



## Year End Compliance Review: Updates, Reminders, Toolkits, and More

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- **Agenda**
  - Benefits in Review
    - 2018 Review-Tax Reform Highlights
    - 2019 in Review
    - What We May See in 2019
  - Current ACA Landscape
  - 2020: Looking Ahead
  - Legislative Outlook



## Benefits in Review

## USEFUL TERMS

**ACA:** The Affordable Care Act

**CDHP:** Consumer Driven Health Plans

**EBHRA:** Excepted Benefit HRA

**GHP:** Group Health Plan

**HCFSA:** Health Care Flexible Spending Accounts

**HCRC:** Health Care Reform Change

**HDHP:** High Deductible Health Plan

**HRA:** Health Reimbursement Arrangement

**HSA:** Health Savings Accounts

**ICHRA:** Individual Coverage HRA

**IMC:** Individual Medical Coverage

**MSA:** Medical Savings Accounts

## Benefits in Review-Tax Reform Highlights

### • Transportation Plans

- Qualified transportation fringe benefits, such as parking and transit passes, can continue to be offered on a **pre-tax basis for employees**.
- **Employers can no longer deduct** expenses for qualified transportation fringe benefits effective for tax years beginning after December 31, 2017.
- IRS Notice 2018-99 issued 12/10/18, to assist employers in determining which parking expenses are no longer deductible (or are includable in unrelated business taxable income (UBTI)).
- **Qualified bicycle commuting expenses will no longer be tax exempt** to employees effective for tax years beginning after December 31, 2017.

## Benefits in Review-Tax Reform Highlights

- **Itemized Deduction Threshold Reduced to 7.5% for all taxpayers for 2017 and 2018. Reverts back to 10% unless incorporated into tax extender in 2019.**
- **Inflation Adjustments**
  - Beginning in 2018, many dollar amounts in the Code—including some benefit-related amounts—that are currently adjusted for inflation using the Consumer Price Index for All Urban Consumers (“CPI-U”) will instead be adjusted using the Chained Consumer Price Index for All Urban Consumers (“C-CPI-U”). **Increases will be lower based upon this method.**
- **Individual Mandate under the ACA**
  - Eliminates the Affordable Care Act (ACA) mandate for individuals purchasing health insurance for months **beginning after December 31, 2018.**

## Benefits in Review

- **January 2018**
  - **Proposed Rules Association Health Plans (1/5/18)**
    - Response to October 2017 Executive Order
    - New rules would propose to allow employers in the same geographic or metropolitan area or in the same industry to commonly sponsor a single group health plan for their employees
    - Under the proposed rules, employers may band together for the sole purpose of sponsoring health insurance
    - Provide smaller employers with more bargaining power
    - No pre-existing conditions, cover preventive care
    - Not required to provide ACA required essential benefits (i.e. maternity coverage, behavioral health for example)

## Benefits in Review

- **June 2018**

- **Final Rule on Association Health Plans (AHP)**

- **6/19/18, DOL after considering over 900 comments issued final rule**

- AHP exists for the purpose of sponsoring a group health plan for its employer members, and has at least one substantial business purpose unrelated to offering group health benefits.
      - AHP must have an organizational structure, commonality of interest.
      - AHP employer members must employ at least 1 employee covered under the health plan under the AHP. Allow working owners to participate.
      - **Effective date:**
        - » 9/1/18 for fully insured AHPs
        - » 1/1/19 for already existing self insured AHPs that choose to meet the new regulation requirements
        - » 4/1/19 for new self insured AHPs

## Benefits in Review

- **August 2018**

- **Association Health Plans (AHP)**

- **Updated Employer Shared Responsibility Q&A**

- Add new **Q&A 18** that clarified that an employer does not automatically become an Applicable Large Employer (ALE) for purposes of the employer mandate just because of participation in an Association Health Plan (AHP).
    - Only time that multiple employers are treated as a single employer for purposes of determining whether the employer is an ALE is if the employers have a certain level of common or related ownership.

## Benefits in Review

### – Final Rule on Association Health Plans (AHP) (cont.)

- **March 2019** U.S. District Court Judge John Bates, ruled that the Administration’s efforts to expand the availability of health plans that don’t meet the coverage rules of the ACA, and arguably violate ERISA, is a deliberate and illegal “end run” around the federal healthcare law.
- Administration opted to appeal the lower court’s ruling to the D.C. Court of Appeals and has not rescinded or revised the final rule.
- Pending Appeal
  - **April 2019**–Guidance issued confirming that state insurance departments continue to have the authority to oversee AHPs and that claims must be paid.
  - **May 2019**–Guidance issued confirming that AHPs cannot market to or enroll new members, although previously existing AHPs are allowed to continue to operate.

## Benefits in Review

- **January 2018**
  - **Bill ending Government Shutdown through February 8th (1/23/18)**
    - **Delay of the “Cadillac” tax on high-cost employer-sponsored health plans for two additional years to January 1, 2022**
      - **Bipartisan Bill passed the House to eliminate Cadillac tax in June 2019**
    - **Delay of the medical device tax until January 1, 2020**
    - **Moratorium of the Health Insurance Tax for 2019 (even though it remains in effect for 2018)**
    - **Funding of the Children’s Health Insurance Program (CHIP) for 6 more years.**

## Benefits in Review

- **February 2018**
  - **Proposed Rule (2/20/18) on Short-term, Limited Duration Health Insurance (STLDI)**
    - Response to October 2017 Executive Order
    - STLDI exempt from ACA requirements for individual market health insurance
    - Proposed regulations to expand period of coverage for up to **12 months**

## Benefits in Review

- **August 2018 (Survived court challenges as of 8/2019)**
  - **Final Rule on Short-Term Limited-Duration Insurance (STLDI) (8/3/18)**
    - This final rule amends the definition of short-term, limited-duration insurance for purposes of its exclusion from the definition of individual health insurance coverage. This action is being taken to lengthen the maximum duration of short-term, limited-duration insurance, which will provide more affordable consumer choices for health coverage.
    - **Effective date:** These final regulations are effective on October 2, 2018.
    - **Applicability date:** Insurance policies sold **on or after October 2, 2018** must meet the definition of short-term, limited-duration insurance contained in this final rule in order to be considered such insurance.

## Benefits in Review

- **October 2018**

- **Health Reimbursement Arrangements (HRA) Proposed Expansion**

- 10/23/18 Proposed regulations in response to Executive Order issued October 2017
    - Taxpayers cannot rely on the proposed regulations.
    - Proposed Effective Date January 1, 2020 after comment period and final guidance
    - **Final regulations issued June 13, 2019**
    - **Allow 2 new types of HRAs**
      - Individual Coverage HRA (ICHRA)
      - Excepted Benefit HRA (EBHRA)
    - **November 20, 2018 Notice 2018-88**, intended to initiate and inform the process of developing guidance so employers understand how to structure integrated HRAs to avoid assessable payments (section 4980H) and potential loss of the exclusion from income for employer-provided health benefits (section 105(h)).

## Benefits in Review

- **November 2018**

- **Pension Plan Limits (impacts testing for 2020, when looking back to 2019 income)**

- November 1, 2018, the IRS issued [Notice 2018-83](#) announcing the cost of living adjustments for pension plans and other retirement-related items for the tax year 2019.
    - **2019 limitations** used for purposes of pension and cafeteria plan **nondiscrimination testing** increase as follows:
      - The dollar limitation under Section 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan will increase from \$175,000 to **\$180,000 in 2019.**
      - The limitation used in the definition of highly compensated employee under Section 414(q)(1)(B) will increase from \$120,000 to **\$125,000 in 2019.**



## Benefits in Review

- **Record HIPAA Enforcement in 2018**

- Office for Civil Rights (OCR) Concludes 2018 with All-Time Record Year for HIPAA Enforcement.
- In 2018, OCR settled 10 cases and secured one judgment, together totaling \$28.7 million.
- This total surpassed the previous record of \$23.5 million from 2016 by 22 percent.
- In addition, OCR also achieved the single largest individual HIPAA settlement in history of \$16 million with Anthem, Inc., representing a nearly three-fold increase over the previous record settlement of \$5.5 million in 2016.

October 2018	Anthem, Inc.	Series of cyberattacks where 79 million individuals records (name, SSN, medical ID#, addresses, dates of birth, email addresses and employment info) were stolen through spear phishing emails.	\$16M settlement and agreed to take substantial corrective action plan
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## Benefits in Review

- **Health Insurance Costs of Employee Family Members of 2% Shareholders**

- **Office of Chief Counsel Internal Revenue Service Memorandum 12/21/18**
  - Confirms that family members related to the more than 2% shareholder of a S Corporation cannot deduct premiums pre-tax through a cafeteria plan because of the stock attribution rules, however, family members who otherwise meets the requirements of §162(l) can deduct the cost of health insurance premiums on their personal taxes on Form 1040.
  - §162(l)(1)(A) allows an individual who is an employee within the meaning of §401(c)(1) to take a deduction in computing adjusted gross income for amounts paid during the taxable year for insurance that constitutes medical care for the taxpayer, his or her spouse, and dependents.
    - Deduction not allowed if the amount exceeds earned income or for any month in which the taxpayer is eligible to participate in any subsidized health plan maintained by an employer of the taxpayer or the spouse of the taxpayer.



## 2019 in Review

## 2019 in Review

- **April 2019**
  - **ACA Parameters**
    - The HHS Notice of Benefit and Payment Parameters for 2020 final rule released on April 18<sup>th</sup>, 2019 includes CMS standards for issuers and Exchanges, generally for plan years beginning on or after January 1, 2020.
      - 2020-Out of pocket limits for in network essential health benefits  
**\$8,150 Single** and **\$16,300 Family**

## 2019 in Review

- **May 2019 HSA limits**
- **Revenue Procedure 2019-25 Issued 5/28/19**

Calendar Year	2019	2020
HSA Maximum Annual Contribution Limit (Self-only)	\$3,500	<b>\$3,550</b>
HSA Maximum Annual Contribution Limit (Family)	\$7,000	<b>\$7,100</b>
HSA Catch-up Contribution Limit (Individuals 55 and older)	\$1,000	<b>\$1,000</b>
HDHP Minimum Annual Deductible (Self-only)	\$1,350	<b>\$1,400</b>
HDHP Minimum Annual Deductible (Family)	\$2,700	<b>\$2,800</b>
HDHP Maximum Out-of-pocket (Self-only)	\$6,750	<b>\$6,900</b>
HDHP Maximum Out-of-pocket (Family)	\$13,500	<b>\$13,800</b>

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **Final regulations issued 6/13/19, Effective 1/1/2020**
- **Individual Coverage Health Reimbursement Arrangement (ICHRA)**
  - To be eligible, no other Group Health Plan is available for the class
  - Health FSA benefit is not considered Group Health Plan coverage for this purpose
  - Cannot be offered the choice between the ICHRA and Group Health Plan.
  - Self employed individuals excluded same as other HRAs. Sole proprietors, partners in a partnership, members of LLC, more than 2% shareholders in an S Corp and their family of lineal ascent or descent are all **ineligible**.
  - Employer must determine in plan document in advance if they will use 4980(h) (30hrs/wk.) or 105(h) (35 hrs./wk.) definition of full-time/part-time employees

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **ICHRA (cont.)**
  - To be eligible, must be enrolled in individual medical coverage (IMC) for each month they are receiving reimbursements
    - **Individual Market Insurance (including Grand mothered coverage and Grandfathered coverage)**
    - **Student Health Plans**
    - **Medicare supplement and Medicare Part A, B, C and D coverage**
      - **Not eligible:** Short-term limited-duration insurance (STLDI), other group health coverage, shared ministry coverage and excepted benefit coverage do not apply

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **ICHRA (cont.)**
  - Only 1 ICHRA option can be offered per class of employees.
  - ICHRA must be offered on same terms to all employees within the same class, employer can set the limit
    - **Eligible Class**
      - Full-time vs. Part-time Employees
      - Classes based on geographic location
      - Seasonal Employees
      - Employees in a unit of employees covered by a particular collective bargaining agreement
      - Employees who have not satisfied a maximum 90 day waiting period
      - Salaried vs. Hourly Employees
  - The maximum HRA benefit can only vary within the class by age (variation limits apply) or family size.

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **ICHRA (cont.)**
  - Minimum participation rule (Salaried/Hourly; FT/PT; Same rating area):
    - Employers under 100 employees-minimum class size 10
    - Employers 100-199 employees-10% of workforce
    - Employers with 200 or more employees-20 employees
  - Final rules allow the class of determination to apply with respect to new hires after a specified date and permit current employees to retain eligibility under a traditional group health plan.
  - Can be offered at the employer level even if part of a control group of employers
  - Nondiscrimination testing under IRC 105(h) (or 4980H FT/PT definitions) and consistency within class

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **ICHRA (cont.)**
  - Employees must be given the right to opt-out of the ICHRA at least annually, prior to the start of the plan year, because ICHRA will void the opportunity for the Premium Tax Credit (PTC). Employee opt out applies to dependents.
    - **IRS Notice 2018-88 ICHRA will constitute minimum essential coverage (MEC) and may also be affordable coverage**
  - Written notices must be provided to each participant at least 90 days prior to the start of the plan year unless the plan goes into effect with less than 90 days lead time, then you must provide by the start of the coverage period. **Model notice**
  - Summary of Benefits and Coverage (SBC) also required at enrollment and open enrollment in subsequent plan years
  - COBRA applies

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **ICHRA (cont.)**
  - If eligible for ICHRA, reimbursable expenses include individual medical coverage (IMC) and other IRC Section 213(d) medical expenses
  - Can be structured to be HSA compatible if restricted to just premiums or premiums and/or limited scope expenses
  - Employees may pay the share of IMC premiums (outside Exchange only) not paid by the ICHRA with pre-tax salary reductions through a supplemental cafeteria plan maintained by the employer
  - Substantiation
    - **Must have reasonable procedure to verify enrollment in individual health insurance coverage**
    - **Must verify all expenses being reimbursed**

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **Excepted Benefit Health Reimbursement Arrangement (EBHRA)**
  - Employer **cannot** offer both ICHRA and EBHRA to same class of employees
  - Must offer other major medical plan coverage
  - Employees eligible for employer sponsored medical plan are eligible to participate in the EBHRA, employee not required to be enrolled
  - **\$1,800** limit (subject to indexing for inflation after 12/31/2020). Limit does not include any carryover from prior year.
  - Must be made available to all similarly situated employees
  - Self-employed individuals excluded same as other HRAs. Sole proprietors, partners in a partnership, members of LLC, more than 2% shareholders in an S Corp and their family of lineal ascent or descent are all **ineligible**.

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **EBHRA (cont.)**
  - If eligible for EBHRA can reimburse:
    - IRC Section 213(d) medical expenses or
    - Premiums/contributions for COBRA, excepted benefit coverage or STLDI
  - **Cannot** reimburse:
    - Individual medical premiums and costs for Medicare Part A, B, C, and D
  - Substantiation of expenses required
  - FSA compatible
  - HSA compatible if restricted to dental and vision expenses
  - COBRA applies
  - SBC required
  - IRC 105(h) nondiscrimination testing applies

## 2019 in Review

- **June 2019 HRA Final Regulations**
- **Other provisions of HRA rule**
- **Special enrollment**
  - **Two new special enrollment periods for individual coverage**
    - Where employer begins offering ICHRA or QSEHRA mid-year
    - Where employee becomes eligible for ICHRA or QSEHRA mid-year
- **ERISA**
  - **Integrated individual coverage not subject to ERISA if:**
    - Voluntary participation
    - No employer selection or endorsement
    - Limits on reimbursement
    - No consideration received by employer
    - Annual notification

## 2019 in Review

**Executive Order 6/24/19** The Secretary of the Treasury to the extent consistent with law, shall...

- Issue guidance by **10/22/19** to expand the ability of patients to select HDHPs compatible with an HSA, and potentially expand what is considered preventive care for chronic conditions that can be covered before the deductible;
  - **IRS Notice 2019-45** released 7/17/19 to expand definition of preventive care for certain chronic medical conditions and expenses
- Propose regulations by **12/21/19** that interpret § 213(d) as including direct primary care arrangements and healthcare sharing ministries in the definition of medical care; and
- Issue guidance by **12/21/19** to increase the Health Care FSA rollover limit.
- **Cadillac Tax**
  - **HR 748**, which repealed the excise tax on high cost health plans passed the House **7/17/2019**. As of 8/1/19, needs Senate vote.

## 2019 in Review

- **Notice 2019-45 (7/17/19) Expands Definition of Preventive Care for Certain Chronic Conditions**
- **Important note:** Although the notice clarifies that benefits for the specified services and items for individuals with the specified chronic conditions listed in the Appendix are preventive care for purposes of IRS Code § 223(c)(2)(C), it **does not treat these services and items as preventive care required to be provided without cost sharing** for purposes of section 2713 of the PHS Act. The effect of this Notice 2019-45 is that health plans will likely make additional preventive care coverage for the specified chronic conditions available at no- or low- cost for those covered by a HDHP that is designed to be paired with an HSA.

**APPENDIX**

<b>Preventive Care for Specified Conditions</b>	<b>For Individuals Diagnosed with</b>
Angiotensin Converting Enzyme (ACE) inhibitors	Congestive heart failure, diabetes, and/or coronary artery disease
Anti-resorptive therapy	Osteoporosis and/or osteopenia
Beta-blockers	Congestive heart failure and/or coronary artery disease
Blood pressure monitor	Hypertension
Inhaled corticosteroids	Asthma
Insulin and other glucose lowering agents	Diabetes
Retinopathy screening	Diabetes
Peak flow meter	Asthma
Glucometer	Diabetes
Hemoglobin A1c testing	Diabetes
International Normalized Ratio (INR) testing	Liver disease and/or bleeding disorders
Low-density Lipoprotein (LDL) testing	Heart disease
Selective Serotonin Reuptake Inhibitors (SSRIs)	Depression
Statins	Heart disease and/or diabetes



## 2019 in Review

- **July 2019 Affordability Calculation Percentage**

- **Rev. Proc. 2019-29** issued 7/23/19, sets out the applicable percentage table for 2020, and provides the required affordability contribution percentage is **9.78%** for plan years beginning in **2020**. Dropping from 9.86% in 2019.

## 2019 in Review

- **July 2019 ACA Court Challenge**

- 20 states and 2 individuals filed suit in Northern District of Texas claiming that: Individual mandate, as amended by Tax reform, is unconstitutional; not severable from ACA
  - Stay issued on December 30 pending appeal
- Appeal to 5<sup>th</sup> Circuit heard arguments on standing issues in July.
  - Ruling likely sometime in late 2019
- Will it go to the Supreme Court?
  - If 5<sup>th</sup> Circuit affirms, then Supreme Court likely to grant cert; decision sometime in 2020
- If 5<sup>th</sup> Circuit reverses, then?

## 2019 in Review

### • September 2019

- [Proposed regulations](#) were released specific to how the Employer Shared Responsibility under the Affordable Care Act (ACA) will apply to ICHRAs
  - Would allow the ICHRA to meet the Employer Shared Responsibility Provision in some cases. An affordable ICHRA is treated as providing minimum value under Code § 4980H.
  - The preamble of the proposed regulations confirms that the ALE by offering an ICHRA, an ALE offers an eligible employer-sponsored plan that is taken into account in determining whether the ALE offered coverage to enough full-time employees and their dependents to avoid a Code § 4980H(a) penalty. Affordability of the ICHRA would be based upon:
    - The amount of the premium for the lowest cost silver plan for self-only coverage of the employee offered in the Exchange for the rating area in which they reside
    - LESS the maximum monthly reimbursement provided by the employer through the ICHRA.
    - **If the employee out of pocket responsibility after ICHRA is less than the annual indexed percentage of household income (9.78%), the ICHRA would be classified as affordable coverage.**
    - A safe harbor would allow ALEs to reference a look back month before the plan year as the applicable lowest cost premium.

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## 2019 in Review

### • September 2019

- [Proposed regulations](#) were released specific to how nondiscrimination testing will apply to ICHRAs
- Two new nondiscrimination safe harbors were included in the proposed regulations in regard to ICHRAs.
  - The maximum reimbursement amount can vary between classes as established in the ICHRA regulations. In addition, the maximum reimbursement amount can vary between age, but only as provided in the regulations (benefit amount for older employees cannot exceed three times that of the youngest tier). Within these definitions, the safe harbor provides that the maximum reimbursement amount cannot vary further. (Employees within the same class and same age parameters must receive the same benefit.)
  - ICHRAs must not be nondiscriminatory in the operation of the plan. You cannot have a disproportionate number of highly compensated individuals qualifying for and the ICHRA and utilizing the maximum benefit compared to non-highly compensated employees.
- In addition, proposed regulations include that ICHRAs which only reimburse insurance premiums will be treated similarly to a fully-insured group insurance plan for nondiscrimination testing. Currently, nondiscrimination testing for fully-insured plans are not being enforced.
- **The IRS will take comments on these proposed rules through December 29, 2019. Further, the IRS has indicated that you can rely on the proposed regulations for plan years beginning before the date that is six months after final regulations are published.**

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## 2019 in Review

- **September 2019**

- **Inflationary Adjustments for 2020**

- August 2019 CPI was released mid September by the DOL. Thomson Reuters used the C-CPI-U for the 12 month period ending August 31 and reported projection inflation adjustments for 2020 Health FSA **projected to increase \$2,750.**

- **October 2019**

- **Revenue Procedure 2019-\_\_?\_\_** announced updates **\_\_?\_\_**
    - Health Care FSA increased to **\$TBD** per plan year? (projected \$2750)
    - Parking increased to **\$TBD** per month? (projected \$270/month)
    - Transit increased to **\$TBD** per month? (projected \$270/month)
    - Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) increased to **\$TBD** Single and **\$TBD** Family? (projected \$5250 S \$10,600 F)

## 2019 in Review

- **October 2019**

- **California Law effective 1/1/2020**

- Requires employers who sponsor flexible spending accounts (FSA) to notify employees in two ways of any deadline that requires them to withdraw FSA funds before the end of the plan year.
      - It does not apply to accounts where the deadline to get funds out is at or after the end of the plan year.
      - ERISA-covered employers would most likely not have to give additional notice for Health FSA plans, as that would be preempted by ERISA.
      - Most plan design gives a claim submission deadline for Dependent Care FSAs that extends past the end of the plan year even for mid-year terms, the new law would not apply.
      - Purpose likely to warn terminated employees if they have to submit claims quickly to avoid forfeiture of FSA balances
      - BESTflex Clients: Recommend distribution of My Company Plan and SPD that would communicate the claims filing rules and deadlines.

## Benefits in Review-What we may see in 2019

- **Medicare Expansion Legislation?**
  - Medicare for all?
  - Medicare Early buy in?
- **ACA “Fixes” Bipartisan Initiatives**
  - Repeal/Delay Cadillac tax (S684, HR 748)
  - 40 Hour week
- **Undoing Administration ACA Activity**
- **Rx Cost Reduction Proposals**
- **“Surprise” OOP Legislation Fix**
  - Potential Fee Disclosure Provisions
- **ACA Constitutional Challenge**
- **Repeal of ACA 1557 Requirements (done by regulation)**

## Current ACA Landscape

## Current ACA Landscape

- **Adult children can remain on parent’s health plan to age 26**
- **PCOR Fees (July 31<sup>st</sup>)-thru plans ending before 10/1/19**
  - Apply to health insurance, HRAs and non-excepted health FSAs
  - For health FSAs and HRAs, only count employee; health insurance, count each covered life

Filing Due Date	Plan Years	Fee	Notes
July 31, 2019	Plan years ending on or after January 1, 2018 through September 30, 2018.	\$2.39	<i>These plans will complete their last scheduled filing in 2020 for plan years ending in 2019 (see last line on table for 2020 filing).</i>
July 31, 2019	Plan years ending on or after October 1, 2018 through December 31, 2018 (this includes calendar year plans).	\$2.45	<i>This is the last scheduled filing for these plans.</i>
July 31, 2020	Plan years ending on or after January 1, 2019 through September 30, 2019.	\$2.45	<i>This is the last scheduled filing for these plans.</i>

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## Current ACA Landscape

- **Form W-2 Reporting: Employers with 250+ W-2s must provide health plan info.**
  - Value of employer-sponsored health care (not incl. HRAs)
- **Over-the-counter medication prescription requirement**
- **HSA 20% penalty on non-medical expenses**
- **Nondiscrimination Testing**
  - Currently necessary for self-insured plans but not insured plans
    - **Enforcement for insured plan testing delayed until guidance issued**
    - **Testing should be done annually, at plan year end**
      - Unofficial testing early in plan year can reveal issues/potential failure
    - **All employers must do testing, even church plans and gov’t entities**
- **Summary of Benefits and Coverage (SBC)**
  - Required for newly-eligible employees and at annual open enrollment for health insurance plans, most HRAs and non-excepted health FSAs

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## Current ACA Landscape-Employer Reporting/Tax Information

IRS Form or Schedule	Who Provides	What is it	Benefit Related	Deadline to provide to individuals
Form 1095-A	Marketplace/Exchange	Proof that an individual is enrolled in qualified health plan on the Health Insurance Marketplace and used by individuals to calculate/reconcile the premium tax credit	Health Insurance	1/31/2020
Form 1095-B (Insured plan)	Insurance carrier	Proof that an individual/family is enrolled in minimum essential health coverage (MEC)	Health Insurance	1/31/2020* *If this deadline is extended, individuals do not need to wait for this form to prepare their tax return.
Form 1095-B (self-funded plan*)  Note: Does not include HRAs integrated with major medical plan or Health FSAs.	Employer	Proof that an individual/family is enrolled in minimum essential health coverage (MEC)	-Self-funded health plans -Retiree HRA -PEB -Participants in active employee HRA that permits employees enrolled in spouse's employer's health plan to participate. -COBRA Beneficiary	1/31/2020* *If this deadline is extended, individuals do not need to wait for this form to prepare their tax return.  <b>Forms 1094-B and 1095-B due to IRS 2/28/20 or 4/1/20 if filing electronically</b>

## Current ACA Landscape-Employer Reporting/Tax Information

IRS Form or Schedule	Who Provides	What is it	Benefit Related	Deadline to provide to individuals
Form 1095-C	Employer	Provided to Full-time employees of an Applicable Large Employer (ALE) regarding the details of whether or not an employee has individual/family affordable, minimum essential coverage (MEC) under the employer plan and for what months they are covered under the plan.	<ul style="list-style-type: none"> <li>Health Insurance</li> </ul>	1/31/2020* *If this deadline is extended Individuals do not need to wait for this form to prepare their tax return.  <b>Forms 1094-C and 1095-C due to IRS 2/28/20 or 4/1/20 if filing electronically</b>
Form 1099-SA	HSA Custodian/Trustee (i.e. Avidia Bank)	Provides total HSA distributions for the year	<ul style="list-style-type: none"> <li>HSA</li> </ul>	1/31/2020
Form 5498-SA	HSA Custodian/Trustee (i.e. Avidia Bank)	Provides total HSA contributions for the year	<ul style="list-style-type: none"> <li>HSA</li> </ul>	5/31/2020

## Current ACA Landscape-Employer Reporting/Tax Information

Employer Penalty	2015	2016	2017	2018	2019	2020 Projection
IRC §4980H(a) "no offer" penalty	\$2,080/yr. \$173/mo.	\$2,160/yr. \$180/mo.	\$2,260/yr. \$188.33/mo.	\$2,320/yr. \$193.33/mo.	\$2,500/yr. \$208.34/mo.	\$2,570/yr. \$214.17/mo.
IRC §4980H(b) "unaffordable/ not minimum value coverage" penalty	\$3,120/yr. \$260/mo.	\$3,240/yr. \$270/mo.	\$3,390/yr. \$282.50/mo.	\$3,480/yr. \$290/mo.	\$3,750/yr. \$312.50/mo.	\$3,860/yr. \$321.67/mo.

## Current ACA Landscape-Employer Reporting/Tax Information

- **Employer Shared Responsibility (Pay-or-Play)**
  - The IRS has updated the [Q&A on the employer mandate](https://www.irs.gov/individuals/understanding-your-letter-226-j)  
<https://www.irs.gov/individuals/understanding-your-letter-226-j>
  - For the **2015 calendar year**, the IRS issued **Letter 226J** informing Applicable Large Employers (ALE) of their potential liability for an employer shared responsibility payment, if any, in late 2017.
  - For the **2016 calendar year**, the IRS issued Letter 226J later in 2018
  - For the **2017 calendar year**, the IRS is issuing Letter 226J starting in the summer of 2019

## Current ACA Landscape-Employer Reporting/Tax Information

- Employer Shared Responsibility (Pay-or-Play) (cont.)

- [Letter 226J](#) will include:

- a brief explanation of section 4980H,
- an employer shared responsibility payment summary table itemizing the proposed payment by month and indicating for each month if the liability is under section 4980H(a) or section 4980H(b) or neither,
- an explanation of the employer shared responsibility payment summary table,
- an employer shared responsibility response form, Form 14764, “ESRP Response”,

## Current ACA Landscape-Employer Reporting/Tax Information

- Employer Shared Responsibility (Pay-or-Play) (cont.)

- [Letter 226J](#) will include (cont.):

- an employee PTC list, Form 14765, “Employee Premium Tax Credit (PTC) List” which lists, by month, the ALE’s assessable full-time employees (individuals who for at least one month in the year were full-time employees allowed a premium tax credit and for whom the ALE did not qualify for an affordability safe harbor or other relief (see instructions for Forms [1094-C](#) and [1095-C](#), Line 16), and the indicator codes, if any, the ALE reported on lines 14 and 16 of each assessable full-time employee’s Form 1095-C,
  - a description of the actions the ALE should take if it agrees or disagrees with the proposed employer shared responsibility payment in Letter 226J, and
  - a description of the actions the IRS will take if the ALE does not respond timely to Letter 226J.
- The response to Letter 226J will be due by the response date shown on Letter 226J, which generally will be 30 days from the date of Letter 226J.



## Current ACA Landscape-Employer Reporting/Tax Information

### • Employer Shared Responsibility (Pay-or-Play) (cont.)

- **Letter 5699.** The IRS sent **Letter 5699** to employers it believes were ALEs that may have failed for the 2017 calendar year, to submit the required Forms. In particular, Letter 5699 requests that the employer confirm the name and Employer Identification Number it used when filing the Forms along with the date such filing was made. Letter 5699 also reminds employers that there are penalties for failing to file the Forms.
- **Responding to Letter 5699.** Employers must respond to Letter 5699 within **30 days** of receipt. ALEs that have not filed the Forms for the 2017 reporting year can provide them to the IRS with their response to Letter 5699. Alternatively, ALEs that have not filed the Forms can commit to filing them within 90 days of the date of the letter. In either case, the ALE must also explain the reason for the late filing.
- Employers that receive **Letter 5699** may also respond by either: (i) claiming that they were not an ALE for the year in question; or (ii) explaining why they did not file the Forms and any actions they plan to take to remedy the failure.

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## Current ACA Landscape-Employer Reporting/Tax Information

### • Employer Shared Responsibility (Pay-or-Play) (cont.)

- **Letter 5699** instructs the business they must respond to the IRS **within 30 days** and specify one of the following:
  - I am subject to the employer mandate and already filed the forms.
  - I am subject to employer mandate, did not file, but am including paper copies of the forms that should have been filed.
  - I am subject to the employer mandate, did not file, but will file the forms electronically within 90 days of the date of this letter.
  - I was not subject to the employer mandate for the year in question.

*It is important for any business that receives IRS Letter 5699 to respond to the IRS within the allotted timeframe, with the appropriate information.*

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## Current ACA Landscape-Employer Reporting/Tax Information

### • Employer Shared Responsibility (Pay-or-Play) (cont.)

#### – IRS Notice 227 Letters:

- **Letter 227K:** Your case has been resolved. Letter acknowledges that the information in Letter 226J response was accepted and the IRS inquiry has closed. You do not owe an ESRP (Employer Shared Responsibility Payment).
- **Letter 227L:** Sent when the IRS agrees with the information your organization provided in response to Letter 226J making the case for a reduced ESRP.
- **Letter 226M:** Sent when IRS disagrees with your organizations Letter 226J response and reiterates its original proposed penalty.
- **Letter 227J:** Acknowledges the receipt of the signed response to Letter 226J Form 14764 in which an organization agrees to pay the ESRP as assessed. No further response needed other to pay the penalty.
- **Letter 227N:** Acknowledges the decision reached in Appeals and shows the ESRP based on the Appeals review. No response required.

## Current ACA Landscape

### 2019 Penalties for not timely filing or providing Forms 1094 and 1095:

- An ALE Member that fails to comply with the information reporting requirements may be subject to the general reporting penalty provisions under section 6721 (failure to file correct information returns) and section 6722 (failure to furnish correct payee statement).
- The penalty for failure to file an information return generally is **\$100** for each return for which such failure occurs. The total penalty imposed for all failures during a calendar year cannot exceed **\$1,500,000**.
- For returns required to be filed after December 31, 2015, the penalty for failure to file an information return generally is increased from **\$100 to \$270** for each return for which such failure occurs. The total penalty imposed for all failures during a calendar year after December 15, 2015 cannot exceed **\$3,275,500**.
- The penalty for failure to provide a correct payee statement is **\$100** for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed **\$1,500,000**.
- The penalty for failure to provide a correct payee statement is increased from **\$100 to \$270** for each statement for which the failure occurs, with the total penalty for a calendar year not to exceed **\$3,275,500**. The increased penalty amount applies to statements required to be provided after December 31, 2015.
- Special rules apply that increase the per-statement and total penalties if there is intentional disregard of the requirement to furnish a payee statement.
- The waiver of penalty and special rules under section 6724 and the applicable regulations, including abatement of information return penalties for reasonable cause, may apply to certain failures under section 6721 or 6722.

## Current ACA Landscape

### 2019 Penalties for not timely filing or providing Forms 1094 and 1095 (cont.):

- **Notice 972CG** proposes penalties under IRC section 6721 for late or incorrect filings.
- An employer has 45 days from the date on the notice to respond to the IRS.
- A business operating outside of the United State has 60 days to respond to the Notice 972CG.
- If an employer does not respond within these time frames, the IRS will send a bill for the amount of the proposed penalty. Therefore, a timely response to the Notice 972CG is mandatory if an employer wishes to abate or eliminate the proposed penalty.
- **An employer has three courses of action when responding to the Notice 972CG.**
  - The employer could **agree** with the proposed penalty. If an employer agrees with the proposed penalty, box (A) should be checked and the signature and date line below box (A) should be completed. Any employer selecting this option should follow the payment instructions provided in the Notice.
  - If an employer **disagrees entirely** with the Notice, the employer will check box (C). If box (B) or (C) are checked, the employer will be required to submit a signed statement explaining why the employer disagrees with the Notice.
  - For an employer to establish a **“reasonable cause”** the employer will have to establish “significant mitigating factors” or that the “failure arose from events beyond the filer’s control.” Furthermore, to prove “reasonable cause” the employer will have to show that it acted in a “responsible manner” both before and after the failure occurred.

## Current ACA Landscape

- **“Cadillac Tax” (delayed until 2022)**
  - **H.R. 195 to keep the government funded to 2/8/18**
  - 40% excise tax on amounts of aggregated health benefits in excess of \$10,200 for single coverage and \$27,500 for family coverage (indexed for inflation)
  - Insurance companies liable for excise tax on insured plans
  - Employers/plan sponsors liable for excise tax on self-funded plans
  - Excise tax will be deductible
  - Actual regulations have yet to be issued
  - Kaiser reported that an estimated 21% of employers in 2022 (31% if HCFSAs)
- **HR 748**, which repealed the excise tax on high cost health plans passed the House **7/17/2019**. As of 8/1/19, needs Senate vote.



## 2020: Looking Ahead- What's In Your Open Enrollment Tool Kit?

## 2020: Looking Ahead

### — Employer Notices

- **Medicare Part D Notice**-Before October 15<sup>th</sup>
- **Grandfathered Plan Notice** (if applicable) upon initial enrollment and annually with all plan communications and materials
- **Notice of Special Enrollment Rights**
  - Prior to initial enrollment, upon renewal of plan coverage, within 90 days of special enrollment, within 7 business days following receipt of request
- **Health Insurance Exchange Notice**-14 days of new hire
- **Women's Health and Cancer Rights Act (WHCRA) Notice**-upon enrollment and annually thereafter

## 2020: Looking Ahead

### – Employer Notices (cont.)

- **Children’s Health Insurance Program (CHIP) Notice**-annually before the start of each plan year
- **Newborns’ and Mothers’ Health Protection Act Notice**-provide in the SPD for a plan providing maternity and infant coverage
- **Initial COBRA Notice**-within 90 days after commencement of coverage
- **HIPAA Privacy Notice**-at least once every 3 years
- **Wellness Program Disclosure**-in plan materials that describe the terms of a health-contingent wellness program
- **ADA Notice Regarding Wellness Program**-must be provided before any employees provide any health information for purposes of a wellness program
- **Michelle’s Law Notice**-with any notice regarding a requirement for certification of student status under a plan that bases eligibility for coverage on student status (and that provides coverage beyond the age of 26).

## 2020: Looking Ahead

- **ERISA Plan Document and SPD requirement**
  - **Benefit Booklets/Insurance Certificates alone will not satisfy the SPD requirement. A Wrap Plan Document and SPD will help satisfy this requirement**
- **Summary Plan Description (SPD)**
  - **To plan participants 120 days after a plan is adopted**
  - **To new plan participants within 90 days after plan coverage begins**
  - **Every 5 years if changes are made or plan is amended**
  - **Every 10 years if no changes**
- **DOL Electronic Disclosure Regulations**, 67 Fed. Reg. 17264 (April 9, 2002) **Employee uses a computer as a regular function of their job. Kiosk does not qualify.**
- **Summary of Material Modification (SMM)** must be given to participants when significant change is made to terms or coverage

## 2020: Looking Ahead

### – Form 5500 filing obligations

- ERISA requirement
- Employers that are governmental entities or church plans are exempt
- Form 5500 must be filed within 7 months from the end of the plan year
- Welfare plans: Employers with an unfunded plan that has 100 or more participants on the 1<sup>st</sup> day of the plan year
- Welfare plans: Employers with an unfunded plan that has less than 100 participants on the 1<sup>st</sup> day of the plan year not required to file Form 5500
- Employer can file for a one-time 2.5 month extension

– **Summary Annual Report (SAR)** must be provided within **9 months** of close of plan year if Form 5500 was filed

## 2020: Looking Ahead

Awards & DOL fines	Court Case
\$17,550 - Failure to provide requested Plan Document and SPD to Participant	Stegelmeier v. Doug Andrus Distributing Employee Health Benefit Plan, 40 EBC 2811 (D. Utah 2007)
\$50,000 - Failure to file Form 5500	PWBA v. Compgraphix, Inc., 199-RIS-52 (ALJ Oct. 14, 1999)
\$86,500 - Failure to file complete and accurate Form 5500	Airport Hospitality, LTD, King of Prussia, Penn., 2010
\$17,475 - Employer did not have SPD; only provided certificate of insurance to Participant; repeatedly insisted they were the same thing	Pisek v. Kindred Healthcare, Inc. Disability Ins. Plan, 2007 WL 2068326 (S.D. Ind. 2007)
\$17,550 - Failure to provide requested Plan Document and SPD to Participant	Reddy v. Schellhorn, 38 EBC 1312 (N.D. Ill 2006)

## 2020: Looking Ahead

- **Review Cost-Sharing Limits for 2020**

- Effective for plan years beginning on or after **1/1/2020**, ACA out-of-pocket limits on essential health benefits cannot exceed
  - **2020: \$8,150 self-only coverage and \$16,300 for family coverage**
- Remember, HDHP limits for HSA compatibility are different
  - **2020: \$6,900 self-only and \$13,800 family**

## 2020: Looking Ahead

- **Review Health FSA Plan Design**

- Health FSA elections
  - Health FSA maximum employee election is \$2,700 (2019) and **\$TBD (2020)**  
**Projected to be \$2750 for 2020**
    - Per employee, per plan year (indexed annually for inflation)
    - Pro-rate for short plan year (e.g., short year to align w/health ins.)
    - Employer contributions don't count toward maximum limit (unless can be cashed out)
    - Rollover does not count toward maximum limit
- Health FSA waiting period
  - Non-excepted health FSA waiting period can't be greater than 90 days.
  - Waiting period for employer-sponsored medical insurance cannot be longer than waiting period for health FSA

## 2020: Looking Ahead

- Review Health FSA Plan Design
  - Health FSA interaction with HSAs
    - Grace Period can impact HSA eligibility until grace/runout is over
    - FSA rollover can impact HSA eligibility for entire next plan year
    - Consider adding a limited health FSA
  - Health FSA cannot be used to pay premiums for individual medical policies or employer-sponsored health insurance

## 2020: Looking Ahead-How to Help Avoid HSA Headaches

### Ask, is your HDHP plan HSA compatible?

- *Not all HDHP are HSA compatible!*
- 2020 minimum deductible \$1,400 single and \$2,800 Family
- 2020 maximum out of pocket \$6,900 single and \$13,800 Family
- ACA compliant plans may not be HSA compatible because out of pocket maximums are too high.

### Ask, does anyone have disqualifying coverage?

- First dollar coverage is disqualifying coverage. No copays for Rx or office visits.
- Medicare enrollment is disqualifying coverage.
- **Spousal benefit plans** (including standard health FSAs and HRAs) may disqualify you!

### Employer Contributions to the HSA:

- Employer should clearly communicate that employees with disqualifying coverage will not be eligible for the HSA, that includes employer contributions.
- Employers should consider carefully the frequency on how they may make HSA contributions because once the HSA deposit has been made, it can only be reversed in limited circumstances.

**Note:** Paying your current HDHP medical premiums pre-tax through a cafeteria plan DOES NOT effect HSA eligibility.



## 2020: Looking Ahead-How to Help Avoid HSA Headaches

### Ask, is your health FSA HSA compatible?

- Standard health FSA enrollment is disqualifying coverage and individuals cannot convert to limited health FSA mid plan year!
- Limited health FSA is HSA compatible because reimbursement is restricted to dental and vision expenses.

### Ask, is your HRA HSA compatible?

- Standard HRA with first dollar coverage is disqualifying coverage.
- Limited HRA is HSA compatible because reimbursement is restricted to dental and vision expenses.
- Post-deductible HRA is HSA compatible because reimbursement does not occur until after the minimum HDHP deductible is met.

### Employee Communication is key! Do employees understand:

- There is **no first dollar coverage** on office visits and Rx. All expenses go towards satisfying the HDHP deductible.
- HSAs work like **bank accounts** and not subject to uniform coverage rules. HSA funds must be in the account in order to pay for HSA expenses from account.
- Employees can use a HSA to save for current or future medical expenses. Interest grows tax free.
- HSA dollars used for non-medical reasons are subject to income tax and 20% penalty.

## 2020: Looking Ahead-How to Help Avoid HSA Headaches

### Grace Period and Rollover can Disqualify you!

- Zero balance on last day of the plan year can avoid triggering the grace period or the rollover.
- 2 ½ month grace period adopted as part of cafeteria plan may cause HSA eligibility problems until the start of the first full month following the grace period.
- Health Care FSA rollover may cause HSA eligibility problems for entire next plan year.
- Rollover plan design options may exist to assist with HSA compatibility (i.e. auto convert, minimum rollover amount, rollover only available with new plan year election)-**Check TPA/Plan document for availability.**

### Cafeteria Plans

- Changes made to a health insurance plan during an active IRS Code §125 plan year will not constitute a qualifying event that permits changes to the Health Care FSA.
- If you are planning to fund the HSA pre-tax through the cafeteria plan, the Plan Document must be amended to add language.

### TIMING IS EVERYTHING!

- Set IRS Code §125 Plan renewal to coincide with the health insurance plan renewal or amend at renewal to sync up to avoid mid-year HSA implementation.

## 2020: Looking Ahead

### • Review HRA Plan Design

- Integration
  - **Employee must be enrolled in employer-sponsored health insurance in order to participate in HRA (unless retiree-only or PEB HRA)**
- No reimbursement of individual medical policies (except retiree-only HRAs, QSEHRA, ICHRA)
- New HRA options not available until **1/1/2020**
- Effective 1/1/18, integrated HRAs can only reimburse expenses associated with family members if they are covered under employer-sponsored medical plan
- Annual opportunity for employees to opt-out
  - HRAs (other than those consisting solely of excepted benefits) generally constitute MEC and could prevent an individual from receiving a premium tax credit/subsidy on Marketplace

## 2020: Looking Ahead

HRA Type	Eligible Expenses	FSA Compatible	HSA Compatible	COBRA	4980H credit	GHP eligibility	Nondiscrim. Testing
Integrated HRA	OOP medical only, no individual medical coverage (IMC) premiums	Yes	Yes if restricted to dental and vision or structured as post minimum deductible	Yes	Possible	Must be enrolled in GHP	IRC 105(h)
Limited HRA	Vision and dental expenses only	Yes	Yes	Yes	No	Not required to be eligible or enrolled in GHP	IRC 105(h)
Retiree Only HRA	All IRC Section 213 expenses	Yes	Yes if restricted to premiums and dental and/or vision expenses	Yes, unless alternative to COBRA	N/A	Not required to be eligible or enrolled in GHP	IRC 105(h)
QSEHRA	Individual Medical (IMC) premiums and OOP, no pre-tax excess premium in cafeteria plan	No, HCFA will void QSEHRA	Yes if restricted to medical premiums and dental and/or vision	No	N/A	Cannot have a GHP available	Must be offered to all non-excludable employees
ICHRA	Individual Medical coverage (IMC) on or off Exchange, Medicare and Student Health plans), 213 OOP, No Group Health plan premiums, excess premium can be pre-tax in cafeteria plan	Yes	Yes if restricted to IM and/or dental and vision OOP	Yes on ICHRA, possible on IMC if subject to ERISA	Possible	Not eligible for GHP	IRC 105(h) or 4980H FT/PT definitions and consistency with class
EBHRA	All IRC Section 213 expenses, COBRA and excepted benefit coverage (including STLDI)	Yes	Yes if restricted to dental and/or vision expenses	Yes	No	Eligible for other GHP	IRC 105(h)

## 2020: Looking Ahead

- **Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)**
  - 21<sup>st</sup> Century Cures Act enacted December 13, 2016
  - Employer with fewer than 50 employees and does not offer group health insurance
  - Employer must provide 90 day notice to employees in advance of establishing the small employer HRA. (Transition Relief: The notice requirement will be met if the notice is provided within 90 days of the effective date of the law.)
  - QSEHRA must be funded solely by the employer
  - QSEHRA can be set up to pay for or reimburse employees' medical expenses, including premiums for individual health insurance coverage or Medicare supplemental insurance.

## 2020: Looking Ahead

- **Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)**
  - Payments or reimbursements for employees who can show proof of health coverage, would be limited to a **\$5,150 (2019)** a year for individuals and **\$10,450 (2019)** for an employee and family members. (Subject to cost of living increase in the future.) Must be prorated by months of coverage in a year. **2020 Limits TBD Project \$5250 S, \$10,600 F**
  - Payments or reimbursements would not be treated as employer-provided coverage for any months that employee does not have minimum essential coverage. Reimbursements would be taxable.
  - The employee covered under the small employer HRA would not be eligible for premium assistance tax credit if QSEHRA is considered affordable coverage.
  - Employers would be required to report **QSEHRA** contributions any reimbursements that are taxable because the employee did not maintain minimum essential coverage, on their **employee's W-2**.
  - **IRS Notice 2017-67** provides additional guidance

## 2020: Looking Ahead

- Department of Labor (DOL) Penalties

– The 2019 adjustments are effective for penalties assessed after January 23, 2019, with respect to violations occurring after November 2, 2015.

Description of Violation	New Penalty	Old Penalty
Failure or refusal to file a Form 5500	\$2,194 per day	\$2,140 per day
Failure to provide documents and information requested by the DOL	\$156 per day	\$152 per day
Failure to provide reports to certain former participants and beneficiaries and failure to maintain records	\$30 per day	\$29 per day
Failure by an employer to inform employees of CHIP coverage opportunities	\$117 per day per employee	\$114 per day per employee
Violations of the Genetic Information Nondiscrimination Act (GINA), such as establishing eligibility rules based on genetic information or requesting genetic information for underwriting purposes	\$117 per participant per day	\$114 per participant per day
Failure to provide annual Summary of Benefits Coverage (SBC)	\$1,156 per failure	\$1,128 per failure

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## Legislative Outlook

- **2019 Legislative Activity/Prospects-Stay Tuned...**

- 116<sup>th</sup> Congress

- **Democrats regained control of the House and committee chairs in 2019**
  - More use of the “Pay go” rule, which would require offsets for any regulatory changes.
    - » **If you make a change, you need to find a way to pay for it.**
- **Republicans retain control of Senate**
- **Divided Congress in 2019, likely means no more repeal and replace ACA or single payer/Medicare for all**
  - Fix Obamacare with bipartisan support
  - Trump may work with Democrats on prescription drug reform

## Looking Ahead...

### 116<sup>th</sup> Congress Activity (not law yet)

- **Increase HSA contribution limits**
  - H.R. 457, H.R. 603, H.R. 2163
- **Expand HSA eligibility**
  - H.R. 908 (seniors enrolled in Medicare Part A only)
  - H.R. 2108/S. 1030 (allow seniors to opt out of Medicare Part A)
  - H.R. 3796 (allow anyone enrolled in Medicare to open and fund a HSA, also working seniors enrolled in Medicare to contribute to HSAs even if they have employer sponsored coverage)
  - H.R. 2177 (allow members of health care sharing ministries to establish HSAs)
  - H.R. 2163 (allow anyone to have an HSA)

## Looking Ahead...

### 116<sup>th</sup> Congress Activity (not law yet)

- **S. 1089 Restoring Access to Medication Act (4/2019)**
  - Overturn over-the-counter medication provision in the ACA that prohibited FSAs, HRAs, and HSAs from reimbursing expenses for OTC drugs unless the drug was insulin or prescribed by a physician.
  - Does not include feminine hygiene products
- **H.R. 1922 Restoring Access to Medication Act (3/2019)**
  - Overturn over-the-counter medication provision in the ACA that prohibited FSAs, HRAs, and HSAs from reimbursing expenses for OTC drugs unless the drug was insulin or prescribed by a physician.
  - Allow feminine hygiene products to be treated as a qualified medical expense that could be reimbursed through FSAs, HRAs, and HSAs.

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## Questions?



### Thank you for attending!!

Any questions can also be addressed by e-mail or phone:

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