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INSURANCE BRIEF

Ringin in the ACA in 2016

Congress and the Departments were busy at the end of 2015 passing bills and issuing Notices and Final regulations addressing different provisions of the Affordable Care Act (ACA). We'll cover them beginning with the most recent release.

Employer Reporting Deadlines

The Internal Revenue Service (IRS) released [Notice 2016-4](#) on December 28th, which extends the deadlines for Forms 1094 and 1095 information reporting. As you know, information reporting under Code Sections 6055 and 6056 relates to both offers of coverage and enrollment in health coverage, and is designed to help the IRS administer premium tax credits, employer shared responsibility under Code Section 4980H, and the individual shared responsibility under Code Section 5000A.

Health insurance issuers, self-insured employers, government agencies, and other entities that provide minimum essential coverage during a calendar year must report the coverage to the IRS on Form 1094-B and to covered individuals on Form 1095-B. Applicable large employers (ALEs) must report coverage provided to full-time employees on Forms 1094-C and 1095-C.

The following chart shows the revised reporting deadlines for 2015 coverage:

Requirements	Original Due Date	New Due Date
1095-B / 1095-C due to employees	February 1, 2016	March 31, 2016
1095-B / 1095-C and 1094-B / 1094-C paper filing due to IRS	February 29, 2016	May 31, 2016
1095-B / 1095-C and 1094-B / 1094-C eFile due to IRS	March 31, 2016	June 30, 2016

Entities responsible for reporting are still permitted to provide reporting forms before the original due dates.

Cadillac Tax Delay

On December 18, 2015 Congress passed a two-year delay of the 40% excise tax. This delay was part of the Consolidated Appropriations Act of 2016, known as the "Omnibus." President Obama signed it into law on December 18th.

Background: The tax applies to the cost of employer health plan coverage exceeding certain threshold amounts, which were originally set for 2018 at \$10,200 for individuals or \$27,500

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ACA Updates *cont'd*

for families. These thresholds will be adjusted annually to the Consumer Price Index (CPI) plus 1% initially and then CPI. Given that the pace of medical inflation is well beyond that of general inflation, the tax is destined to outgrow itself in short order and many employers will be impacted by the cost of the tax and the enormous compliance burden that the tax creates.

Key Provisions:

- The delay of the Cadillac/excise tax is effective for 2018 and 2019, meaning that without further legislative adjustment or repeal, the tax will now be scheduled to take effect beginning in January 2020.
- The tax will now be deductible to employers.

What's Next: Many employers, unions, insurers and industry groups have opposed the tax based on concerns around administrative and financial burdens for employers and adverse outcomes for employees. Efforts to change or repeal the tax are likely to continue.

Health Insurer Tax Suspended

The Omnibus also suspends the Health Insurer Tax (HIT), also known as the Health Insurance Industry Fee for 2017. The HIT fee began in 2014 and only impacts insured health plans. Employers with insured health plans have seen this tax passed through in their annual rates with an increase of around 2%.

Medical Device Tax

This tax which has been in effect since 2014 is now suspended for 2016 and 2017.

Auto-enrollment Repealed

As part of the Bipartisan Budget Act of 2015 passed by Congress in November this provision was repealed. The ACA did not specify an effective date for the automatic enrollment requirement. Guidance in 2012 indicated employers were not required to comply until final regulations were released from the Department of Labor. Employers are still free to implement auto-enrollment as a strategy to decrease employees' eligibility for premium tax credits and thereby reduce employer penalty exposure.

Affordability and Minimum Value (MV)

The IRS released [final regulations](#) addressing eligibility for health insurance premium tax credits. They finalize parts of the 2013 proposed regulations including the following:

Wellness Program Incentives: Incentives under a nondiscriminatory wellness program that reduce either cost-sharing or premiums generally are not taken into account as amounts paid by the plan for purposes of determining the plan's MV Percentage or affordability—unless the program is designed to prevent or reduce tobacco use. Thus, wellness incentives are taken into account for affordability and minimum value only if they relate to tobacco use, in which case it is assumed that the employee qualifies for the incentive.

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5500 Filing Extension Repealed

We reported in the October *Insurance Brief* that legislation enacted in July 2015 had lengthened the maximum extension from 2 ½ months to 3 ½ months. Now as part of the "[Fixing America's Surface Transportation Act](#)" this has been repealed. For calendar-year plans who file an extension the deadline is once again October 15th.

ACA Updates *cont'd*

Employer Contributions to HRAs. Amounts newly made available for the current plan year under an integrated HRA are treated as follows: (1) amounts that may be used only for cost-sharing (and not for paying premiums) are taken into account in determining the MV Percentage; and (2) amounts that may be used for paying premiums are taken into account in determining a plan's affordability, but not for determining its MV Percentage. The preamble clarifies that HRA contributions are only taken into account if the HRA and the primary employer-sponsored coverage are offered by the same employer. In addition, employer contributions to an HRA reduce an employee's required contribution (or count towards providing minimum value) only to the extent the amount of the contribution is required under the terms of the plan or is determinable within a reasonable time before the employee must decide whether to enroll. According to the preamble, additional regulations will finalize other minimum value rules.

Employer Contributions to Cafeteria Plans. For purposes of affordability, the final regulations adopt the rule that an employee's required contribution is reduced by employer contributions under a cafeteria plan that (1) may not be taken as a taxable benefit, (2) may be used to pay for minimum essential coverage, and (3) may be used only to pay for medical care within the meaning of Code § 213.

What's Next: The proposed minimum value regulations on inpatient hospital and physician services have not been finalized so we will have to wait for future regulations on this topic.

Employer Shared Responsibility

The IRS issued [Notice 2015-87](#) to provide guidance on how various ACA provisions apply to employer sponsored plans. It is generally applicable to plan years beginning on or after December 16, 2015. Here are some highlights from the Q&A included in the Notice.

Adjustments to 9.5% Affordability Standard. Starting in 2015, the IRS began indexing the percentage of household income that employees may be required to pay for employer-sponsored coverage when determining affordability under Code § 4980H. Q/A-12 indicates that indexing applies to all provisions under Code §§ 4980H and 6056 that reference the 9.5% standard, including the three § 4980H affordability safe harbors. The IRS intends to amend the associated regulations; in the interim, employers may rely on the indexed percentages (9.56% for 2015 and 9.66% for 2016).

Adjusted Penalty Amounts. Q/A-13 confirms the indexed penalty amounts under Code § 4980H. For 2015 and 2016, the penalty amounts are \$2,080 and \$2,160, respectively, under Code § 4980H(a) and \$3,120 and \$3,240, respectively, under Code § 4980H(b). Adjustments for future years will be posted on the IRS.gov website.

Affordability. Q/As-7, -8, and -9 explain how employer contributions affect the amount employees are required to pay to purchase employer-sponsored coverage. In general, employer contributions reduce employees' required contributions so long as they can be used exclusively for medical expenses (including coverage under an employer-sponsored health plan)—but not if they can be received as taxable benefits or used to purchase non-health benefits. Transition relief allows employers to treat certain employer contributions not satisfying the general principle as reducing an employee's required contribution for purposes of Code § 4980H(b) for plan years beginning before 2017 if requirements set forth in the guidance are met. In addition, future proposed regulations are expected to reflect that unconditional opt-out payments (available to employees declining employer-provided health coverage and not

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Health FSA Carryovers & COBRA

Included in IRS [Notice 2015-87](#) are Q & A addressing health FSA carryovers and COBRA. Notice 2013-71 allows for up to \$500 of unused amounts remaining at the end of the plan year in a health FSA to be carried over into the following plan year. It has long been the case that qualifying health FSAs need not offer COBRA coverage unless the qualified beneficiary's account is "underspent" when the qualifying event occurs. Q/A-21 explains that health FSA carryovers are included when determining the amount available for reimbursement.

Example. Facts: An employer maintains a calendar year health FSA that qualifies as an excepted benefit. Under the health FSA, during the open season an employee has elected to reduce salary by \$2,500 for the year. In addition, the employee carries over \$500 in unused benefits from the prior year. Thus, the maximum benefit that the employee can become entitled to receive under the health FSA for the entire year is \$3,000. The employee experiences a qualifying event that is a termination of employment on May 31. As of that date, the employee had submitted \$1,100 of reimbursable expenses under the health FSA.

Conclusion: The maximum benefit that the employee could become entitled to receive for the remainder of the year as a benefit under the health FSA is \$1,900 ((\$2,500 plus \$500) minus \$1,100).

In contrast, Q/A-22 states that carryovers are not included when determining the COBRA premium, which is based solely on the employee's salary reduction election and any additional employer contributions, if applicable.

Q/A-23 provides that, even though qualifying health FSAs are not obligated to provide COBRA beyond the end of the plan year, if a health FSA allows carryovers for non-COBRA beneficiaries, it must allow them on the same terms for similarly situated COBRA beneficiaries. Thus, at the end of the plan year, a qualified beneficiary could potentially carry over up to \$500 of unused amounts until the end of the applicable COBRA maximum coverage period, with no premium due. However, health FSAs may also limit carryovers to individuals who have elected to participate in the health FSA in the next plan year (Q/A-24) and may require that carryover amounts be forfeited if not used within a specified period of time, such as one year (Q/A-25).

Example. Facts: Employer sponsors a cafeteria plan offering a health FSA that permits up to \$500 of unused health FSA amounts to be carried over to the next year in compliance with Notice 2013-71, but only if the employee participates in the health FSA during that next year. To participate in the health FSA, an employee must contribute a minimum of \$60 (\$5 per calendar month). As of December 31, 2016, Employee A and Employee B each have \$25 remaining in their health FSA. Employee A elects to participate in the health FSA for 2017, making a \$600 salary reduction election. Employee B elects not to participate in the health FSA for 2017. Employee A has \$25 carried over to the health FSA for 2017, resulting in \$625 available in the health FSA. Employee B forfeits the \$25 as of December 31, 2016 and has no funds available in the health FSA thereafter.

Conclusion: This arrangement is a permissible health FSA carryover feature under Notice 2013-71.

What's Next: You can check your Sec. 125 plan documents to see if they reflect the carryover eligibility and duration you want for your active employees and COBRA participants. If they do not, a plan amendment would be necessary to make the desired changes.

ACA Updates *cont'd*

conditioned on satisfaction of other requirements (e.g., proof of coverage from a spouse's employer) are treated as increasing employees' required contributions for employer-sponsored coverage. The IRS generally anticipates that this rule will apply only after final regulations are issued, except that it will apply on adoption to unconditional opt-out arrangements adopted after December 16, 2015. Until the rule applies, employers are not required to treat opt-out payments as increasing employees' required contributions for purposes of reporting or Code § 4980H.

Definition of "Hour of Service" for Full-Time Employee Determination. Q/A-14 explains how the "hour of service" rules under DOL regulations apply when determining full-time status under Code § 4980H. For example, an hour of service under Code § 4980H does not include hours after termination of employment or hours paid solely to comply with a worker's compensation law, but short-term or long-term disability leaves generally result in credited hours of service for periods during which the recipient retains employee status and receives disability benefits directly or indirectly funded by the employer. Notably, the IRS states that disability benefits from coverage purchased with after-tax employee dollars will not give rise to hours of service. Moreover, the DOL's 501-hour limit on crediting paid, non-worked hours does not apply under Code § 4980H. The IRS intends to propose these clarifications as regulations under Code § 4980H, effective as of December 16, 2015.

Benefit and Payment Parameters for 2017

On November 20th, the Department of Health and Human Services (HHS) issued [proposed regulations](#) that address a wide range of Affordable Care Act (ACA) benefit provisions that will be effective for 2017 plan years. These rules are published each fall and finalized the next spring for the following plan year. Mostly they impact the Exchanges but included in the payment parameters is the annual limitation on cost sharing.

Out-of-Pocket Maximums. The proposed 2017 annual out-of-pocket maximums are \$7,150 for individual coverage and \$14,300 for family coverage.

Annual Open Enrollment Period. The proposed open enrollment period for the individual Marketplace for benefit year 2017 will begin November 1, 2016 and end January 31, 2017.

2017 Actuarial Value (AV) Calculator

Also on November 20th the Centers for Medicare & Medicaid Services (CMS) posted the draft [2017 Actuarial Value Calculator](#), along with the [2017 Methodology and User Guide](#). This calculator will be used by issuers of non-grandfathered health insurance plans offered in the individual and small group markets, both inside and outside of the Exchanges, to determine levels of coverage. The ACA groups health plans into four tiers: bronze, with an AV of 60%; silver, with an AV of 70%; gold, with an AV of 80%; and platinum, with an AV of 90%.

Please contact your SML Account Team if you have any questions.

Best wishes from all of us for a Happy New Year!





Employee Benefits

	<u>2015</u>	<u>2016</u>
Health Care Flexible Spending Account Maximum	\$2,550	\$2,550
Dependent Care Spending Account Maximum	\$5,000	\$5,000
Health Savings Accounts:		
• Maximum Individual Contribution	\$3,350	\$3,350
• Maximum Family Contribution	\$6,650	\$6,750
• Catch-Up Contribution	\$1,000	\$1,000
High Deductible Health Plans:		
• HDHP Minimum Annual Deductible (Individual)	\$1,300	\$1,300
• HDHP Minimum Annual Deductible (Family)	\$2,600	\$2,600
• HDHP Maximum Out-of-Pocket Limit (Individual)	\$6,450	\$6,550
• HDHP Maximum Out-of-Pocket Limit (Family)	\$12,900	\$13,100
Parking (Monthly)	\$250	\$255
Mass Transit Passes (Monthly)	\$250 (retro parity)	\$255
Bicycle Commuting (Monthly)	\$20	\$20
401(k) Limit	\$18,000	\$18,000
401(k) Catch-up	\$6,000	\$6,000