

Making Sense of Health Care Reform



**American Fidelity
Administrative Services**
a different opinion



Agenda

- Recent News
- Executive Actions
- Impact On Employers

But first...

American Fidelity Administrative Services, LLC does not provide tax or legal advice. While we're happy to provide you with this general information, given the complexity of these rules, we encourage you to contact your tax or legal counsel about how the requirements apply to your specific plans or situation.



Recent News

The Individual Mandate



Individual Mandate



- Penalty reduced to zero at the beginning of 2019
- Individual Mandate itself still exists



Challenges in the Courts

ESB-6305-0519

Texas v. United States



- Lawsuit brought by 20 states' attorneys general and governors
- Contends reduction of Individual Mandate penalty to zero invalidates the mandate, and that without the mandate, the entire ACA is invalid
- Federal judge ruled in favor of plaintiffs in December, 2018, though enforcement continues
- DOJ agrees with federal judge
- Oral arguments set for July 2019





States and Localities

States and Localities

- New York City recently announced a plan to guarantee health coverage to all residents
- CA governor Gavin Newsom has proposed a statewide requirement that every Californian have health insurance
- WA governor Jay Inslee has proposed a public option similar to Medicare but available to all residents
- NM studying a plan to expand the state's Medicaid program, allowing people who currently earn too much to qualify to buy into coverage



Executive Actions

HRA Expansion

HRA Highlights:

- Provide employers more control
- Valuable in budget-sensitive industries
- Are not required to be offered with qualified HDHP
- 100% employer funded

HRA Expansion

Proposed Regulations to Expand Usability of HRAs

- Attempt to “Undo” ACA Prohibitions
- Provide Employers With Additional Affordable Health Insurance Options
- Effective January 1, 2020 (If Finalized)
- Other Account-Based Health Plan Alternatives

Association Health Plans

- New regulations modify the definition of an employer under the Employee Retirement Income Security Act of 1974 (ERISA)
- AHPs can now form on the basis of common geography or industry, and can operate across state lines
- Not specifically geared to public sector, but may have a spillover effect as more doors open for associations considering sponsoring health plans
- Look for increased interest and activity in the areas of risk pooling, joint purchasing arrangements, formation of trusts, etc.
- Implementation blocked by federal court judge who called the final rule an "end run around the ACA"
- DOL is appealing the decision and published guidance that AHPs formed under the new rules prior to the court ruling may continue to the end of the plan year

Short-term, limited-duration policies

What your employees need to know

- Plans can provide coverage for up to 364 days
- May permit renewal at insurer's discretion for up to 36 months
- Loss of coverage under the short-term policy does not trigger a special enrollment period for Marketplace coverage – must wait for open enrollment
- May be entitled to HIPAA special enrollment rights under your group health plan if otherwise eligible to enroll in the plan at that time. BUT, no special enrollment rights for failure to pay timely premiums or voluntarily dropping coverage
- The plans remain available but face legal challenges and congressional scrutiny




Impact on Employers

Employer Reporting

Employers should continue to comply with the ACA, including preparing to meet their 2019 reporting obligations, which are due in early 2020.

The Employer Mandate, which requires large employers to offer affordable, adequate coverage to substantially all employees or face a shared responsibility payment, continues in full force.

Employer Reporting

 Department of the Treasury
Internal Revenue Service

Taxpayer Name
Taxpayer Address
City, ST Zip code

Date:
02/13/2018
Tax year:
2016
Employer ID number:
12-34567
Person to contact:
Tax Mann
Employee ID number:
5021548A
Contact telephone number:
(212) 555-1234
Contact e-tax number:
(212) 555-3456
Response date:
03/05/2018

Dear Taxpayer:

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP \$20,000.00

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least 100% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or
- You offered MEC to at least 100% of your full-time employees (and their dependents), but at least one of your full-time employees was certified as being allowed the PTC (because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage).

This letter certifies, under Section 1411 of the Affordable Care Act, that for at least one month in the year, one or more of your full-time employees was enrolled in a qualified health plan for which a PTC was allowed. Based on this certification and information contained in our records, we are proposing that you owe an ESRP of \$20,000.00.

What you must do
Review this letter carefully. It explains the proposed ESRP and what you should do if you agree or disagree with this proposal. You must tell us whether you agree or disagree with the proposed ESRP by the Response date on the first page of this letter.

The following items are included:

- An explanation of the employer shared responsibility provisions in Internal Revenue Code (IRC) Section 4980H, which are the basis for the ESRP. See **About the ESRP**,
- An **ESRP Summary Table** itemizing your proposed ESRP by month;
- An **Explanation of the ESRP Summary Table**;

Letter 225-J (Rev. 1-2018)
Catalog Number 679050

32,240
employers
\$4.4 billion

Focus on HSAs

- Efforts to expand and enhance Health Savings Accounts (HSAs) expected to continue
- Proposed changes may include
 - Increased contribution limits to match annual out-of-pocket-maximum
 - Allowing HSA funds to be used for health insurance premiums
 - Permitting spousal catch up contributions to the same HSA
 - Paying for OTC medicines without a prescription
 - Reimbursing qualifying expenses incurred before the HSA was established

Cadillac Tax

- Scheduled to take effect January 1, 2022
- 40% excise tax would apply to cost of coverage in excess of statutory thresholds
- Currently, \$10,200 for individual coverage and \$27,500 for family coverage
- Thresholds will be updated before the tax takes effect and indexed for inflation in future years

Cadillac Tax Planning

Better safe than sorry?

- Target of repeal efforts; bipartisan opposition to the tax may make a repeal or further delay more likely
- If the Cadillac Tax falls, the employer exclusion is next target, so planning is still a good idea



Understanding the Marketplace

State Marketplace

- 12 states, including CA, offer a state-based Marketplace
- Remaining use HealthCare.gov to apply for and enroll in health coverage
- Bronze, silver, gold, and platinum options
- Guaranteed issue coverage, no preexisting condition exclusions or medical underwriting

Advance Premium Tax Credit

- May use to purchase Marketplace coverage
- Available to certain individuals with household income up to 400% FPL
- Credit not available if eligible for:
 - Adequate/affordable employer self-only coverage
 - Government provided coverage (Medicare, Medicaid, CHIP, or Tricare)

Advance Premium Tax Credit

- If employer offers affordable self-only coverage, generally not eligible for the advance premium tax credit
- Safe harbor for certain affordability determinations made by the Marketplace
- More info at <https://www.irs.gov/affordable-care-act/individuals-and-families/questions-and-answers-on-the-premium-tax-credit>

Advance Premium Tax Credit

- Safe harbor applies (even if employer-sponsored coverage would have been affordable based on actual household income) if:
 - Employee provided accurate information about the cost of employer-sponsored coverage and
 - Marketplace found employee eligible based on projected household income

Advance Premium Tax Credit

Safe harbor does not apply if, with reckless disregard for the facts, employee provided incorrect information to Marketplace concerning the portion of the annual premium for self-only coverage for the employee under the plan

Marketplace Notice

- Notice that an employee has qualified for a tax credit
- Not an assessment of a penalty, but an early indicator of a need to investigate
- Can serve as an early warning of a potential penalty during reporting
- Information on steps to respond can be found at healthcare.gov

Health Insurance Marketplace

DEPARTMENT OF HEALTH AND HUMAN SERVICES
465 INDUSTRIAL BOULEVARD
LONDON, KENTUCKY 40750-0001

Nice Guys Printing
John Smith
12345 9th Ave North
Somewhere, VA 55555

July 16, 2014

Dear John Smith:

The person listed below submitted an application for health coverage through the Health Insurance Marketplace in Virginia and indicated that he or she is an employee of Nice Guys Printing at the address shown above.

This person reported that he or she:

- didn't have an offer of health care coverage from Nice Guys Printing;
- did have an offer of health coverage, but it wasn't affordable or didn't provide minimum value; or
- was in a waiting period and unable to enroll in health care coverage.

The employee has been determined eligible for advance payments of the premium tax credit (APTC) or cost sharing reductions (CSRs) for at least one month during 2016 to help pay for Marketplace coverage and has enrolled in coverage through the Marketplace.

Employee Name	Birthday	Last 4 digits of Social Security Number (if available)	Marketplace Application ID
Jane Doe	March 15	6789	123456789


Why am I getting this notice?

This notice informs you that your employee was found eligible for APTC or CSRs and that, if various conditions are met, you may have to pay an employer shared responsibility payment to the Internal Revenue Service (IRS) in the future. It also notifies you of your opportunity to appeal this eligibility determination.

Certain employers (those with at least 50 full-time employees or full-time equivalent employees, called applicable large employers) might have to pay an employer shared responsibility payment for any month that at least one full-time employee enrolled in Marketplace coverage and receives APTC or CSRs.

If you have questions: Visit HealthCare.gov. Or, call 1-800-355-5856 (TTY: 711). The call is free.

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Questions?

Thank you!

First.Last@americanfidelity.com

1-800-xxx-xxxx Office

Xxx-xxx-xxxx Mobile

Compliance Insights: bit.ly/AFASVIP