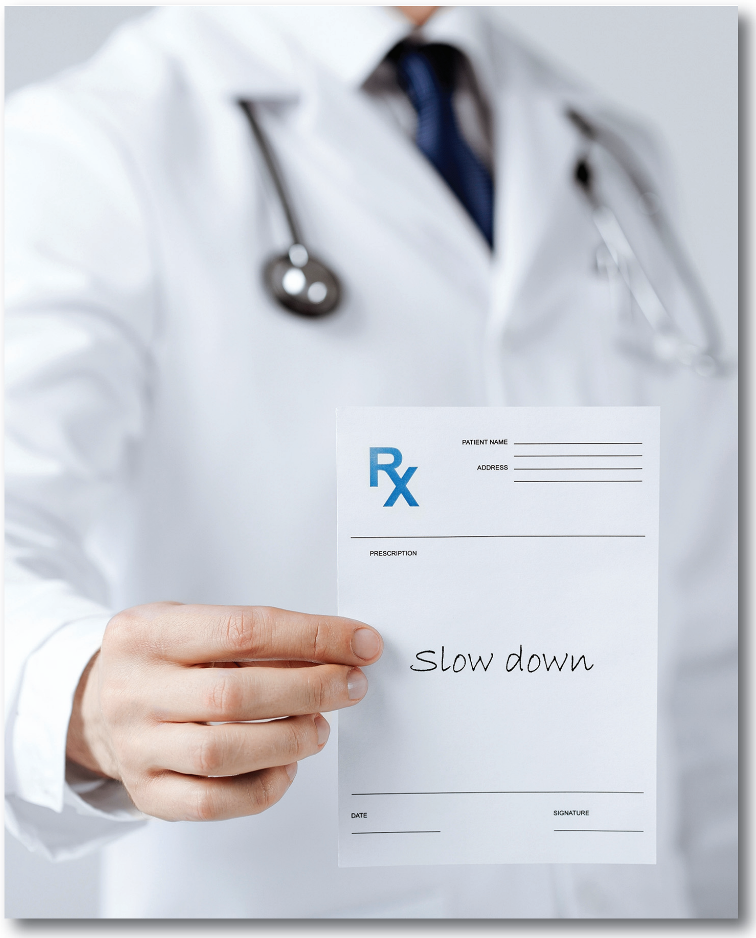
Affordable Care Act: New forms of relief in sight for 2015

By the New York State Association of School Attorneys

NYSASA
New York State Association of School Attorneys



As implementation of the Affordable Care Act (ACA) continues, school districts and BOCES are grappling with its requirements. One priority involves avoiding penalties that the government can impose on employers that fail to offer affordable health coverage that provides a minimum level of coverage to their full-time employees (which, in the case of school districts and BOCES, can include substitute teachers who are full-time equivalents).

Many questions on this topic have been addressed by the U.S. Department of Treasury in final regulations affecting the "employer shared responsibility" requirements under the ACA. These include new forms of "transition relief" – clarifications and adjustments that affect employers' obligations during the initial year of ACA implementation. For instance, the ACA generally requires a large employer to offer coverage to its full-time employees and their dependents. However, if an employer has not offered dependent coverage to some or all full-time employees during the 2013 and 2014 plan years, then the employer will not be required to offer dependent coverage to those employees in the 2015 plan year. This transition relief is intended to provide employers sufficient time to expand their health plans to include dependent coverage.

Other forms of transition relief may or may not be available to your school district or BOCES. In many cases, employers must make calculations to determine whether certain employees are entitled to benefits under the ACA.

The more important forms of transition relief are summarized below.

"Large Employer" status. An employer is considered a "large employer," and therefore governed by the shared responsibility provisions of the ACA, if it employed an average of at least 50 full-time equivalent employees on business days during the preceding calendar year. The final regulations permit an employer to use any six-month period with the 2014 calendar year to determine whether it is a qualifying large employer. School districts and BOCES are permitted to include the months of July and August in that assessment. This makes it possible, depending upon the calculations under this transition relief, to delay application of the employer shared responsibility provisions until 2016. In 2016, however, an employer would be required to determine whether it is a large employer based on the entire 2015 calendar year.

Employers with fewer than 100 FTEs. Mid-sized employers are not required to comply with ACA requirements in 2014 if the employer: (a) has a "limited workforce size" in that it employed on average between 50 and 100 full-time equivalent employees during a six consecutive month period in 2014; (b) meets the "maintenance of workforce and aggregate hours of service" conditions by not reducing its workforce or hours of service between Feb. 9 and Dec. 31, 2014 for the purpose of achieving the "limited workforce size"; (c) does not eliminate or materially reduce the health coverage it offered as of Feb. 9, 2014; and (d) submits to the IRS a "certification for eligibility for transition relief" attesting to each of these conditions. Mid-sized employers qualifying for protection under this form of transition relief will not be permitted to use the other transition relief options set forth here.

Shorter "lookback" period. "Full-time" status determines whether employees are eligible for health insurance under the ACA in any given month. An employee has full-time status in any month in which he or she is employed, on average, at least 30 hours of service per week. The initial regulations authorized an employer to lookback at a period of between three and 12 months; if the person averaged 30 hours per week during that time, the person was considered full-time and eligible for an offer of health insurance. The final regulations offer transition relief for the first year by allowing employers to adopt a look-back period that is between six and 12 months beginning no later than July 1, 2014 and ending no earlier than 90 days before the first day of the plan year beginning on or after Jan. 1, 2015. This will help employers limit applicability of the ACA in 2015. The three- to-12-month lookback described in the original regulations will apply after the first year.

Longer stability period. If an employee is determined to be full-time, person that is eligible for insurance during a stability period, which the initial regulations defined as a period of at least six consecutive calendar months that follows the look-back period and is no shorter in duration than the look-back period. If an employee is determined not to be full-time, then the employer is not required to offer insurance during the following stability period, but the stability period under the initial regulations could not exceed the length of the look-back period. The transition relief permits an employer to implement a stability period which is longer than the look back period for 2015. This effectively extends the time during which an employee who is determined to be less than full-time can be denied health insurance. After the first year, a stability period cannot be longer than the look-back period.

Offer of coverage for January 2015. If an employer does not offer coverage to a full-time employee during any day of a calendar month, then the employee is treated as not being offered coverage during that entire month. The final regulations provide transition relief from this only for the month of January 2015. If an employer offers coverage by the first day of the first payroll period that begins in January 2015, the employee will be treated as having been offered coverage for January 2015.

Part A penalty relief. Large employers are generally required to provide health insurance coverage to at least 95 percent of their full-time employees (and their dependents) in order to avoid a costly "Part A" penalty under the ACA. The Part A penalty is equal to the number of full-time employees the employer employed for the year (minus 30) multiplied by $2,000. The final regulations provide transition relief for 2015 and state that during each calendar month of 2015, and any months in 2016 of a plan year which started in 2015, a large employer that offers coverage to at least 70 percent of its full-time employees (and their dependents) will not be subject to the Part A penalty. Moreover, if an employer is subject to the Part A penalty for failing to meet the 70 percent requirement, the penalty will be determined by the number of full-time employees employed for the year (minus 80) multiplied by $2,000. Beginning in 2016, the 95 percent threshold returns, and only 30 employees will be excluded from the penalty calculation. Please be aware that the transition relief does not affect the Part B penalty, which imposes upon the employer a $3,000 penalty for each employee who is not offered affordable health insurance and uses a tax credit to purchase insurance from the ACA health exchange. Insurance is not affordable when the employee is required to contribute more than 9.5 percent of household income toward the individual premium. While the Part A penalty is generally considered to be the larger potential penalty, this is may not always be the case. The temporary lowering of the coverage requirement from 95 percent of fulltime employees to 70 percent potentially increases the likelihood that an employer could be subjected to the Part B penalty because 30 percent of the district's employees may not be offered coverage.

Careful review is required to determine whether a given school district or BOCES is eligible for these various forms of transition relief. Of course, full implementation of the ACA is still on track for 2016. Systems for evaluating eligibility and tracking employees should be in place well in advance of that.


Volz

Members of the New York State Association of School Attorneys represent school boards and school districts. This article was written by Thomas Volz of the Law Offices of Thomas M. Volz, PLLC.