Check again if Obamacare employer mandate applies to you

Ralph Lizardo for *Progressive Dairyman*

> "The employer fines for being noncompliant with Obamacare are too severe to ignore. I have recommended to my clients with 100 or more full-time-equivalent employees to start the process now as the deadline is fast approaching."

It has been a year since I last wrote about Obamacare. There have been many developments since my November 2013 article. I receive many questions from my clients about this topic and the one that is mostly asked is: Is it better to offer coverage or pay the penalty?

Before we get started, I wanted to remind everyone about two very important key terms: "affordable" and "minimum essential coverage." These terms apply to both the individual and employer mandates. The minimum essential coverage means that the policy must include items and services such as ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder; prescription drugs; rehabilitation and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. The premiums for these services must be affordable for the individual.

Individual mandate

The individual mandate requires individuals to have medical insurance or pay a fine. This mandate is effective Jan. 1, 2014. Individuals can get insurance through their employer, if it is offered, the health insurance marketplace or exchange, and public programs like Medicare and Medicaid if they qualify.

The insurance marketplace or exchange offers four different coverage levels: Bronze, silver, gold and platinum. All of these coverages include the minimum essential benefits, with bronze intended to have the lowest premiums with highest out-of-pocket costs and platinum intended to have the highest premiums with the lowest out-of-pocket costs.

Let's focus on the cheapest plan, the bronze, which covers approximately 60 percent of people's medical expenses. The premium will vary depending on age and where you live. According to the report dated Sept. 25, 2013, and issued by the U.S. Department of Health & Human Services, the weighted-average premium for an individual under the bronze coverage is $249 per month.

The premium discrepancy between the various states is wide. For example, Minnesota's average premium for bronze coverage is $144 per month while Wyoming's is $425 per month. Multiply these premiums to the numbers of family members in your household, and it starts to add up. However, there are government credits available to assist individuals in paying for the premiums, but they have to qualify.

The yearly penalty for not having the minimum essential insurance coverage for 2014 is $95 for adults ($47.50 for a child) or 1 percent of income, whichever is greater. Penalties are assessed on a monthly basis. For each month the individual does not meet the requirements, the minimum monthly penalty is $7.92 ($95 / 12 months). For 2015, the minimum penalty increases to $325 for adults ($162.50 for a child) or 2 percent of income, and for 2016, it increases to $695 ($347.50 for a child) or 2.5 percent of income, whichever is greater. However, there are limited exemptions in avoiding the penalties.

The individual fines for not having medical insurance are insignificant in comparison to the premiums. You have to ask yourself: Is it worth it? Accidents happen every day and medical costs are increasing; can you afford not to have medical insurance?

Employer mandate

As to the employer mandate, you must offer insurance to your employees and their dependents or pay a fine. Employers must have insurance coverage available to employees and their dependents that meets the minimum essential coverage. The key word is "offer."

The employer mandate goes into effect Jan. 1, 2015, for employers with more than 100 full-time equivalent

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employees. For employers with 50 to 99 full-time equivalent employees, the employer mandate goes into effect Jan. 1, 2016. For employers with less than 50 full-time equivalent employees, there is no requirement to offer insurance to your employees.

Employers must be very careful in situations where an individual owns multiple entities. There's a "controlled group" provision included in Obamacare. This provision was included to deter individuals from setting up multiple entities and dividing their employees to get under the 50-employee requirement.

Here's a simple example of how controlled group works. If an individual is an owner of four entities with 30 employees each, for purposes of the employer mandate, each entity is deemed to have a total of 120 employees and thereby required to offer insurance.

Furthermore, to qualify as "affordable insurance," the employee's share of his or her premium cannot exceed 9.5 percent of their annual household income. It is close to impossible for an employer to know their employee's total household income. Therefore, a safe-harbor amount was set in place, which is not greater than 9.5 percent of an employee's total W-2 for the year. If the employee wants their dependents to be covered, employers can pass 100 percent of the dependent premiums back to the employees.

I have spoken to several insurance brokers on how much it will cost for employers to provide medical insurance to their employees. The answer that I get most often is: "It depends." It depends on the location of the company, the age of employees being covered, the number of participants, the type of plan, etc.

Let's put some numbers on how the employer mandate works. Let's assume that you have an employee that makes $30,000 per year. To qualify as affordable, his or her share of the premium you offer cannot exceed $237.50 per month ($30,000 x 9.5 percent / 12 months). For premium purposes, let's use the weighted-average premium for individuals with bronze coverage of $249 per month. In this example, the employer's out-of-pocket expense is only $11.50 per month, well below the $237.50 "affordable" threshold.

The yearly penalty for not offering insurance to your employees is significant. When health insurance is not offered, a non-tax-deductible fine for the employer will start at $2,000 per employee. If you have 100 employees, the employer could be fined $140,000. The first 30 employees will be exempt in calculating the fine (i.e., 100 employees - first 30 employees x $2,000 = $140,000). The fine increases to $3,000 per employee, for a total of $210,000, if one employee goes to a health insurance exchange and receives government assistance.

To summarize the employer mandate: you must, first, have an insurance policy available; second, offer the insurance to employees which they have the option to accept or decline; and third, make it affordable. Documentation is very important in making sure employers are in compliance with Obamacare.

The employer fines for being noncompliant with Obamacare are too severe to ignore. I have recommended to my clients with 100 or more full-time-equivalent employees to start the process now as the deadline is fast approaching. The first step is to contact health insurance agencies to get premium quotes. Once the policy is set, all the other requirements should fall into place fairly easily. *PD*