AssuredPartners
COMPLIANCE OBSERVER

4th Quarter 2018

2016 Proposed ACA Penalties

As they did this same time last year, the Internal Revenue Service (IRS) has begun issuing Letter 226J to notify applicable large employers (ALE) of their proposed employer shared responsibility penalties for the **2016 calendar year**.

The IRS will issue Letter 226J to an ALE if it determines that, for at least one month in the year, one or more of the ALE's full-time employees was enrolled in a qualified health plan for which a premium tax credit was allowed (and the ALE did not qualify for an affordability safe harbor or other relief for the employee).

Within the letter, ALEs will find an Employer Shared Responsibility Penalty (ESRP) Summary Table, itemizing the type and calculation of their proposed penalty, as well as a list of their employees who received a premium tax credit (PTC listing) for coverage obtained through the Marketplace, for one or more months of the calendar year.

The determination of whether an ALE may be liable for a penalty, and the amount of the proposed penalty in Letter 226-J, are based on information from Forms 1094-C and 1095-C filed by the ALE and the individual income tax returns filed by the ALE's employees. A thorough review of the information provided in the Letter, along with the information filed with the IRS on Forms 1094-C and 1095-C for the 2016 calendar year, should be completed to determine if the information is accurate.

ALEs who receive this letter ***must respond within 30 days of receipt***, either agreeing to the proposed penalty or disagreeing with the penalty, all or in part. The IRS provides an employer response form, Form 14764, for employers to use for this purpose.

Additional Resources:
Understanding Letter 226-J
Publication 594, The IRS Collection Process – for payment options

MLR REBATES

REMINDER! ERISA plan sponsors who receive a MLR rebate that is considered "plan assets" and who decide to either distribute the rebate in cash to participants or offset the participants' share of premiums must do so ***within three months of the plan's receipt of the rebate*** from the carrier. Failure to distribute the rebate within this timeframe requires the plan sponsor to establish a trust to hold the rebate as plan assets.

2018 ACA Reporting

Final forms and instructions for 2018 reporting under Section 6055 and 6056 are now available.

Forms **1094-C** and **1095-C** (and related instructions) are used by applicable large employers (ALEs) to report under Section 6056, as well as for combined Section 6055 and 6056 reporting by ALEs who sponsor self-insured plans.

Forms **1094-B** and **1095-B** (and related instructions) are used by entities reporting under Section 6055, including self-insured plan sponsors that are not ALEs.

Employers should become familiar with these forms and instructions in preparation to use them for reporting for the 2018 calendar year.

DEADLINES

As we recently announced, the IRS has once again extended the deadline for ALEs to provide individual statements for 2018. IRS Notice 2018-94 extends the due date for furnishing to individuals the 2018 Form 1095-B, *Health Coverage*, and the 2018 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, from January 31, 2019 to March 4, 2019**.** The notice does NOT, however, extend the deadline for filing ACA forms with the IRS. These forms still must be filed by Feb. 28, 2019 (or April 1, 2019 if filed electronically, since March 31, 2019 is a Sunday).

PENALTIES

A reporting entity that fails to comply with the Section 6055 or Section 6056 reporting requirements may be subject to the general reporting penalties for failure to file correct information returns (under Code Section 6721) and failure to furnish correct payee statements (under Code Section 6722).

Penalties may be waived if the failure is due to reasonable cause and not due to willful neglect. They may also be reduced if the failure is corrected within a certain period of time.

PENALTY RELIEF

As with prior returns, the IRS has once again extended transition relief (see Notice 2018-94) for providing incorrect or incomplete information to reporting entities that can show that they have made good-faith efforts to comply with the Sections 6055 and 6056 reporting requirements for 2018 (both for furnishing to individuals and for filing with the IRS).

This relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement. **No relief** is provided for reporting entities that:

- Do not make a good-faith effort to comply with the regulations; or
- Fail to file an information return or furnish a statement by the due dates

Additional Resources:

Q&As on Section 6055 and Q&As on Section 6056; and
A separate set of Q&As on Employer Reporting using Form 1094-C and Form 1095-C

Final PCORI Fee Adjustment

Recently, the IRS published Notice 2018-85, announcing the final adjusted PCORI fee amount for plan years ending on or after Oct. 1, 2018, and before Oct. 1, 2019. The final applicable rate is **$2.45 per covered life.**

The PCORI fees do not apply for plan years ending on or after Oct. 1, 2019. Therefore, *for calendar year plans*, the 2018 plan year is the last plan year that these fees will be effective.

Issuers and plan sponsors must pay PCORI fees annually on IRS Form 720 by July 31 of each year. For the 2018 plan year, PCORI fees are due by July 31, 2019.

Agencies Release 2018 Form 5500, Schedules, and Instructions

The DOL, IRS, and PBGC have released advance information copies of the 2018 Form 5500 series, including Schedules and Instructions. (As a reminder, these copies cannot be used for filing; with very limited exceptions, Form 5500 must be filed electronically.) Here are highlights of changes relating to welfare and 401(k) plan filings:

- **Participant Counts** - The Instructions now specify that, for Line 6 (Number of participants at the end of the plan year), welfare plans should complete only elements 6a(1), 6a(2), 6b, 6c, and 6d. (There was already a note to this effect on the Form.)
- **Schedule R** - Revised Instructions for Schedule R add a second situation in which the schedule should not be completed, reflecting the removal of certain IRS compliance questions after 2016. Schedule R should not be completed if all six specified requirements are met, including that no reportable plan benefits were distributed during the year and no specified benefits were paid during the year other than by the plan sponsor or plan administrator. The Instructions explain that this last condition for avoiding Schedule R is not met if payments were reportable on Form 1099-R.
- **Annually Adjusted Penalties** - The Instructions have been updated throughout to reflect the current maximum penalty for Form 5500 filing failures ($2,140 per day). Filers are also reminded to check for increases, as required annual adjustments take place after these forms and schedules have been published.
- **Plan Characteristics Codes** - The description for Plan Characteristic Code 3D (used in completing lines 8a and 8b) has been revised to reflect changes to the pre-approved plans process by deleting the references to master, prototype, and volume submitter plans.
- **Principal Business Codes** - The list of principal business activity codes (used to complete line 2d) has been updated to reflect changes to the North American Industry Classification System—the standard on which the Form 5500 list is based.

Although the changes to Form 5500 for 2018 are not extensive, those responsible for filing should review the updated Instructions carefully to ensure complete and accurate filing of Form 5500 and any necessary Schedules

Source: EBIA Weekly/Checkpoint

2019 Benefit Limits

The IRS has updated various benefit plan limits for 2019. A comparison of the 2019 and 2018 limits is listed below.

LIMITS	2019	2018
High Deductible Health Plan (HDHP) Limits		
• HDHP Minimum Deductible – Self Only	$1,350	$1,350
• HDHP Minimum Deductible – Family	$2,700	$2,700
• HDHP Out-of-Pocket Maximum – Self Only	$6,750	$6,650
• HDHP Out-of-Pocket Maximum – Family	$13,500	$13,300
Health Savings Accounts (HSA) – Contribution Limits		
• Self Only	$3,500	$3,450
• Family	$7,000	$6,900
• Catch-Up Contributions (age 55 and older)	$1,000	$1,000
ACA Out-of-Pocket Maximum Limits		
• Self Only	$7,900	$7,350
• Embedded Individual Maximum within Family Coverage	$7,900	$7,350
• Family	$15,800	$14,700
Flexible Spending Arrangement (FSA) Contribution Limits		
• Health	$2,700	$2,650
• Dependent Care	$5,000	$5,000
Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) Reimbursement Limits		
• Self Only	$5,150	$5,050
• Family	$10,450	$10,250
Employer Adoption Assistance Exclusions		
• Maximum Gross Income Exclusion	$14,080	$13,840
• Maximum AGI Limit	$211,160	$207,140
Transportation Fringe Benefits – Monthly Limits		
• Parking	$265	$260
• Transit Passes and Vanpooling (combined)	$265	$260
Defined Contribution Retirement Plan Limits		
• 401(k)/403(b)/457 Employee Deferral Limit	$19,000	$18,500
• Catch-up Contributions (age 50 or older)	$6,000	$6,000
• Defined Contribution Plan Limit	$56,000	$55,000
• Defined Benefit Plan Limit	$225,000	$220,000
• Annual Employee Compensation Limit	$280,000	$275,000
Highly Compensated Employee Threshold	$125,000	$120,000
Key Employee Threshold	$180,000	$175,000

Did you Know?

In hopes of lowering health care costs, many employers are now offering, or considering offering, a high deductible health plan (HDHP) coupled with a health savings account (HSA). But did you know that due to an HSA's potential tax savings, ***the IRS imposes strict eligibility requirements on HSA contributions***? Accordingly, only an "eligible individual" can establish an HSA and make contributions or have them made on his/her behalf.

Who Is An "Eligible Individual"?

An "eligible individual" means, with respect to any month, any individual who:

1. is covered under a high-deductible health plan (HDHP) on the first day of such month;
2. is not also covered by any other impermissible health plan (with certain exceptions);
3. is not enrolled in Medicare; and
4. may not be claimed as a dependent on another person's tax return.

What Is a High Deductible Health Plan?

Generally, an HDHP is a health plan that provides significant benefits and satisfies certain requirements with respect to deductibles and out-of-pocket expenses (see chart on page 4). An HDHP can be insured or self-funded. With the exception of preventive care benefits, no benefits can be paid by an HDHP until the annual deductible has been satisfied.

What Other Health Coverage Makes an Individual Ineligible for an HSA?

Individuals having any other health plan coverage (other than an HDHP) that provides coverage below the statutory minimum HDHP deductible, whether covered as an individual, spouse, or dependent, are ineligible for an HSA. Examples of impermissible coverage include **but are not limited to**:

- General-purpose health reimbursement arrangements (HRA) and health flexible spending accounts (FSA)
- Medicare
- TRICARE
- Medicaid
- Some Veteran Affairs (VA) and Indian Health Services (IHS) Benefits
- Telemedicine and on-site clinics (if not limited to permissible coverage (preventive care, permitted insurance, or permitted coverage) or if it provides free or reduced-cost significant medical benefits prior to the statutory minimum deductible being satisfied)

What If an Individual is Eligible For, but Not Enrolled In, Another Health Plan?

Assuming the individual meets the other requirements to be an eligible individual, the actual health coverage selected by the individual controls; thus, it does not matter that an individual could have chosen, but did not choose, coverage under a low-deductible health plan or other coverage that would have disqualified the individual from contributing to an HSA. However, in the case of a general-purpose HRA or health FSA, since these plans are designed to pay or reimburse all qualifying medical expenses of an employee and his/her eligible tax dependents (i.e. all are "covered"), an individual covered by one of these plans will not be an eligible individual for HSA contributions, regardless of who is actually enrolled in the plan.

How Does Enrollment in Medicare Affect an Individual's HSA eligibility?
Eligibility for Medicare benefits alone does not make an individual ineligible for HSA contributions. An individual who is ***entitled*** to Medicare benefits is not eligible for HSA contributions. To be entitled to Medicare benefits, an individual generally must **be both eligible and enrolled in Medicare**.

What About Individuals Who Turn 65, Aren't They Automatically Enrolled in Medicare?
An individual is only automatically enrolled in Medicare at age 65 **IF** he/she is receiving Social Security or Railroad Retirement benefits.

Medicare entitlement based on age or disability generally cannot be waived by individuals who are receiving Social Security benefits. Some individuals might like to waive Medicare (but keep their monthly Social Security benefits) to preserve the right to contribute to an HSA. However, Medicare does not permit individuals to retain Social Security benefits and waive Medicare.

NOTE: For employers with **fewer than 20 employees**, Medicare is the primary insurer and the employer-sponsored plan is secondary coverage. In some instances, the employer's insurer may require employees at these **smaller companies** and their enrolled dependents to enroll in Medicare when they're first eligible. This is not a federal requirement, but rather an insurer rule. Plan sponsors should check with their insurer to know whether this is true for their plan.

Can an Employee's Spouse, who is Enrolled in an HDHP Plan as a Dependent, Continue to Make Contributions to an HSA if the Employee Enrolls in Medicare?
Yes, individuals are not required to be the HDHP plan subscriber in order to be HSA-eligible. Although the employee (HSA holder) may cease to be an HSA-eligible, the spouse, if otherwise an eligible individual, may open his/her own HSA account and continue to make tax-deductible contributions up to the family maximum if s/he remains covered on a family HDHP contract. For some couples, this provision in the law allows them to continue to contribute to an HSA for several years after the older spouse enrolls in Medicare.

Who is a Tax Dependent for Purposes of HSA Eligibility?
In general, a taxpayer may claim an individual as his or her tax dependent if the individual is:

- the taxpayer's child and under age 19 at the end of the tax year;
- the taxpayer's child, a student and under age 24 at the end of the tax year; or
- a member of the taxpayer's household for whom the taxpayer provided over half of the support for the year and whose gross income does not exceed the personal exemption amount**.**

Must an Employer Verify an Employee's Eligibility for an HSA?
Employers that contribute to an employee's HSA are only responsible for determining the following with respect to an employee's eligibility and maximum annual contribution limit on HSA contributions:

- whether the employee is covered under an HDHP or any low-deductible health plan (including health FSAs and HRAs) sponsored by that employer, and
- the employee's age (for catch-up contributions).

The IRS has informally indicated that the burden of determining HSA eligibility falls almost entirely on the employee, and that the employer will not be liable if it turns out that the employee is ineligible for an HSA.

Although not required, we recommend employers provide educational materials and interactive tools to help employees determine whether they are eligible for an HSA. For further information on HSAs and potential tax liabilities, we recommend seeking the advice of your legal counsel or tax advisor.

FROM ALL OF US AT ASSUREDPARTNERS

Should you have any questions or concerns about any of the topics addressed in this Newsletter, please contact a member of your AssuredPartners' Benefits Team.

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