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To: Participating Agency and Participating Employer Chief Executive Officers & Health Benefit Administrators

From: Employee Benefits Division

Subject: Patient Protection and Affordability Act (PPACA) Employer Shared Responsibility and Reporting Requirements

Date: April 9, 2015

Effective January 1, 2015, large employers are subject to the Employer Shared Responsibility provisions under the Patient Protection and Affordable Care Act (PPACA). The Employer Shared Responsibility provision requires that a large employer offer health insurance coverage to at least 70 percent of its full-time employees. Beginning in 2016, this requirement increases to 95 percent of full-time employees. In addition to these requirements, there are reporting requirements that affect both large and small employers. The purpose of this memo is to provide general information to participating employers in the New York State Health Insurance Program (NYSHIP) of these requirements, and to provide some helpful resources issued by the federal government for employers subject to these provisions. As a reminder, NYSHIP became a self-insured plan in 2014; this should be kept in mind when reviewing your reporting obligations under PPACA.

Employer Shared Responsibility Penalties

Large employers subject to these provisions may face substantial penalties if they do not meet the required mandates. Specifically, large employers failing to meet the 70 and 95 percent thresholds may face a penalty equal to \$2,000 multiplied by the total number of an employer's full-time employees. In addition, employers may incur another penalty if any full-time employee is not offered coverage and later enrolls in a health insurance plan through NY State of Health or other exchange and qualifies for a premium rebate or subsidy. In this case, the penalty is \$3,000 per employee. This penalty is only assessed against the actual number of employees that enroll in a plan offered through the exchange with premium rebates or subsidies (whereas the earlier penalty is assessed against all of an employer's full-time employees).

To comply with these requirements, health insurance coverage must provide minimum essential coverage and meet federal affordability thresholds. The Employee Benefits Division notes that the Empire Plan well exceeds the standards for providing minimum essential coverage. Compliance with the affordability thresholds, however, will depend on the premium sharing arrangements that employers have in place with their employees.

For the purposes of these provisions, PPACA defines large employers as those with at least 50 full-time employees. PPACA further defines full-time employees as those working 30 hours per week or more. The federal government's formal guidance for both determining an employer's total number of employees and their status as full-time or part-time is quite complex. As a result, the Employee Benefits Division recommends consulting your benefits consultant or legal counsel for further advice.

Large Employer Reporting Requirements

Under PPACA, large employers are required to report to full-time employees and the IRS whether coverage was offered to such employees. Additionally, large employers are required to report enrollment information for nearly all covered enrollees, including part-time and full-time employees, non-Medicare retirees, and other covered groups, such as COBRA beneficiaries (Medicare-primary enrollees are excluded from this requirement). This information, which employers must report to enrollees and the IRS, will assist your enrollees in satisfying PPACA's individual mandate provisions. These reporting requirements are the responsibility of the employer, not the State of New York. In addition, each employer, not the State, is responsible for identifying its full-time employees and reporting the required information. The Employee Benefits Division recommends employers subject to these provisions begin to act now, as the required forms must be provided to employees and enrollees no later than January 31, 2016. Based on IRS guidance, most large employers will use Forms 1094-C and 1095-C to fulfill the reporting requirements. To complete this form accurately, employers should use the NYSHIP Agency Reconciliation Report available through NYBEAS, which includes enrollee and dependent names, Social Security numbers, and periods of coverage. For instructions on how to generate this report please review HBA Memo PE11-08/ PA11-08/ PAEX11-05.

Small Employer Reporting Requirements

Small employers participating in a self-insured health plan, such as the Empire Plan or the Excelsior Plan, are required to report enrollment information to nearly all covered enrollees, including part-time and full-time employees, non-Medicare retirees, and other covered groups, such as COBRA beneficiaries (Medicare-primary enrollees are excluded from this requirement). This information, which employers must report to enrollees and the IRS, will assist your enrollees in satisfying PPACA's individual mandate provisions. Small employers are not subject to the Employer Shared Responsibility provisions, commonly known as the employer mandate. Based on IRS guidelines, small employers in self-insured plans, including the Empire Plan and the Excelsior Plan, will likely use Forms 1094-B and 1095-B to fulfill these reporting requirements. These reporting requirements are the responsibility of the employer, not the State of New York. To complete this form accurately, employers should use the NYSHIP Agency Reconciliation

Report available through NYBEAS, which includes enrollee and dependent names, Social Security numbers, and periods of coverage. For instructions on how to generate this report please review HBA Memo PE11-08/ PA11-08/ PAEX11-05.

Resources

For the final regulations on the Employer Shared Responsibility issued by the federal government, go to: <https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage>. Additional information on the requirements of the Affordable Care Act, including the Employer Shared Responsibility provisions may be found at: <http://www.dol.gov/ebsa/healthreform/index.html>

Guidance on reporting requirements and copies of the applicable forms can be found at the links provided below.

Instructions for Forms 1094-C and 1095-C can be found at: <http://www.irs.gov/instructions/i109495c/> . Copies of these forms can be found at: <http://www.irs.gov/pub/irs-pdf/f1094c.pdf> and <http://www.irs.gov/pub/irs-pdf/f1095c.pdf> .

Instructions for Forms 1094-B and 1095-B can be found at: <http://www.irs.gov/instructions/i109495b/> . Copies of these forms can be found at: <http://www.irs.gov/pub/irs-pdf/f1094b.pdf> and <http://www.irs.gov/pub/irs-pdf/f1095b.pdf> .

For complete information concerning all of the information discussed in this memo, such as the Employer Shared Responsibility provisions, how to determine whether your entity is a “large” employer, how the penalties will be assessed, and employer reporting requirements, the Employee Benefits Division recommends consulting your benefits consultant or legal counsel.