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LEGISLATIVE REVIEW



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GRANDMOTHERED PLAN RELIEF THROUGH 2019

President Trump has signed the Extension of Continuing Appropriations Act, which will fund the government through February 8, 2018. The Act includes:

The Centers for Medicare and Medicaid Services (CMS) has allowed states to permit carriers to extend “grandmothered” plans provided that all such policies end by December 31, 2019.

“Grandmothered” plans are those purchased subsequent to March 23, 2010 but before December 31, 2013 when market reforms such as the new rating methodologies for individual and small group fully-insured plans and the Essential Health Benefits requirements became effective.

Any grandmothered plans in New York, New Jersey, Pennsylvania and Delaware that were in force were permitted to be extended.

For more information, visit: [CMS Bulletin Released April 9: Extension of Transitional Policy Through 2019](#)

HEALTH SAVINGS ACCOUNT (HSA) MAXIMUM FAMILY CONTRIBUTION RELIEF

IRS Grants Relief for Taxpayers Affected by Reduction of Maximum Family Contribution for HSA accounts

The IRS had initially announced a rollback of \$50 off of the \$6,900 maximum in March. Recognizing the problems for persons who may have already contributed the maximum, the IRS is allowing the full \$6,900 to remain in effect for 2018.

Revenue Procedure 2018-27 announces relief for affected taxpayers and allows the \$6,900 limitation to remain in effect for 2018.

This is a rollback of what was previously reported in IRS Bulletin No. 2018-10 in March.

For more information, visit: [Revenue Procedure 2018-27](#)



COMMONSENSE REPORTING ACT H.R. 3919 AND S. 1908

These proposals to reform the Affordable Care Act's reporting requirements are efforts to provide much-needed relief for employers seeking to comply with the reporting requirements under Section 6055 and 6056 for enforcement of the ACA's individual and employer mandates.

Specifically, the legislation would:

- Establish a new voluntary reporting system for employers to report to the IRS information about their health plans. Exchanges will use the federal data hub to access this data for individual verification for tax credits.
- Require that employers report to the IRS only those employees (and/or their dependents) who are not receiving healthcare from their employer, greatly simplifying the requirement that all employees be reported.
- Specify that information that would be reported would include name and employer identification, who has been extended an offer of minimum essential coverage, whether coverage meets minimum value and the affordability safe harbor, and months that coverage is available without waiting periods.
- Allow employers to deliver reports to employees electronically without another consent form.
- Instruct the Government Accountability Office to conduct a study on the notifications, HHS appeals process and the prospective reporting system.
- Require HHS to review the most recent tax filing for individuals automatically reenrolled in exchange-based coverage and adjust their tax credits accordingly.

For more information, visit: Commonsense Reporting Act [H.R. 3919](#) and [S. 1908](#)



NEW JERSEY ENFORCES THE INDIVIDUAL MANDATE STARTING JANUARY 1, 2019

- New Jersey is the second state after Vermont to enact an individual mandate, which becomes effective January 1, 2019.
- The purpose of P.L. 2018, Chapter 31 is to stabilize the market and help keep health insurance premiums as low as possible.
- The tax applies to all New Jersey residential taxpayers. Hardship exemptions shall be determined by the State Treasurer.
- The mandate requires individuals to maintain minimum essential coverage (MEC) or pay a penalty.
- The amount of the tax penalty is the New Jersey average premium for bronze level plans, \$695 or 2.5% of income, whichever is greater. "Income" is defined as household income minus any deductions.
- The tax will be collected via the New Jersey income tax return.
- Every entity (employer or carrier) that provides MEC shall report to the individual and to the State Treasurer similar to the ACA reporting.
- The State will create forms that will be provided once they officially become available.

For more information, visit: [P.L. 2018, Chapter 31](#)



EMPLOYER SHARED RESPONSIBILITY AFFORDABILITY FOR 2019

Basics of the Employer Shared Responsibility / Pay or Play Mandate

Starting in 2015, employers with at least 50 full-time including equivalent employees, on average, in the preceding calendar year, are subject to the Employer Shared Responsibility provision of the ACA. All union, part-time, variable hour and seasonal employees are counted to determine the 50 threshold. Such an employer is known as an Applicable Large Employer (ALE).

If an ALE does not offer at least minimum essential coverage (MEC) or does not offer affordable minimum value coverage to their full-time employees and their dependents to age 26, the employer may be subject to a tax assessment if at least one full-time employee receives a premium tax credit from an exchange marketplace. Individuals are eligible for a subsidy if their household income is up to 400% of the Federal Poverty Level, they are not eligible for Medicare or Medicaid and are not enrolled in the employer's health plan.

Affordability

2015 was 9.5%, 2016 was 9.66%, 2017 was 9.69%, 2018 is 9.56% (reduced), and 2019 is 9.86% per Revenue Procedure 2018-34 released May 2018.

EMPLOYER SHARED RESPONSIBILITY (PAY OR PLAY) PROVISION ESTIMATOR

The Taxpayer Advocate Service—an independent organization within the Internal Revenue Service (IRS)—has developed an [Employer Shared Responsibility Provision Estimator](#) tool to assist employers in understanding how the Affordable Care Act's employer shared responsibility ("pay or play") provisions work and how the provisions may apply to them.

Employers can use the tool to determine their:

- Number of full-time employees, including full-time equivalent employees (FTEs);
- Applicable large employer (ALE) status; and
- Estimated maximum amount of potential liability for the employer shared responsibility payment ("pay or play" penalty payment).

The tool provides estimates only. Employers are advised to use it only as a guide to assist them in making decisions regarding their tax situation.

ASSOCIATION HEALTH PLAN (AHP) FINAL RULES ISSUED

On January 4, 2018, the U.S. Department of Labor (DOL) announced proposed rules to expand the opportunity to offer employment-based health insurance to small businesses through Association Health Plans.

On June 19, 2018, the Trump Administration released a final rule as well as a fact sheet on the new rule. The rule was in response to an executive order issued by President Trump on October 12, 2017 directing federal agencies to expand the availability of AHPs, short-term limited duration insurance policies and Health Reimbursement Arrangements. The proposal calls for a revision to ERISA in order to redefine “employer” to allow more groups to qualify as associations and treat health coverage sponsored by an employer association as a single group health plan that would not be subject to the ACA’s ten essential health benefits required in the consumer and small group markets.

The goal of the Administration’s rule is to provide small-business owners, employees of small businesses and family members of working owners and their employees with more coverage options, more affordable pricing, enhanced ability to self-insure, less regulatory burden and complexity and reduced administrative costs.

HOW

Under the final rule, self-employed individuals, sole proprietors and common-law employees would be permitted to join an AHP.

The final rule does say that there must be at least one other service, e.g., education, offered to members so that the association cannot solely exist to provide health insurance. Allowing the self-employed without employees to join is beneficial as they were excluded in 2014 when they could no longer get group coverage, but there is a risk of anti-selection. It was suggested that they should have one open enrollment season to avoid any anti-selection. Although the final rule does not mandate one enrollment period, it does allow the association to incorporate the suggested rule.

State laws are not preempted, which means the final rule will apply to them.

REGIONAL STATE REVIEW

New York State DFS (New York State Department of Financial Services) has reported that the Trump Administration’s final rule expanding the role of association health plans won’t prevent its authority to regulate health insurance.

New Jersey DOBI (New Jersey Department of Banking and Insurance) has reported that it will not allow non-compliant plans.

Pennsylvania Insurance Commissioner Jessica Altman’s comments are reported on the PA.gov website (see link below).

Delaware currently allows a Delaware-based employer to participate in an association plan from another state if that state allows it and the Delaware group is a member of that association.

For more information, visit

- [AHP Final Rule](#)
- [AHP Fact Sheet](#)
- [Presidential Executive Order](#)
- [PA Insurance Commissioner Jessica Altman's Comments](#)

EMPLOYER SHARED RESPONSIBILITY UPDATE

Employer Shared Responsibility is in Full Force

Reporting for Applicable Large Employers (ALEs) remains in effect. The Internal Revenue Service (IRS) continues to enforce penalties under 4980H for ALEs who have not complied with the Employer Shared Responsibility mandate. More than 10,000 enforcement 226J letters have been issued by the IRS for the 2015 reporting year.

Helpful Tips

Maintaining Documentation

Employers should prepare and maintain detailed records to support the information reported on their 1094 and 1095 filings.

- Maintaining complete records will help the employer in the event of an IRS examination regarding the accuracy of its filings
- Well maintained records may also help the employer in the event they must dispute a penalty calculation presented in a Letter 226J
- IRS guidance notes that the records should be maintained for at least three years from the due date of the filings (late filers should maintain their records at least three years from their filing date)

Documentation to Keep

Employers should retain:

- Documentation on their selection of which affordability safe harbor they applied to their eligible employees
- Records of any calculations regarding the benefits eligibility of variable hour employees
- Necessary payroll, open enrollment and demographic records needed to document the data reported in the individual 1095 filings as well as their 1094 transmittal