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Compliance *focus*

Pay Attention to New State Reporting Requirements for Employers

When Congress repealed the ACA individual mandate in 2017, the Congressional Budget Office (CBO) estimated that eliminating the penalty would lead to five million fewer people enrolling in non-group coverage by 2027. Some in the industry argued that the lack of a penalty would have a negative impact on the individual health insurance market by reducing the number of younger, healthier individuals purchasing individual health insurance policies.

In response, some states have begun to look into adding a state tax-based individual mandate. Massachusetts already had a state mandate prior to the enactment of the ACA; now four more states (California, New Jersey, Rhode Island, and Vermont) and the District of Columbia have passed new laws implementing a state mandate. New Jersey and Washington DC's laws are the first to go into effect in 2019.

In what will turn out to be an administrative challenge for multi-state employers, each state will have its own employer reporting requirement related to the mandate. The first new employer reporting (excluding existing reporting in MA) will be required beginning early in 2020 for employers with employees in NJ and DC. Employer reporting for CA and RI will begin early in 2021. VT rules and details have yet to be determined. The good news is that it appears most states will accept data from the federal 1094/1095 reporting, but each state will have a different process for submitting the necessary data.

Be Sure You Didn't Miss It!

Recap of 4th Quarter Issue Briefs and Alerts

COBRA Qualifying Events

COBRA requires covered employers to offer continued health plan coverage to qualified beneficiaries when they experience a COBRA “qualifying event.” Whether a qualifying event has occurred depends on whether an individual has experienced one of seven triggering events listed in the statute, and whether that event causes a loss of eligibility for health coverage.

It is important for employers subject to COBRA to discern whether an individual has in fact experienced a qualifying event to ensure that an election notice is provided on a timely basis and to avoid issues with carrier coverage or an inadvertent extension of the maximum coverage period.

More here: <http://benefitcomply.com/issue-brief-cobra-basics-what-is-a-cobra-qualifying-event/>

Offer of Coverage Requirements and Associated Penalties

As the IRS continues to actively enforce the employer shared responsibility payments and associated employer reporting requirements, we are reminded that the employer mandate under §4980H of the ACA remains in effect and requires compliance to avoid potential penalties. All applicable large employers (ALEs) are subject to §4980H offer of coverage requirements and §6056 employer reporting requirements. ALEs who fail to comply with §4980H offer of coverage requirements and report accordingly to the IRS via Forms 1094-C and 1095-C may find themselves subject to penalties (employer shared responsibility payments).

More here: <https://benefitcomply.com/issue-brief-%c2%a74980h-offer-requirements-and-associated-penalties-2/>

BENEFITS NEWS HIGHLIGHTS

- On September 25, 2019, the Kaiser Family Foundation published their [2019 Employer Health Benefits Benchmark Survey](#). The survey found that the “average annual premiums for employer-sponsored health insurance in 2019 are \$7,188 for single coverage and \$20,576 for family coverage.”
- On September 30, 2019, the IRS (Internal Revenue Service) issued [proposed Individual Coverage HRA \(ICHRA\) regulations](#) to address employer compliance with §4980H offer of coverage requirements, employer reporting requirements under §6055 and §6056, and §105(h) nondiscrimination rules. Perhaps most importantly, the proposed rules describe how an employer can determine when an ICHRA will be considered an offer of affordable minimum value coverage. For further information, check out our [Compliance Alert](#).
- On November 5, 2019, HHS (Health and Human Services) released an [update](#) to “its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations” – including increases to civil monetary penalties related to failures under HIPAA Privacy and Security Requirements.

IRS Announced 2020 Health FSA Contribution Limits

In Revenue Procedure 2019-44, the IRS sets forth a variety of 2020 adjusted tax limits. Among other things, the notice addresses slightly increased limits for employee contributions toward health flexible spending accounts (FSAs). The annual limitation has now increased by \$50 to \$2,750 for 2020. Employers who currently offer health FSAs may choose to increase the annual election limit for participants for the 2020 plan year.

More here: <https://benefitcomply.com/compliance-alert-irs-announces-2020-health-fsa-limits/>

HHS Finalized Rescission of HPID Requirements

On October 28, 2019, the Department of Health and Human Services (HHS) issued final regulations to rescind the requirement that employers and plan sponsors obtain and use a unique health plan identifier (HPID), as well as to eliminate the voluntary use of any other entity identifier (OEID). This rule finalizes the December proposed rule, making the elimination of the HPID requirement and OEID standard official, and allowing entities to continue using their Payer IDs for HIPAA standard transactions.

More here: <https://benefitcomply.com/hhs-finalizes-rescission-of-hpid-requirement/>

ERISA Documentation, Disclosures & Reporting

Most employee benefit arrangements, group health plans and non-group health plans, are employee welfare benefit plans covered by ERISA and required to comply with documentation, disclosure, and reporting requirements imposed under ERISA. Many employers fail to have compliant or current documentation in place, which puts them at risk in a variety of ways.

More here: <https://benefitcomply.com/erisa-documentation-disclosures-reporting/>

Updated Affordability Considerations

For purposes of individual eligibility for tax subsidies through a public Exchange, and for compliance with the employer shared responsibility rules under §4980H, it is important to understand whether coverage offered under an

BENEFITS NEWS HIGHLIGHTS

- In November, the DOL (Department of Labor) updated the SBC (Summary of Benefits and Coverage) templates, instructions, and related materials for plan years beginning on or after January 1, 2021.
- The IRS has released final tax forms and reporting instructions to be used as required under §6055 & §6056 of the ACA for the 2019 tax year, including: Final Instructions for Forms 1094-C & 1095-C and Final Instructions for Forms 1094-B & 1095-B
- On December 18, 2019, the FDA (Food and Drug Administration) released a proposed rule that, if finalized, would allow commercial importation of certain prescription drugs from Canada. See the FDA's Impact Analysis here.

employer-sponsored group health plan is “affordable.” When setting plan contribution rates, employers must consider IRS employer affordability safe harbors, the various elements that play into the determination of the employee contribution, and the penalties associated with failing to offer affordable coverage.

More here: <https://benefitcomply.com/issue-brief-affordability-considerations/>

IRS Provides 2019 Transition Relief and an Extended Deadline for Providing Form 1095 to Employees and Participants

As in previous years, the IRS announced in Notice 2019-63 that it has extended the due date to March 2, 2020 (instead of January 31, 2020) for employers and insurance companies to provide 2019 Form 1095s to individuals. In addition, the penalty relief available for good faith reporting errors continues to be available. New this year is relief related to providing Form 1095s to certain individuals.

More here: <https://benefitcomply.com/compliance-alert-irs-provides-2019-transition-relief-and-an-extended-deadline-for-providing-form-1095-to-employees-and-participants/>

Appellate Court Invalidates ACA’s Individual Mandate

In a 2–1 vote, a three-judge panel in the U.S. Court of Appeals for the 5th Circuit upheld the ruling by a U.S. District Court judge in *Texas v. the United States* that the individual mandate of the Affordable Care Act (ACA) is unconstitutional. However, the appellate court did not rule on whether this means that the entire ACA is unconstitutional. Instead, it sent the case back to the Texas District Court for further analysis.

More here: <https://benefitcomply.com/compliance-alert-appellate-court-invalidates-acas-individual-mandate/>

Cadillac Tax Repealed, PCORI Fee Extended, and Other Benefits Changes Contained in the End-of-Year Spending Bill Passed by Congress

Congress has passed the Further Consolidated Appropriations Act, 2020 (the spending bill). The massive bill funding the federal government includes important provisions related to employer-sponsored health and welfare plans. Most importantly, the spending bill repeals a number of ACA-related taxes, including the so-called “Cadillac Tax” on high-cost health plans, the health insurance tax (HIT) that applies to health insurance companies, and the medical device tax. However, the Patient-Centered Outcomes Research Institute (PCORI) fee, which had been scheduled to expire, was extended until 2029.

More here: <https://benefitcomply.com/compliance-alert-cadillac-tax-repealed-and-other-benefits-changes-contained-in-the-end-of-year-spending-bill-passed-by-congress/>

Quarterly Q&A

What documentation/proof are employers required to receive before permitting a midyear pre-tax election change or verifying dependent status during open enrollment?

What does the law require?

The tax code does not require an employer to receive verification of a reason for a requested pre-tax election change beyond the employee's own certification, so long as the employer has no reason to believe that the employee's certification is incorrect.

Similarly, ERISA does not require any additional verification other than an employee's certification that eligibility criteria are satisfied.

What can the plan require?

Although neither the tax code nor ERISA generally require verification of the occurrence of an event beyond the employee's own certification, many employers voluntarily choose to require additional verification before making such a change to an employee's election.

There are no federal guidelines or restrictions on what a plan can require an employee to provide to verify the occurrence of an event in connection with a requested change. Common items requested by employers include marriage certificates, birth certificates, or proof of enrollment in another employer's plan. It can be helpful for employers to have a list of items they will accept to verify an occurrence so that when an event occurs, they can refer to the list.

What does the plan require?

Employers are required to have a written §125 Cafeteria Plan Document if they are permitting employees to make pre-tax contributions to pay for benefits. Further, employers are required to administer their pre-tax plan in accordance with the terms of their §125 Cafeteria Plan Document, or risk disqualifying the plan from tax exempt status for all participants. Whether the employer decides to require additional proof of the occurrence of an event that would permit a midyear pre-tax election change, or not, the requirements to make a change should be reflected in the employer's §125 Cafeteria Plan Document.

If the employer does not want to list every form of acceptable verification, language could be drafted to give the employer broad discretion in deciding what to accept. The employer should apply any requirement as consistently as possible for every requested change from every employee to avoid the appearance of discrimination.

Also keep in mind that employers have a duty to follow the terms of their ERISA plan document and SPD. If additional verification is required under the terms of the plan, the employer should strictly enforce these requirements as well.