



What Texas School Officials Should Understand About the Affordable Care Act

The Patient Protection and Affordable Care Act (ACA), also known as ObamaCare, enacted sweeping changes to the healthcare system. Among other things, the ACA mandates that individuals maintain health insurance on themselves and their dependents, and penalizes large employers that fail to offer affordable insurance to full-time employees. The ACA has been controversial and some provisions have been repealed or delayed. Nonetheless, the ACA is the law of the land and districts must prepare for compliance.

The ACA impacts employers in a number of ways. Three separate but interrelated requirements take effect over the next two years: the requirement to offer coverage, the affordability requirement, and a new IRS reporting requirement. This article explains which districts are covered by the ACA, provides an overview of the three key requirements, discusses progress towards compliance, and identifies what board members should understand about each requirement.

Background

Covered employers: The three requirements apply to a *large employer*, defined under the ACA as averaging 50 or more full-time employees (including a workforce extender – see below) per calendar month over the preceding calendar year. In other words, a district that averages 50 or more full-time employees per month, including the workforce extender, in 2014 will be considered a large employer in 2015.

- What board members should understand: ACA coverage is determined at the beginning of each calendar year based on the number of employees the previous calendar year. A district's status as covered or not covered may vary from year to year with workforce fluctuations.

Workforce extender:¹ In order to prevent employers from avoiding the requirements of the ACA by employing multiple part-time employees, the ACA requires an employer to include the hours worked by part-time employees in determining the size of its workforce. Solely for purposes of determining workforce size, a district must calculate a workforce extender (WFE) for each calendar month. The WFE is calculated by summing all hours worked in a calendar month by employees who are not full-time (as defined by the ACA) then dividing by 120. The result is added to the number of full-time employees for the month. The district must repeat this

¹ The ACA uses the term *full-time equivalent* not *workforce extender*. Many school districts use full-time equivalent to refer to an individual job position. This article uses the term workforce extender to avoid confusion.

calculation for each calendar month then calculate an average. For 2015 only, workforce size is determined by averaging only six calendar months (from 2014) rather than all 12 months of the previous calendar year. A district may use the summer months in calculating the six-month average for 2014.

Not every district needs to calculate a WFE:

- For 2015, only districts that may average less than 100 employees (full-time employees plus WFE) in 2014 should calculate workforce size.
 - A district that averaged 50-99 employees (full-time employees plus WFE) may be exempt from the requirement to offer coverage and the affordability requirement until the first day of the 2016 plan year. The district must file a certification with the IRS in early 2016 to take advantage of this extension. Regardless of whether the district claims the extension, the district is subject to the reporting requirement as of January 2015.
 - A district that averaged 49 or fewer employees (full-time employees plus WFE) is not a large employer and therefore is not covered by the ACA for 2015.
- For 2016 and beyond, only districts that are not sure whether they averaged 50 or more employees (full-time employees plus WFE) should calculate workforce size. If a district averaged less than 50 employees the previous calendar year, it is not a covered employer during the current calendar year.
- What board members should understand: If a district averages less than 100 full-time employees (including WFE) over six months in 2014, the district may be able to postpone compliance with some of the ACA requirements until 2016. A district that averaged 49 or fewer employees in 2014 is exempt from all requirements for 2015, but may have to recalculate workforce size each calendar year.

Full-time employees: Employees who are regularly scheduled for 30 or more hours per week (teachers, counselors, administrators, other professionals, and many hourly employees) are considered full-time. In addition, employees who are not regularly scheduled for 30 or more hours per week, such as substitutes, are considered full-time for any calendar month in which they actually work 130 or more hours. A district that does not participate in TRS-ActiveCare can use a look-back period of 3-12 months to determine whether an employee averages 30 or more hours per week. Look-back periods are extremely complicated to administer.

- What board members should understand: The ACA's definition of full-time status may impact substitutes. A substitute will be considered full-time under the ACA if she is regularly scheduled for 30 or more hours per week (permanent or long-term substitutes) or if she actually works 130 or more hours in a calendar month.

Hours of service: All hours worked or paid are considered when determining an employee's hours in a week or month. Special rules apply when determining the hours of an employee who is paid a daily or half-daily rate. For example, a substitute who is paid a half-daily rate must be

credited with 8 hours for every calendar day worked. To avoid these 8-hour equivalents, a district must track substitutes' actual hours of work (start and stop times) even if the district continues to pay on a daily or half-daily rate.

- What board members should understand: Eight-hour equivalents may increase the number of hours a substitute is deemed to have worked for ACA purposes. To avoid the impact of 8-hour equivalents, a district must track start and stop times. This tracking may require additional resources such as additional staff and/or software.

Requirement to Offer

Effective date: This requirement takes effect January 2015. However, a district may avoid the penalty for the 2015 plan year if it offers insurance to at least 70% of its full-time employees as of the first day of the 2015 plan year. Districts with an average workforce of 50 to 99 full-time employees, including WFE, in 2014 may be eligible for a delay to the first day of the 2016 plan year.

Basics: A district faces a penalty for any month that it does not offer insurance to at least 95% of its employees who meet the ACA definition of full-time for that month.² (For the 2015 plan year, the substantial compliance target is 70%, not 95%.) The penalty is \$167³ times every full-time employee for the calendar month (less 30). For example, a district with 250 full-time employees in a calendar month is potentially subject to a penalty of over \$36,000 – for one month—if it did not offer insurance to at least 95% of the employees who were full-time for that month. Remember that *full-time* includes any substitute or other employee who worked 130 or more hours for the calendar month.

An employer complies with this requirement if it offers coverage to an eligible employee at least once per plan year, even if the employee declines. For purposes of this penalty, the cost of coverage is irrelevant. However, the affordability penalty may apply if insurance is offered but is too costly.

Progress toward compliance: To avoid the hefty penalty for failure to offer coverage, a district must offer insurance to any employee who could potentially work 130 or more hours in any calendar month during the plan year, including part-time employees who work in more than one capacity and substitutes.

About 90% of districts participate in TRS-ActiveCare. A person who is a TRS member or who is employed by a district for 10 or more regularly-scheduled hours per week is eligible for TRS-ActiveCare, including substitutes. Accordingly, those districts that participate in TRS-ActiveCare are able to offer coverage to most, if not all, employees who could potentially work 130 or more hours in a calendar month.

² An employer must offer insurance to its employees *and their dependents*. Texas districts already offer insurance to dependents so this requirement is not discussed in this article.

³ This amount will be adjusted for inflation starting in January 2015.

Most non-ActiveCare districts extend eligibility only to employees who are TRS members, which excludes substitutes. Compliance strategies for non-ActiveCare districts include: (1) expanding plan eligibility to include all employees who could potentially work 130 or more hours in a calendar month, such as substitutes; or (2) aggressively managing hours worked by substitutes and other part-time employees to ensure that few, if any, works 130 or more hours in any calendar month.

- What board members should understand: The requirement to offer coverage carries a hefty penalty. To avoid the penalty, a district must ensure that most or all employees who potentially work 130 or more hours in a month are offered health insurance.
 - TRS-ActiveCare: districts should be able to meet the 70% target for the 2015-16 plan year (95% for the 2016-17 plan year) due to broad eligibility rules
 - Non-ActiveCare: districts must decide whether to expand eligibility or limit hours of substitutes and part-time staff

Affordability Requirement

Effective date: This requirement takes effect January 2015, except as to employees who are offered affordable insurance as of the first day of the 2015 plan year. Districts with an average workforce of 50 to 99 full-time employees, including WFE, in 2014, may be eligible for a delay to the first day of the 2016 plan year.

Basics: A district is subject to a penalty if it fails to offer affordable insurance to one or more full-time employees. Insurance is *affordable* if the net monthly cost to the employee is less than or equal to 9.5% of the employee's monthly household income. *Net monthly cost to the employee* is based on the lowest-cost, employee-only option, net of the employer contribution—even if the employee actually selects a more costly option.

Because employers cannot accurately determine an employee's household income, three safe harbors are available for calculating *monthly household income*. For most districts, the rate of pay safe harbor—the employee's hourly rate times 130—is the best method for determining monthly household income. Some districts may be able to use the federal poverty line safe harbor.

The monthly penalty is \$250⁴ for every applicable employee. An applicable employee is an employee for whom coverage is not affordable and who: (1) is full-time *that month*; (2) obtains coverage through the Health Insurance Marketplace, and (3) qualifies for a premium tax credit.

Progress toward compliance: State law requires districts to contribute a minimum of \$225 per month for every employee who enrolls in insurance through the district and who is a TRS member.⁵ Many districts contribute more than the minimum. Because of this contribution, insurance will be affordable under the ACA for most employees who are TRS members. Each

⁴ This amount will be adjusted for inflation beginning January 2015.

⁵ A portion of this payment—\$75—comes from state funds.

district will need to determine whether its insurance is unaffordable for any employees and, if so, either increase the district's premium contribution or increase the hourly rates of employees for whom insurance is not affordable.

State law does not require districts to contribute toward the premiums of employees who are not TRS members, such as substitutes. Without the premium contribution, district insurance will not be affordable for substitutes. A district is potentially subject to a \$250 penalty for every substitute who works 130 or more hours in a calendar month.

To avoid the penalty as to substitutes, a district must manage hours worked to avoid full-time status. Because capping hours worked by all substitutes every month is impractical, districts may opt to selectively pay this penalty. In other words, a district may cap the hours worked by most substitutes but make exceptions where the value of the substitute outweighs the risk of the penalty. Remember, the penalty only applies if a substitute qualifies for a premium tax credit so a district probably will not owe the penalty on every substitute every month.

- What board members should understand: School district insurance is affordable, under the ACA, for most employees who are TRS members, with the possible exception of the lowest paid employees. District insurance is not affordable for substitutes unless a district opts to pay the premium contribution. Unlike the failure to offer penalty, the affordability penalty is not potentially catastrophic and can be managed. Managing the penalty may require additional resources to track and manage hours worked by substitutes and part-time employees.

Reporting Requirement

Effective date: Districts must begin tracking data as of January 2015, but the first report is not due until March 2016. For 2015, the reporting requirement applies to every district that averaged 50 or more employees (full-time plus WFE) during 2014, even districts that may be eligible for an extension of the requirement to offer coverage or the affordability requirement.

Basics: A district must file a report with the IRS listing all full-time employees for each calendar month in the previous calendar year and whether each reported employee was eligible for benefits. The district must also provide a statement to every employee listed on the IRS report—every employee who was full-time for even one calendar month the preceding calendar year.

The IRS will use the information from employer reports, as well as information from individual tax returns and reports filed by insurance plans, to determine which individuals were without insurance for any month(s) during the previous calendar year. If the IRS concludes that a district failed to offer affordable insurance to one or more full-time employees for any month(s), the IRS will send the district a statement including any penalties. The district will have an opportunity to respond before it must make payment.

Progress toward compliance: Most districts do not maintain payroll and personnel data in a format that lends itself to ACA reporting. Systems for tracking hours worked, as defined by the ACA, and benefit eligibility should be in place by January 2015 so that districts can track the data in real time and create the reports that are due in 2016.

- What board members should understand: Beginning in 2016, districts must file reports showing the number of full-time employees per calendar month and whether they were benefit-eligible. The first reports will cover 2015 data. Tracking and reporting may require additional resources.

Conclusion

The Affordable Care Act will present a number of challenges to school districts as employer requirements begin to take effect over the next couple of years. Compliance efforts will require additional resources. Many districts will implement controls on substitutes and other contingent staff in order to manage potential penalties. Districts that do not participate in TRS-ActiveCare must reconsider eligibility rules. Board members can expect to see the health care landscape continue to evolve as more elements of the ACA take effect.

For more information on this and other school law topics,
visit TASB School Law eSource online at schoolawesource.tasb.org.

Holly Murphy, June 2014

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.