IASB Iowa Association of School Boards

Special Report

Commentary on Education Issues

A School District's Responsibilities under the Federal Patient Protection and Affordable Care Act (ACA)

*[IASB asked the Benefit Compliance Program to develop this document for board members and administration to better understand the Federal Patient Protection and Affordable Care Act. Due to the technical nature of the legislation, business managers are the real beneficiaries of this document. Throughout the document the term "school district" is used, but the law applies the same to AEA's and community colleges as well. Additionally, please note that the term "year" references a calendar year, as opposed to a school year]. **

The Patient Protection and Affordable Care Act (ACA) which was enacted on March 23, 2010 added Section 4980H, Shared Responsibility for Employers Regarding Health Coverage, to Title 26 of the United States Code. Section 4980H imposes a penalty on large employers for (1) failing to offer full-time employees (and their dependents) the opportunity to enroll in group health coverage or for (2) offering coverage to full-time employees (and their dependents) that is unaffordable or that does not provide minimum value. In either case, penalties are imposed if any full-time employee purchases coverage through the state exchange and receives a premium tax credit.

On January 2, 2013 the U.S. Treasury Department and the Internal Revenue Service (IRS) issued proposed regulations providing guidance under section 4980H with respect to the employer shared responsibility provisions,1 and on February 12, 2014 final regulations were issued.2 The employer shared responsibility provisions are also known as the employer mandate or the play or pay mandate and will be referred to throughout this Special Report as the "Employer Mandate".

Special thanks to Keri Farrell-Kolb and Susan Pinckney, Benefit Compliance Program, for their development of this document.

1 Shared Responsibility for Employers Regarding Health Coverage, 26 CFR Parts 1, 54 and 301, 78 Fed. Reg. 217, (Jan 2, 2013).
2 Shared Responsibility for Employers Regarding Health Coverage, 26 CFR Parts 1, 54 and 301, 79 Fed. Reg. 8543 (Feb. 12, 2014).

December 19, 2014

Beginning in 2015, many Iowa school districts will be required to offer health coverage to full-time employees (and their dependents) or pay a penalty tax under the Employer Mandate. The mandate has been a subject of much concern for many Iowa school districts. This *Special Report* will focus on some of the common questions school districts have regarding the mandate and closes with a proposed resolution that school boards may adopt as they seek to ensure their district's compliance with the law.

Requirements to Comply

Q: Is our school district required to comply with the Employer Mandate?

A: Yes, if the district meets the definition of a "large" employer. A large employer includes any district that employs an average of at least 50 full-time employees (including an equivalent for part-time employees) on business days during the preceding calendar year.3 A district must look at the number of employees in 2014 to determine whether it will be considered a large employer for 2015. The law does not include an exception for governmental or tax-exempt employers or for benefits that are subject to collective bargaining. Instead, the number of full-time employees is the sole determining factor for whether or not a district is subject to the Employer Mandate.

The number of employees employed by the district will not only determine whether or not the district is subject to the Employer Mandate, but also is a factor in determining when the district must comply. For this reason, it is important to not only know the district size, but also to maintain documentation, especially for districts that are less than 50 or borderline between one of the categories listed below. Specific rules apply for counting the number of full-time employees to determine district size, so a district that is unsure or borderline should seek assistance.

Q: When is our District required to comply?

A: A district that meets the definition of a large employer may be subject to penalties as early as January 1, 2015. However, the law provides transition relief from the penalties for districts with non-calendar year plans and for districts with at least 50 but less than 100 full-time employees (including an equivalent for part-time employees), if certain conditions are satisfied.4 The following chart summarizes when the penalties will begin to apply:

District Size in Calendar Year 2014 (Including both FT and an equivalent for PT employees)	Effective Date for Enforcement of Penalties
Less than 50	Exempt
50-99	Beginning of 2016 Plan Year (e.g., July 1, 2016)*
100+	Beginning of 2015 Plan Year (e.g., July 1, 2015)*

3 Internal Revenue Code §4980H(c)(2); Treas. Reg. §54.4980H-1(a)(4).
4 Shared Responsibility for Employers Regarding Health Coverage, 26 CFR Parts 1, 54 and 301, 79 Fed. Reg. 8543, 8569-8576 (Feb. 12, 2014).

**Certain additional requirements, other than district size, must be satisfied. If those requirements are not met, penalties will begin to apply as of January 1, 2015.*

Although the penalties may not begin until mid-2015 or mid-2016, districts should begin preparing for compliance well in advance. In fact, districts may need up to a year to implement systems for counting and tracking hours to determine who must be offered coverage as of the effective date.

In addition, regardless of the compliance date for enforcement of the penalties under the Employer Mandate, new reporting requirements apply to all districts with at least 50 full-time employees, including full-time equivalents, for the 2015 calendar year.5

Q: What does our district need to do to comply?

A: The law does not specifically require districts to offer health coverage to employees. However, districts may incur penalties for not offering health coverage (referred to as "minimum essential coverage") to all full-time employees and their dependents that is both "affordable" and provides "minimum value".

In order to be considered ***affordable,*** employees cannot be required to pay more than 9.5% of their income toward the cost of single coverage. If the district offers more than one plan, then affordability is measured against the lowest cost plan that provides minimum value, even if the employee enrolls in family coverage and/or a higher cost plan. Districts may use any of the following safe harbor methods to measure an employee's income: *(1) Form W-2 safe harbor; (2) rate of pay safe harbor; or (3) federal poverty line safe harbor.*

If a district pays 100% of the single premium for all full-time employees, the affordability requirement is satisfied. If the district pays something less for all or some full-time employees, then the district should determine whether affordability is met based on one of the three safe harbors mentioned above.

Minimum value is satisfied if the plan pays at least 60% of the total allowed cost of benefits. Most health plans offered by Iowa school districts provide significant benefits to employees and will easily meet minimum value requirements.

However, when faced with limited budgets and the requirement to offer coverage to additional employees, districts may be considering offering lower cost plans to some employees. In addition to raising potential non-discrimination issues discussed below, districts should be wary of considering or adopting any plan that does not include hospital or physician benefits for any group of employees. These plans were once thought to satisfy the minimum value requirement, but the federal government has clarified that they do not.6
In case of an audit, districts should retain documentation that the plan offered by the district meets the minimum value requirement. Documentation may be provided by the insurance carrier for an insured

5 Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer Sponsored Plans, 79 Fed. Reg. 13231 (March 10, 2014).
6 IRS Notice 2014-69.

plan, or by completing the minimum value calculator made available by the Department of Health and Human Services for self-funded plans.7

The final requirement to avoid penalties is that coverage must be offered to ***full-time employees*** (and dependents8), which is discussed below.

Determining Full-Time Employees

Q: What is the definition of a full-time employee?

A: The law defines a full-time employee as any employee who works an average of at least 30 hours per week or 130 hours per month.9

Hours of service include not only hours actually worked by an employee, but also hours for which an employee is paid or entitled to payment due to vacation, holiday, sick leave, disability, layoff, jury duty, military leave or leave of absence. In addition, special rules apply for employment break periods of at least four consecutive weeks, such as summer breaks, and for special unpaid FMLA, jury duty or military leaves of absence. See below for additional details. For salaried employees, the district may count actual hours of service as described above, or may use a daily equivalency method (counting 8 hours for each day an employee works at least 1 hour) or a weekly equivalency method (counting 40 hours for each week an employee works at least 1 hour). Since both of the equivalency methods will tend to overstate hours worked by part-time employees, they may have limited applicability for most districts.

Q: Are substitute teachers considered our employees?

A: All common law employees are treated as employees of the district; whereas independent contractors and leased employees are not. However, the district's label does not necessarily control whether the individual will be considered an employee or independent contractor. Under the common law standard, an employment relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, along with the details and the means by which it is done.10 This is a factual determination.

While we have heard about districts in other states exploring leasing arrangements for substitute teachers, districts in Iowa historically have hired substitute teachers as their own employees, even though the individual may also have an employment relationship with another district or entity as well. In contrast, transportation personnel, such as bus drivers may be one area in which some districts have contracted with a separate company that, by agreement, legally controls and directs the work of those individuals.

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7 The minimum value calculator is available at http://cciio.cms.gov/resources/regulations/index.html.
8 Dependents include children (but not step children or foster children), who are under age 26, but do not include spouses.
9 Internal Revenue Code § 4980H(c)(4); Treas. Reg. § 54.4980H-1(a)(21)(ii).
10 Treas. Reg. § 54.4980H-1(a)(15); Treas. Reg. § 31.3401(c)-1(b).

One of the first steps a district should take toward compliance is to categorize and review the status of employees – employee vs. independent contractor, full-time vs. part-time and whether or not they are currently offered coverage – in order to determine the district's potential liability and to develop strategies for compliance with respect to those employees who may work full-time, but who are not currently offered coverage. Common classes of district employees generally include administrators, teachers, associates, substitute teachers, clerical, custodial, maintenance, food service, bus drivers (unless contracted through a separate company), coaches and other regular and seasonal employees.

Q: How do we identify full-time employees?

A: The law provides two methods for determining full-time employees: (1) the monthly measurement method, or (2) the look-back measurement method. In general a district must use the same method for all employees, except a different method may be used for:

(a) Hourly and salaried employees,
(b) Collectively bargained and non-collectively bargained employees, and
(c) Each group of collectively bargained employees covered by a separate bargaining agreement.

Since different rules apply under each measurement method, from an administrative standpoint, it may be easier to use and apply one method to all employees.

Under the ***monthly measurement method***, each employee's status as full-time or part-time is determined by counting the employee's hours of service for that month. If an employee works at least 130 hours for a particular month, then the employee will be considered full-time for that month and either must be offered coverage or the district would be at risk for incurring a penalty for that month.

The problem with using the monthly measurement method is that it is common for substitute teachers, associates, coaches and seasonal employees to work more than 130 hours in some months out of the school year, but not others. For example, a district may have substitute teachers who work full-time as part of a long-term subbing position for two or three months out of the year, or coaches may work full-time during a particular season out of the school year. These types of situations would put the district at risk of incurring penalties for those months in which they work at least 130 hours. To avoid penalties, the district would have to offer coverage to those employees for the months in which they work at least 130 hours, so the district could have employees coming in and out of coverage on a month-by-month basis, and the district may not always be aware or sure if coverage should be offered until the month is over.

In order to provide greater predictability for both the district and its employees, the IRS allows districts to use a ***look-back measurement method*** to determine whether an employee is full-time based on hours worked over a set period of time (known as a measurement period) instead of on a month-by-month basis. If an employee works an average of 30 hours per week (or 130 hours per month) during the measurement period, the employee will be considered full-time during a future "stability" period,

regardless of the number of hours the employee works during the stability period. The look-back measurement method avoids a current month-by-month calculation of hours to determine an employee's full-time or part-time status.

Employers are responsible for determining which measurement method to use. IASB recommends the look-back method since all school districts employ substitutes, coaches, and possibly seasonal or other employees who are not typically offered health coverage, but may work at least 30 hours a week during certain times of the year. The look-back measurement method averages hours over a period longer than one month, so employees who only work full-time for a short time frame may not qualify for coverage as full-time when their hours are averaged over the measurement period. It is one strategy a district can use to manage hours (by looking at the average over a period of time), possibly without having to actually reduce hours. A sample resolution adopting the measurement method is in Appendix A. The resolution defaults to the look-back method, but should the board choose the monthly measurement method, the Resolution should be updated to reflect this decision.

Q: How do we determine what the look-back measurement period will be?

A: For ongoing (current) employees, the district must adopt a ***standard measurement, administrative and stability period.***

The standard ***measurement period*** is a period of 3-12 months during which the district tracks hours of service worked by employees. We generally recommend that districts adopt a 12 month standard measurement period.

After the end of the measurement period, the district may use an ***administrative period*** of up to 90 days. The purpose of the administrative period is to give the district time to calculate hours of service, to offer coverage to those employees who qualified as full-time based on hours worked during the measurement period, and to give employees time to enroll in or decline coverage. Since districts normally accomplish these functions during an annual open enrollment period, it works well to align the administrative period with the district's normal open enrollment period.

The stability period is the period of time during which the employee's status as either full-time or part-time is generally locked in. If full-time, coverage must be offered for a stability period that begins immediately after the end of the measurement period plus any administration period. We generally recommend aligning the stability period with the plan year, so that employees are coming in and out of coverage at the beginning and end of the plan year.

One example of a standard measurement, administrative and stability period is as follows:

Measurement period: May 1, 2014 – April 30, 2015
Administrative period: May 1, 2015 – June 30, 2015
Stability period: July 1, 2015 – June 30, 2016

The regulations include a transition rule which allows a district to use a measurement period that is shorter than 12 months for the first year (and still use a 12-month stability period), as long as the measurement period begins by July 1, 2014 and is at least 6 months long.

It is important to emphasize that the measurement period should begin in 2014, so that a district knows who is full-time and who must be offered coverage as of its compliance date in 2015 (generally, July 1, 2015). Even for those districts that are not required to comply until 2016, it is still important to start the look-back measurement period in 2014, so the number of full-time employees can be determined for the new IRS reporting requirements effective in 2015. Thus, virtually all school districts that are subject to the Employer Mandate (and who adopt the look-back measurement method) should start measuring hours as of July 1, 2014 (or earlier), which may require a district that has not started measuring hours to access prior payroll records.

Q: Why not use a 9-month measurement period that aligns with the school year?

A: Because a 9-month measurement period will only align with the school year for the first year. The measurement period is a continuous, rolling period. Once the first measurement period ends, the next one must begin immediately afterward. If the first measurement period begins September 1 and ends May 31, the next measurement period must begin June 1 and will end February 28.

The result that districts are looking for here – to be able to calculate hours of service over the school year – can be accomplished by adopting a 12 month measurement period and excluding the summer break when calculating the average hours worked by employees (see the next question).

Q: How does a district calculate hours of service over summer breaks?

A: School districts using the look-back measurement method must either exclude employment breaks that are at least four consecutive weeks (such as the summer break) when calculating average hours worked by employees, or credit the employee with the same average hours worked during the school year for the employment break.11 No more than 501 hours must be credited or excluded. This means that employees who average at least 30 hours per week during the school year will be considered full-time even though they are not working over the summer.

The employment break rules only apply to employees who do not work over the summer (or over a period of at least four consecutive weeks). For those employees who work during the summer, their actual hours of service should be counted. However, districts should not require or request that employees work over the summer in order to avoid application of the employment break rules.12

11 Treas. Reg. § 4980H-3(d)(6)(ii)(B)

12 Regulations include an "anti-abuse" rule which states: "…any hour of service is disregarded if the hour of service is credited, or the services giving rise to the crediting of the hour of service are requested or required of the employee, for the purpose of avoiding or undermining the application of the employee rehire rules…or the averaging method for employment break periods." See Treas. Reg. § 4980H-3(d)(6)(vi).

Q: What about breaks during the school year, such as winter or spring breaks?

A: Since these breaks are not at least four consecutive weeks, they are not subject to the special rules for employment break periods. If unpaid, they would be counted as 0 hours of service for each day during the break

Q: How are hours of service calculated for employees on unpaid FMLA, military or jury duty?

A: The rule is similar to employment break periods discussed above. For districts using the look-back measurement method, unpaid FMLA, military or jury duty leaves are known as special unpaid leaves and must either be excluded when calculating the average hours worked or must be included with credit being given for the same number of hours the employee would have normally worked during the leave. There is no cap on the number of hours that must be excluded or credited for special unpaid leaves of absence.

Q: Are there other special rules to follow when counting hours?

A: Yes. Special rules apply for rehired employees, employees who have a change in status, and the determination of hours to count for special categories of employees. Rehire and change in status rules are discussed below.

Offers of Coverage

Q: Are we required to offer coverage right away to new variable hourly, part-time or seasonal employees, such as a new substitute teacher?

A: No. Districts may wait to offer coverage to new employees whose hours will vary, or who will work part-time or only on a seasonal basis. If the district uses the look-back measurement method, the district must track a new employee's hours over an initial measurement period to determine whether he or she is full-time. The initial measurement period must begin by the first day of the month after the employee's start date. We recommend that districts use a 12 month initial measurement period, followed by a one month administrative period (the maximum limit in this situation), and a 12 month initial stability period. Specific rules apply for transitioning a new employee onto the measurement period that applies to ongoing employees.

New full-time employees must be offered coverage within three months to avoid penalties. An initial measurement period does not apply to new full-time employees.

Determination of a new hire's full-time employment status is made based on the facts and circumstances on the employee's start date. A determination must be made as to whether the employee is reasonably expected to work an average of 30 hours or more per week (130 per month). If it is unclear, or as part of a district's best practices, it may be beneficial to document in a job description, contract or letter of employment the expectation of whether or not an employee is expected to work at least 30 hours per week (or 130 hours in a month).

Also, a district may not take into account that an employee may terminate employment before the end of the initial measurement period, i.e., the law does not allow an exception for a new hire who is reasonably expected to average 30 or more hours to per week to not be considered full-time simply because the employment is expected to be temporary.

Q: What if an employee waives coverage?

A: A district is only required to offer coverage to full-time employees and dependents. Employees may waive or decline coverage, but the district will need to offer coverage to its full-time employees (and their dependents) on an annual basis. Thus, if a full-time employee waives coverage one year, he or she will need to be offered coverage again the next year. In order to prove employees were offered coverage, districts should maintain records, either in paper or electronic form, of all employee elections, including those who waive coverage.

Q: Are we required to offer coverage to spouses?

A: No. However, bargaining agreements may require spousal coverage, and other issues should be explored if a district is considering a spousal carve-out.

Q: Are we required to offer coverage to part-time employees?

A: No. However, districts may be more generous than what the law requires by offering coverage to employees who work less than 30 hours per week, but they are not required to do so. Again, bargaining agreements may require a district to offer coverage for certain classes of part-time employees.

Rehire and Change in Status Rules

Q: Are we required to offer coverage to a full-time teacher who retires at the end of the school year and is rehired as a substitute teacher at the beginning of the next school year?

A: Yes, if an employee has less than a 26-week break in service, he or she is treated as a continuing employee and retains his or her full-time or part-time status upon rehire for the remainder of the stability period.[1] If an employee is rehired after at least a 26-week break in service, he or she may be treated as a new employee.

Q: What if an employee changes from a FT position to a PT position during the year?

A: If an *ongoing employee* experiences a change in employment status, the change generally will not affect his or her status as a part-time or full-time employee for the remainder of the stability period. This means that if an employee is covered under the district plan as a full-time employee and changes

1. 13 Treas. Reg. § 54.4980H-3(d)(6)(ii). The final regulations provide a limited exception which may allow a district to terminate coverage earlier if the district had offered the employee coverage continuously since the beginning of his or her employment.

to a part-time position, he or she generally may retain coverage at least until the end of the stability period.[14]

If a new *variable hour*, *seasonal or part-time employee* changes to an employment position that is full-time (and not seasonal) before the end of the initial measurement period, the employee must be offered coverage no later than the first day of the fourth full calendar month following the change in status (or, if earlier, the first day of the month following the end of the initial measurement period, if the employee averaged at least 30 hours per week during the initial measurement period).[15]

Penalties

Q: What are the penalties?

A: Districts may be subject to one of two penalties for failing to comply:

1. A ***$2,000 penalty*** applies if a district does not offer coverage to substantially all (meaning 70% for 2015[16] and 95% in future years) full-time employees and dependents, if at least one full-time employee purchases coverage through the state exchange and receives a premium tax credit. The penalty is $2,000 times the total number of full-time employees employed by the district minus 30 FT employees (or minus 80 FT employees for 2015 only[17]). The $2,000 is an annual penalty that is assessed $166.67 per month.

   Example: In 2015, the district offers coverage to 135 of its 200 full-time employees, and one full-time employee purchases coverage through the state exchange and qualifies for a tax credit. The penalty would be as follows:

   200 FT employees – 80 FT employees = 120 x $2,000 = $240,000

   In 2016, the penalty would be:

   200 FT employees – 30 FT employees = 170 x $2,000 = $340,000

2. A ***$3,000 penalty*** applies if a district offers coverage to at least 95% (70% for 2015 only) of all full-time employees and dependents, but the coverage does not provide minimum value or is

2. 14 Treas. Reg. § 54.4980H-3(d)(1)(vii). The final regulations provide a limited exception which may allow a district to terminate coverage earlier if the district had offered the employee coverage continuously since the beginning of his or her employment.
3. 15 Treas. Reg. § 54.4980H-3(d)(3).
4. 16 The 70% transition relief for 2015 only applies to districts who have not changed their plan year since Feb. 9, 2014. Shared Responsibility for Employers Regarding Health Coverage, 26 CFR Parts 1, 54 and 301, 79 Fed. Reg. 8543, 8575 (Feb. 12, 2014).
5. 17 The 80 FT employee reduction for 2015 applies only to districts with at least 100 FT employees (including an equivalent for PT employees) and who have not changed their plan year since Feb. 9, 2014. Shared Responsibility for Employers Regarding Health Coverage, 26 CFR Parts 1, 54 and 301, 79 Fed. Reg. 8543, 8575 (Feb. 12, 2014).

not affordable. The annual penalty is $3,000 (or $250 per month) per full-time employee who actually receives a premium tax credit by purchasing coverage through the state exchange. The penalty also applies to any of the 5% (or 30% for 2015) who were not offered coverage, if one or more received subsidized coverage through the exchange.

Example: Coverage for substitute teachers is not affordable. The district offers coverage to all of its full-time employees, but the district does not contribute toward the cost of coverage for substitute teachers who qualify as full time employees, so their coverage does not meet the affordability requirement. The penalty would be $3,000 times the number of full time substitute teachers who purchase coverage through the state exchange and receive a premium tax credit. In this situation, the exact number cannot be determined until after the end of the year when individuals file their tax returns and eligibility for tax credits is determined by the IRS (although the state exchange may notify the district of an advance determination of an employee's eligibility for tax credits). In this example, the district should consider other potential implications, such as non-discrimination rules, carrier requirements and state laws, when offering alternative coverage or decreasing district contributions for certain classes of employees.

Example: District excludes up to 5% of FT employees from coverage or misses offering coverage to a few FT employees. The district either intentionally decides to offer coverage to only 195 of its 200 full-time employees, or inadvertently misses offering coverage to a few full-time employees, and one or more full-time employees who are not offered coverage purchase coverage through the state exchange and receive a premium tax credit. Even though the coverage meets both minimum value and affordability requirements those few employees who are not offered coverage could trigger a penalty. The penalty would be $3,000 times each full-time employee who was not offered coverage and receives a tax credit through the exchange.

Q: Will the penalties increase in future years?

A: Yes. The penalties may be adjusted for inflation beginning in 2015, so the $2,000 penalty and the $3,000 penalty discussed above may be slightly higher for 2015 and future years.**Q: How will the government enforce the penalties?**

A: The IRS has recently released detailed reporting requirements, including draft Forms 1094-C and 1095-C and instructions[18], that will require districts to report to both the IRS and employees, detailed information about coverage offered to employees and the number of full-time employees. All districts with 50 or more full-time plus full-time equivalents in 2014 must report information for the 2015 calendar year, regardless of the districts effective date for the Employer Mandate. The IRS will use the information obtained from employers and individuals to assess penalties.

18 Forms 1094-B and 1095-B may also be required for districts with self-funded plans.

Q: What are some strategies to avoid the penalties?

A: Strategies vary from district to district, and depend on each district's unique circumstances. Most strategies focus on the 30-hour requirement and minimizing the cost to the district of offering coverage to additional employees. Strategies range from reducing hours up front for certain groups of employees, to managing hours through use of the look-back measurement method or other internal mechanisms, such as timekeeping systems that track, monitor and alert districts to situations where the potential for exceeding the limit exists. Districts may also decide that, in some cases, the penalty is less than the cost of offering affordable coverage, and may choose to pay the penalty.

Q: Are there risks involved with implementing certain strategies?
A: There could be. Some have speculated that reducing hours in order to avoid offering coverage or paying a penalty may violate §18C of the Fair Labor Standards Act, which was added by ACA. However, we are not aware of a challenge, or any final determination of a challenge, brought as a result of a reduction in hours. Districts who still may be considering a reduction in hours strategy should seek legal advice from their district's attorney. Other strategies may potentially violate the anti-abuse rules mentioned earlier if they attempt to shift hours to summer breaks for the purpose of avoiding the employment break rules. In addition, strategies which may be permissible today under ACA, such as offering a lower cost plan to substitute teachers or associates, or not making a district contribution toward their coverage, could be at risk of violating current or future non-discrimination rules.

Future Considerations

Q: What is the status of non-discrimination rules and how might it affect school districts?

A: Non-discrimination rules currently apply to all self-funded health plans.[19] ACA added non-discrimination rules for insured plans, but those rules have been delayed until the IRS issues further guidance. To date, we have not received additional guidance from the IRS, so the rules remain delayed, but districts should still consider the possible implications.

Once guidance is issued, the rules likely will affect school districts in a couple of ways. First, if a district pays more toward coverage for administrators or other highly compensated employees than what is paid toward coverage for other employees, the additional payment for administrators likely will be considered discriminatory. Some districts are taking a proactive approach toward changing this practice, while others may be taking a "wait-and-see" approach. One solution has been to include the difference between what the district pays for administrators and what it pays for other employees as part of an administrator's taxable income.

A second potential implication may be if the district implements a plan that provides certain groups of non-highly compensated employees, such as substitutes or associates, with fewer benefits. This strategy may be considered discriminatory under the rules; however, there are various exceptions, and

19 Internal Revenue Code §105(h).

the rules can be complicated, so it is important to seek advice from the district's attorney regarding strategies and potential implications under the non-discrimination rules.

Q: Given recent elections and other developments, is there any chance the law will simply go away?

A: Probably not. The law has been in effect for over four years now and many of its provisions have been implemented, some changed and a few eliminated. We expect that trend will continue. The U.S. Supreme Court is considering a case that may have significant implications for the future of the law if it determines that the tax credits or subsidies offered through state exchanges operated by the federal government are invalid. The subsidies offered to individuals in Iowa and 33 other states would be impacted by such a decision. The Court's decision is expected in June 2015.

Conclusion

It is not enough that school district personnel are simply aware of the law. It is critical that individuals tasked with the compliance at the district level are aware of and have the necessary resources to adhere to the requirements. School boards play a critical role in ensuring compliance with state and federal law. In regards to the Patient Protection and Affordable Care Act, three of the key roles played by the board include the following:

(1) Setting clear expectations regarding compliance with the ACA. This can be done through the adoption of a board resolution that sets the expectation for roles and responsibilities regarding ACA compliance. (See Appendix A).

(2) Approving plans as well as personnel and budget allocations that define and support compliance with the law. These supports will vary from district to district, but could include helping those individuals responsible with ACA compliance receive the necessary training or support to successfully comply with the law.

(3) The board needs to regularly check in to ensure that the expectations are being implemented with fidelity, determine whether or not additional resources may be needed, and to see if adjustments need to be made.

If you have questions or need additional resources, please contact Iowa Association of School Boards HR Services Director.

School Board Resolution
The Patient Protection and Affordable Care Act

WHEREAS The _____ Community School District ("District") sponsors health insurance or a group health plan in which certain eligible employees are offered health coverage;

WHEREAS The Patient Protection and Affordable Care Act ("ACA") enacted on March 23, 2010 added Section 4980H, Shared Responsibility for Employers Regarding Health Care Coverage, to Title 26 of the United States Code;

WHEREAS The school district is considered a large employer based on the employment of at least 50 full-time employees, including an equivalent for part-time employees, during the preceding calendar year. As a large employer, the District may be subject to penalties if coverage is not offered to full-time employees or if the coverage offered does not meet the requirements of the law;

WHEREAS Section 4980H imposes a penalty on large employers for (1) failing to offer full-time employees (and their dependents) the opportunity to enroll in group health coverage or for (2) offering coverage to full-time employees (and their dependents) that is unaffordable or that does not provide minimum value. In both cases, penalties are imposed if any full-time employee purchases coverage through the state exchange and receives a premium tax credit;

WHEREAS The ACA requires the District to offer health coverage to full-time employees; and

WHEREAS The IRS has provided two methods for determining whether an employee is full-time: (1) the monthly measurement method; and (2) the look-back measurement method. The District has adopted the look-back measurement method to determine the full-time status of all employees.

NOW THEREFORE, BE IT RESOLVED by the Board of Education of the _____ Community School District by action at its *[insert date]* meeting, the following:

(1) The Board of Education of the _____ Community School District shall comply with the requirements of the Patient Protection and Affordable Care Act to the best of its ability.

(2) The Board of Education of the _____ Community School District delegates to the Superintendent, including his/her designee(s), to establish time periods, govern the measurement and tracking of employee hours, and/or otherwise establish procedures implementing and in accordance with Section 4980H.

_____ _____

Board President **Date**

_____ _____

Board Secretary **Date**