AGENDA

• Affordable Care Act (ACA) Progression
• Employer Shared Responsibility
• Additional ACA Fees (PCORI/Transitional Reinsurance Fee)
• IRS Reporting
• Excise (Cadillac) Tax Overview
• Financial Impact of the Excise (Cadillac) Tax
THE LAWYERS MADE ME SAY IT.

Wellmark is not providing any legal advice with regard to compliance with the requirements of the Affordable Care Act (ACA) or the Mental Health Parity Addiction Equity Act (MHPAEA). Regulations and guidance on specific provisions of the ACA and MHPAEA have been and will continue to be provided by the U.S. Department of Health and Human Services (HHS) and/or other agencies. The information provided reflects Wellmark’s understanding of the most current information and is subject to change without further notice. Please note that plan benefits, rates, renewal rate adjustments, and rating impact calculations are subject to change and may be revised during a plan’s rating period based on guidance and regulations issued by HHS or other agencies. Wellmark makes no representation as to the impact of plan changes on a plan’s grandfathered status or interpretation or implementation of any other provisions of ACA. Any questions about Wellmark’s approach to the ACA or MHPAEA may be referred to your Wellmark account representative. Wellmark will not determine whether coverage is discriminatory or otherwise in violation of Internal Revenue Code Section 105(h). Wellmark also will not provide any testing for compliance with Internal Revenue Code Section 105(h). Wellmark will not be held liable for any penalties or other losses resulting from any employer offering coverage in violation of section 105(h). Wellmark will not determine whether any change in an Employer Administered Funding Arrangement affects a health plan’s grandfathered health plan status under ACA or otherwise complies with ACA. Wellmark will not be held liable for any penalties or other losses resulting from any Employer Administered Funding Arrangement. For purposes of this paragraph, an “Employer Administered Funding Arrangement” is an arrangement administered by an employer in which the employer contributes toward the member’s share of benefit costs (such as the member’s deductible, coinsurance, or copayments) in the absence of which the member would be financially responsible. An Employer Administered Funding Arrangement does not include the employer’s contribution to health insurance premiums or rates.

TO SIMPLIFY THINGS:

- This is not legal advice
- Regulations and guidance is provided by HHS and is incomplete
- Anything can change without notice
- Consult your tax advisor for compliance with the IRS code
- Wellmark is not responsible for penalties or losses due to employer coverage violations
- Seek legal advice to determine changes that may impact grandfathered status
- Any questions, talk to your Wellmark representative
TIMELINE FOR ACA PROVISIONS

- Employer Shared Responsibility
- Information Reporting
- Cadillac Tax
2 EMPLOYER SHARED RESPONSIBILITY
WHO IS SUBJECT TO EMPLOYER SHARED RESPONSIBILITY?

Applicable Large Employers

Special Considerations
• Transition relief for 2015
• Seasonal worker exception
• Controlled group aggregation rules
• Successor (buyer) and new employers

50 or more full-time and full-time equivalent employees during the prior calendar year
FULL-TIME AND FULL-TIME EQUIVALENT EMPLOYEES

Full-time (FT) employees: 30 or more hours of service per week, or 130 hours per month

Full-time equivalent employees: employers total monthly non-full-time service hours (up to 120 per employee), divided by 120

Only important for determining Applicable Large Employer (ALE) status
WHO MUST AN EMPLOYER OFFER COVERAGE?

Full-time employees

Employees averaging 30 or more hours of service per week, or 130 hours per month

Special Considerations

• Common law employees
• Methods for tracking hours (actual, equivalency, or reasonable alternative)
• Measurement methods (monthly or look-back)
**Administrative Decisions for Employers**

<table>
<thead>
<tr>
<th>Employer Decisions</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of service calculations</td>
<td>Actual, equivalency, other</td>
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<td>• Measurement, administrative, stability</td>
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<td>Use of 2015 transition relief</td>
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<td>W2, rate of pay, FPL</td>
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</tbody>
</table>

*Categories:
1. Each group of collectively bargained employees covered by a separate agreement
2. Collectively bargained vs. non-collectively bargained
3. Salaried vs. hourly employees
4. Employees whose primary places of employment are in different states
WHAT IS AN HOUR OF SERVICE?

Included:

• Hours worked

• Hours not worked but paid or entitled to pay for:
  – Vacation
  – Holiday
  – Illness
  – Incapacity (including disability)
  – Layoff
  – Jury Duty
  – Military Leave
  – Leave of absence

Excluded:

• Unpaid/tax-exempt volunteers
• Government work study programs
• Religious order vows of poverty
• Foreign-source income
ACA DEFINITION OF FULL-TIME EXPANDS ELIGIBILITY

Full-time employee pool

- 40 Hours Worked
- 30 Hours Worked
- 30 Hours of Service

Includes hours worked and hours not worked but entitled to pay for:
- vacation
- holiday
- illness
- incapacity (including disability)
- layoff
- jury duty
- military duty
- leave of absence
DISPARATE DATA AND OWNERSHIP

- Payroll
- Human Resources
- Coverage Eligibility
- Absence Management
- Jury Duty
- Time-tracking Systems

Hours Worked and Paid Time Off
### WHY EMPLOYERS MUST TRACK HOURS OF SERVICE

<table>
<thead>
<tr>
<th>Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determine Applicable Large Employer Status</td>
</tr>
<tr>
<td>Determine Full-time Employee Status</td>
</tr>
<tr>
<td>Information Reporting Requirements</td>
</tr>
<tr>
<td>Penalty Assessment and Demands</td>
</tr>
</tbody>
</table>
# Measurement Method Comparison

<table>
<thead>
<tr>
<th>Two permitted measurement methods</th>
<th>Monthly</th>
<th>Look-Back</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Approach for determining full-time status</strong></td>
<td>Based on hours of service for each calendar month</td>
<td>Based on hours of service during a look-back period of three (3) to 12 months</td>
</tr>
<tr>
<td><strong>When to offer affordable, MV coverage to new full-time employees to avoid ESR penalties</strong></td>
<td>By the first of the month following three (3) full calendar months of employment&lt;sup&gt;1&lt;/sup&gt;</td>
<td>By the first of the month following three (3) full calendar months of employment&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Break in service (e.g., rehiring a former employee or when an employee returns from a period of unpaid leave)</strong></td>
<td>Treated as new employee if 13 or more weeks with no hours of service&lt;sup&gt;2, 3, 4&lt;/sup&gt;</td>
<td>Treated as new employee if 13 or more weeks with no hours of service&lt;sup&gt;2, 3, 4&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Special unpaid leave (FMLA, USERRA military leave, and jury duty)</strong></td>
<td>N/A</td>
<td>Ignore period of leave when averaging hours or calculate at same average weekly rate not part of leave</td>
</tr>
<tr>
<td><strong>Employment break of four or more consecutive weeks for employees of educational organizations</strong></td>
<td>N/A</td>
<td>Ignore period of break when averaging hours or calculate at same average weekly rate as active period (up to 501) hours, not counting any special unpaid leave</td>
</tr>
</tbody>
</table>

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<sup>1</sup> Rule applies once per period of employment

<sup>2</sup> Employees of educational organizations must have a break with no hours of service for 26 or more weeks before treated as new

<sup>3</sup> Rule of parity applies (may treat as new if no hours of service during a period that is at least four consecutive weeks and longer than the employee’s preceding period of employment, but shorter than 13 weeks (or 26 weeks for employees of educational organizations). Example: An employee works for three weeks, terminates, and is rehired ten weeks later. Such an employee can be treated as new because the 10-week break is more than four and less than 13 weeks, and is longer than the original three week period of employment.

<sup>4</sup> When treated as a new employee, the employer could restart the initial measurement period or apply a new 90-day waiting period for full-time employees.
The look-back measurement method:
While more practical for use by many employers, the look-back measurement method is significantly more complex than the monthly measurement method-and therefore the regulations contain extensive guidance with respect to how it works.
TREATMENT OF EDUCATIONAL ORGANIZATION EMPLOYMENT BREAKS DURING THE MEASUREMENT PERIOD

The final rules also require educational institutions that use a look-back measurement period to follow an averaging method for employment break periods.

For employees of educational organizations, a 12-month measurement period is permitted but a special rule applies that says for employment break periods (e.g. summer break) of four or more consecutive weeks, you must either:

1. Exclude: Exclude the employment break period (up to 501 hours of service not counting any special unpaid leave) from the measurement period when averaging.

2. Impute: Impute: Credit hours of service for the employment break period at a rate equal to the average weekly rate during the active period (up to 501 hours of service, not counting any special unpaid leave).

The rules governing employment break periods for educational organizations apply only to an employee treated as a continuing employee upon the resumption of services, and not to an employee treated as terminated and rehired. An educational organization cannot treat its employees who work during the active portions of the academic year as seasonal employees.
THE LOOK-BACK MEASUREMENT METHOD

Fundamentally, the look-back measurement method separate employees into two major categories.

1. Ongoing Employees — those who have been employed by the employer for at least one complete standard measurement period (full-time or part-time).

2. New Employees — those who have not been employed by the employer for at least one complete standard measurement period.
THE LOOK-BACK MEASUREMENT METHOD:
NEW EMPLOYEE SUBCATEGORIES

a. Those reasonable expected to be full-time and not seasonal.

b. And, variable hour, part-time and seasonal employees – defined accordingly:

   i. Variable hour employee
   ii. Part-time employee
   iii. Seasonal employees
HOW THE LOOK-BACK MEASUREMENT METHOD WORKS

**Measurement Period**
Employees who average at least 30 hours of service per week during a defined measurement period lasting between three (3)-12 months...

**Administrative Period**
...after an optional administrative period of up to 90 days following the measurement period...

**Stability Period**
...must be treated as full-time employees and offered coverage during a stability period that is at least as long as the measurement period and is no shorter than six (6) months.

**Simply put:**
- The measurement period is when employers track and measure employees to determine if full-time and otherwise eligible for coverage.

- The administrative period is when employers tabulate the results from the measurement period and offer coverage to those who qualify (as well as any period between an employee’s start date and the beginning of the initial measurement period).

- The stability period is when coverage is provided to full-time employees who qualified during the measurement period and elected coverage during the administrative period.
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1. Each group of collectively bargained employees covered by a separate agreement
2. Collectively bargained vs. non-collectively bargained
3. Salaried vs. hourly employees
4. Employees whose primary places of employment are in different states
WHAT IS A MINIMUM VALUE PLAN?

40% Member

60% Plan
METALLIC TIERS

Member Pays 40%
Insurance Plan Pays 60%
BRONZE

Member Pays 30%
Insurance Plan Pays 70%
SILVER

Member Pays 20%
Insurance Plan Pays 80%
GOLD

Member Pays 10%
Insurance Plan Pays 90%
PLATINUM
WHAT IS CONSIDERED AFFORDABLE?

The lowest cost single-only premium cannot exceed 9.56 percent of:

- **W-2 Safe Harbor**
  ...an employee’s W2 wages

- **Rate of Pay Safe Harbor**
  ...the computed monthly rate of pay
  - Hourly rate $ \times 130 \text{ hours per month} = \text{monthly rate of pay}

- **Federal Poverty Line Safe Harbor**
  ...the federal poverty level of a single individual
  - 2014 FPL $11,670 \times 9.5\% = $1,109/yr or $92.42/mo
APPLICABLE PENALTIES

Am I an applicable large employer? You are if you have 50 (100, in 2015) or more full-time and full-time-equivalent employees.

YES

NO

Not subject to employer shared responsibility requirements

Do I offer health coverage to at least 95% (70%, in 2015) of full-time employees (and their dependents)?

YES

NO

Does at least one full-time employee receive a premium tax credit/cost-sharing reduction?

YES

No Coverage Penalty: $2,000 x (Total number of full-time employees - 30 (80, in 2015)).

NO

No penalty

NO

No penalty

Do plan provide minimum value AND affordable coverage to full-time employees?

YES

NO

Does at least one full-time employee receive a premium tax credit/cost-sharing reduction?

YES

Inadequate Coverage Penalty: $3,000 x total full-time employees receiving a premium tax credit/cost sharing reduction.

NO

Penalty cannot exceed $2,000 x the total number of full-time employees - 30 (80, in 2015).

1 While applicable large employers that offer coverage to at least 95% (70%, in 2015) of their full-time employees (and their dependents) avoid the No Coverage Penalty, such employers are still subject to the Inadequate Coverage Penalty for full-time employees who receive federally subsidized Marketplace coverage, including those not offered coverage (e.g., the other 5% (30%, in 2015)).

2 Those are annual potential penalties that accrue monthly, and are subject to inflation adjustments.
3 ADDITIONAL ACA FEES
PATIENT-CENTERED OUTCOME RESEARCH INSTITUTE (PCORI)

- Independent, non-profit established by U.S. Department of Health and Human Services
- Goal: Funds research to study evidence-based methods to help patients and clinicians make better health care decisions
PCORI FEES

• Due annually on July 31 through 2019
• Self-funded employers required to:
  – Submit fees directly to the IRS
  – Complete Form 720 (Quarterly Federal Excise Tax Return)
• Fee based on average number of lives covered during the plan year using one of these methods:
  – Actual count
  – Snapshot
  – 550 form
• Annual fee 2016: $2.07 per covered life during the plan year* (2015 fee is $2.08)

* Prior year’s fee will be adjusted by the Secretary of Treasury to account for medical inflation for the plan year.
TRANSITIONAL REINSURANCE FEE

- Purpose: To help stabilize premiums in the individual market
- Paid annually in two installments for benefit years 2014, 2015, 2016
  - First installment – 2016 $21.60 (2015 $33)
ANNUAL INSURANCE FEE (SUSPENDED 2017)

- Health insurers are not required to pay these fees in 2017
- Fee was designed to off-set costs of expanding coverage under ACA
- Paid based on market share
- Wellmark to pass back the savings
4 IRS REPORTING
**Enforces Individual Mandate**

6055

- Employers with self-funded health plans
- Statements to enrolled contract-holders
  - Due by 1/31
- IRS transmittals
  - Due by 3/31

**Enforces Employer Mandate**

6056

- Applicable Large Employers
- Statements to all full-time employees
  - Due by 1/31
- IRS transmittals
  - Due by 3/31
# Employer Responsibility for Information Reporting

<table>
<thead>
<tr>
<th>Applicable Large Employer (ALE) Status</th>
<th>Funding Arrangement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Small Employer (Non-ALE)</strong></td>
<td></td>
</tr>
<tr>
<td>Less than 50 full-time, including full-time equivalent, employees</td>
<td>Fully Insured: FI Small <strong>NONE</strong></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Large Employer (ALE)</strong></td>
<td></td>
</tr>
<tr>
<td>50 or more full-time, including full-time equivalent, employees</td>
<td>Fully Insured: FI Large <strong>6056</strong> Form 1095-C (Parts I&amp;II)</td>
</tr>
</tbody>
</table>

Employee statements are reported on Forms 1095: IRS transmittals are reported on Forms 1094
### ALEs
- ESR reporting (6056)
  - Full-time employees
  - Coverage offer
  - Entire month to count

### SF Employers
- MEC reporting (6055)
  - Contract-holders
  - Inforce coverage
  - One day/month counts
  - Requires SSNs

---

**Form 1095-C**

**Employer-Provided Health Insurance Offer and Coverage**

**Part I**

<table>
<thead>
<tr>
<th>Employee</th>
<th>Applicable Large Employer Member (Employer)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of employee</td>
<td>Name of employer</td>
</tr>
<tr>
<td>Social security number (SSN)</td>
<td>Employer identification number (EIN)</td>
</tr>
<tr>
<td>Street address (including apartment no.)</td>
<td>Street address (including room or suite no.)</td>
</tr>
</tbody>
</table>

**Part II**

<table>
<thead>
<tr>
<th>Employee Offer and Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>All 12 Months</td>
</tr>
<tr>
<td>Offer of Coverage or other required code</td>
</tr>
<tr>
<td>Employer Share of Lowest Cost Monthly Premium for Self-Only Minimum Value Coverage</td>
</tr>
</tbody>
</table>

**Part III**

**Covered Individuals**

If Employer provided self-insured coverage, check the box and enter the information for each covered individual.

<table>
<thead>
<tr>
<th>Name(s) of covered individual(s)</th>
<th>All 12 Months</th>
<th>(DOE if SSN is not available)</th>
<th>Months of Coverage</th>
</tr>
</thead>
</table>

**Part III of this form reflects same information reported by insurers on form 1095-B**

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For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
WHAT ARE THE RISKS FOR FAILURE TO COMPLY?

RISK 1
10,000 full-time employees + 2,000 misclassified contingent workers

Could be subject to a $24M EXCISE TAX

RISK 2
Contingent liabilities, tax accruals and financial statement positions aren’t supported with appropriate documentation and internal controls

RISK 3
Employers need processes to respond and/or appeal Exchange determinations

Up to a $3,000 per employee penalty for receiving an incorrect premium tax credit

RISK 4
Significant technology changes may be needed for tracking employee eligibility and IRS reporting requirements

Up to $1.5 M

Source: Ernst & Young LLP, February 4, 2015 Webinar: How employers are implementing the ACA within their organizations -- Implementation of the Affordable Care Act (ACA)
5 EXCISE (CADILLAC) TAX OVERVIEW
WHAT IS THE EXCISE (CADILLAC) TAX?

Based on total cost of coverage: employer plus employee premium share

40 percent tax on health care costs over threshold:

- Annual - $10,200 single/ $27,500 family*
- Monthly - $850 single/$2,291 family*

* Threshold amounts will be updated before tax takes effect.
RECENT UPDATES TO THE CADILLAC TAX

The Consolidated Appropriations Act (2016) signed by President Obama on December 18, 2015, impacted the Cadillac Tax as follows:

- Effective date delayed from 2018 to 2020
- Tax is now deductible for employers who pay it
- Current published thresholds for high-cost plans will be updated before tax takes effect
- No regulations have been issued to date
WHAT IS THE PURPOSE OF THE EXCISE (CADILLAC) TAX?

- Reduces excess health care spending by employees and employers
- Reduces tax-preferred treatment of employer provided health care
- Helps finance the expansion of health coverage under the Affordable Care Act
HOW IS THE AGGREGATE VALUE OF BENEFITS DETERMINED?

Rules similar to those used to determine value of benefits for COBRA purposes.

1. Employer and employee paid premiums
2. All pre-tax contributions to HRA, HSA, and FSA accounts
3. Cost of onsite medical clinics and wellness programs
HOW IS THE AGGREGATE VALUE OF BENEFITS DETERMINED?

- The value of the plan must be lowered to avoid reaching the threshold
- Shifting costs to participants does NOT lower the value of the plan
- Age/gender adjustments may apply
- Tax is measured as a function of plan cost and not actuarial value
- Applies on a calendar year basis
WHO QUALIFIES FOR HIGHER APPLICABLE DOLLAR LIMITS?

Higher limits of $11,850 and $30,950 apply to:

• Retirees; or

• Individuals who participate in a plan sponsored by an employer where the majority of the employees covered by the plan are engaged in high-risk professions:
  – Law enforcement officers
  – Employees who engage in fire protection activities
  – Individuals who provide out-of-hospital emergency medical care (including EMTs, paramedics, and first responders)
  – Individuals whose primary work is longshore work
  – Individuals engaged in the construction, mining, agriculture (not including food processing), forestry, and fishing industries; or
  – Individuals who repair or install electrical or telecommunication lines
WHICH PRODUCTS ARE NOT AFFECTED BY THE EXCISE TAX?

- Long-term care insurance
- Hospital indemnity, accident, and critical illness paid with after-tax dollars
- Employee Assistance Programs that meet certain requirements
- Dental/vision if insured or separately administered
6 FINANCIAL IMPACT OF THE EXCISE TAX
The Congressional Budget Office (CBO) has lowered its estimate of projected revenue from the excise (Cadillac) tax.

Projected Excise (Cadillac) Tax Revenue Over 10 Years

In Billions

CBO Estimate as of Jan 2014: $120
CBO Revised Estimate - March 2015: $87

2 Modern Healthcare, March 2015; http://www.modernhealthcare.com/article/20150309/NEWS/150309909
HOW WILL THE EXCISE (CADILLAC) TAX BE CALCULATED?

2020 example:

\[
\begin{align*}
$10,600 & \quad \text{Annual Single Premium} \\
- $10,200 & \quad \text{Annual Tax Threshold} \\
\hline
$ 400 & \quad \text{Excise Tax Rate} \\
\times 40\% & \\
\hline
$ 160 & \quad \text{Tax per Individual}
\end{align*}
\]

On a per-month basis, this is equivalent to: $883 monthly single premium.
## It Can Add Up Quickly

<table>
<thead>
<tr>
<th>Example</th>
<th>Individual</th>
<th>Family</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of coverage</td>
<td>$10,600</td>
<td>$28,500</td>
<td></td>
</tr>
<tr>
<td>Threshold</td>
<td>$10,200</td>
<td>$27,500</td>
<td></td>
</tr>
<tr>
<td>Amount in excess of threshold</td>
<td>$400</td>
<td>$1,000</td>
<td></td>
</tr>
<tr>
<td>Excise (Cadillac) tax: 40 percent of excess</td>
<td>$160</td>
<td>$400</td>
<td></td>
</tr>
<tr>
<td>Number of enrollees</td>
<td>500</td>
<td>800</td>
<td></td>
</tr>
<tr>
<td>Penalty (Excise tax) x (no. of enrollees)</td>
<td>$80,000</td>
<td>$320,000</td>
<td>$400,000</td>
</tr>
</tbody>
</table>
WHAT ARE EMPLOYERS SAYING?

73% are very or somewhat concerned they will trigger the excise (Cadillac) tax.

62% say the excise (Cadillac) tax will have a moderate or greater impact on their health care strategy in 2015 and 2016.

48% are likely to trigger the tax in 2020.

HOW ARE EMPLOYERS PREPARING?

1 in 5 employers have projected an increase in future liabilities due to the excise (Cadillac) tax.

1 in 4 employers plan to restructure their benefits to deal with the excise (Cadillac) tax.

1 in 8 employers are building pre-funding of the excise (Cadillac) tax into premiums.
HOW ARE EMPLOYERS PLANNING TO MINIMIZE IMPACT?

- Add or expand tools to encourage plan participants to be better consumers: 73%
- Implement or expand account-based CDHPs: 57%
- Add or expand incentives / disincentives to engage employees in wellness programs: 53%
- Eliminate high cost plans: 30%
- Add or expand high performance networks, ACOs, PCMHs, or similar delivery models: 27%
- Move to a defined contribution model: 10%

Number of responses = 136. (Selected responses) Respondents were allowed to select more than one option.

**NEXT STEPS:**

1. Examine your compensation structure to determine if you can track actual hours worked (e.g., hourly staff) or whether you need to establish a consistent method for crediting hours of service using an equivalency method (e.g., salaried staff).

2. Determine which measurement method(s) is right for your organization.

3. Decide if you will vary measurement types or periods by the permitted categorization of employees (e.g., salaried and hourly, or collectively bargained and non-collectively bargained).

4. If using the look-back measurement method, establish the length and dates of your measurement, administrative, and stability periods.

5. Keep good records of all employees’ service hours, and offer coverage to those determined to be full-time at least once per plan year (as applicable), to avoid penalties. Even if service hours are straightforward, you may need these records in case one of your full-time employees obtains subsidized Marketplace coverage and you subsequently receive a penalty assessment (whether or not justified) from the IRS — which could occur months or even years down the road.

6. As always, consult with your legal and tax advisors, and remember that your Wellmark representative is here to assist you.
Questions?
THANK YOU!

Alice Wilson

Email: wilsonam@wellmark.com