



State of Alabama
STATE EMPLOYEES' INSURANCE BOARD
State Employees' Health Insurance Plan
Joe N. Dickson, Chairman
William L. Ashmore, Chief Executive Officer
April 8, 2014

MEMORANDUM

TO: State Agencies Whose Payroll is Administered through the State Comptroller

FROM: William L. Ashmore *WLA*
State Employees' Insurance Board

SUBJECT: Affordable Care Act Employer Shared Responsibility Provisions

As an employer with over 50 full-time employees, the State of Alabama is subject to the Affordable Care Act ("ACA"). On February 10, 2014, the Treasury Department and the IRS issued final rules regarding the employer shared responsibility provisions of the ACA. Under these rules, the employer shared responsibility provisions will not be effective for the State of Alabama until January 1, 2015. While the rules issued to date address how non-governmental entities should comply with the ACA, no specific guidance has been issued regarding governmental entities. However, until such guidance is issued, the State of Alabama will be required to make a good faith effort to comply with the ACA.

Beginning in 2015, the State of Alabama will be required to treat employees who average at least 30 or more hours of service per week as full-time employees for health insurance purposes. This means that effective January 1, 2015, each agency will be required to offer coverage through the State Employees' Health Insurance Plan (SEHIP) to all employees who average at least 30 or more hours of service per week at the full-time active employee monthly premium. In addition, each agency will be required to pay the state funding amount for all employees who average 30 or more hours of service per week, regardless of whether the employee enrolls in the SEHIP.

The State Employees' Insurance Board (SEIB) is currently compiling data from the State Comptroller about the number of employees employed by each agency and their hours of service during 2014. This data will be used to evaluate each state agency's compliance with the employer shared responsibility provisions of the ACA for 2015. The SEIB will notify agencies during the administrative period (October 16, 2014 through December 31, 2014) if any full-time employees must be offered coverage under the SEHIP. However, it will ultimately be the responsibility of each state agency, not the SEIB, to comply with the employer shared responsibility provisions of the ACA.

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State Agency Responsibility

Each state agency will be responsible for complying with the following employer shared responsibility provisions of the ACA:

1. offer health coverage meeting "minimum essential coverage" requirements to a specified percentage of full-time employees and their dependent children;
2. offer health coverage meeting the ACA's "minimum value" coverage standard; and
3. offer health coverage that is "affordable."

The SEIB has determined that the SEHIP meets the minimum essential coverage requirement and minimum value standard. Accordingly, each state agency will be required to determine the percentage of its full-time employees that are offered coverage through the SEHIP and whether this coverage is affordable under the ACA. These two aspects of the ACA are further described below:

1.) Percentage of full-time employees who are offered coverage:

For 2015, state agencies must offer coverage through the SEHIP to at least 70% of its full-time employees or it may be subject to the employer shared responsibility payment. In 2016, state agencies must offer coverage through the SEHIP to at least 95% of its full-time employees or it may be subject to the employer shared responsibility payment.

SEIB Comment: Pursuant to Alabama Code Section 36-29-1, et seq., most state agencies are required to offer health insurance coverage to its employees and their dependent children. Accordingly, most state agencies should have no problem meeting this employer shared responsibility provision.

2.) Determining whether the coverage offered is affordable:

If an employee's share of the premium for individual coverage under the SEHIP would cost the employee more than 9.5% of that employee's annual household income, the coverage is not considered affordable for that employee under the ACA and the employer may be subject to the employer shared responsibility payment. Because state agencies generally will not know their employees' household incomes, agencies can take advantage of one or more of the three affordability safe harbors set forth in the final regulations to make the affordability determination. The safe harbors include the employee's Form W-2 wages, the employee's rate of pay, or the Federal Poverty Level.

SEIB Comment: Although the 2015 premiums have not been set by the SEIB yet, it is unlikely that the 2015 individual premium will exceed 9.5% of a full-time state employee's annual household income.

Employer shared responsibility payment

If a state agency fails to comply with one of the above employer shared responsibility provisions, it could be subject to a shared responsibility payment if at least one full-time employee receives tax-subsidized coverage through the Marketplace. However, it is far from clear exactly who can and will be held liable for paying these penalty amounts. The statute suggests that the penalty falls on the "person" that failed to satisfy the mandate, but exactly who that "person" is is not likely to be known until further regulations are issued.

This memorandum is offered for informational purposes only. Each state agency will be responsible for complying with all of the ACA employer shared responsibility provisions. Should you need assistance in order to comply with the ACA, the SEIB strongly suggests you seek legal counsel or guidance from healthcare experts.