



Subject: 1) Marketplace Developments; 2) Proposed Regulations on ACA Reporting Obligations; 3) State Individual Mandate Reporting Update; 4) Year-End Reminders

Date: December 14, 2021

Marketplace Developments

Marketplace Open Enrollment Extended

Historically, the open enrollment period for the federal marketplace has ended December 15. Beginning for the 2022 coverage period, the federal marketplace open enrollment runs from November 1, 2021 through January 15, 2022.

For enrollments received on or before December 15, 2021, the effective date of coverage will be January 1, 2022. For enrollments received between December 16 and January 15, coverage will become effective February 1, 2022.

State marketplaces may have different enrollment periods but they may not end before December 15. See list of state-based marketplaces from CMS's website [here](#).

American Rescue Plan Act Expansion of Entitlement to Premium Assistance

The American Rescue Plan Act provides a temporary increase in the premium tax credit available to certain individuals obtaining health coverage through the marketplace. Of particular note, the ACA's 400% of poverty cliff, i.e. no premium assistance once an individual reaches that threshold, is relaxed for two years. Individuals exceeding 400% of poverty would be entitled to premium assistance if the cost of health care exceeds 8.5% of their income.

Employers subject to employer shared responsibility should be aware that this could impact their risk of IRC section 4980h (a) or 4980h (b) penalty. Also note, the Build Back Better proposals include extension of these expansions. Employers should keep an eye on this, especially if it potentially impacts some of their workforce.

Proposed Regulations on ACA Reporting Obligations

The IRS and Treasury have issued a notice of proposed regulations providing that the 1095-C benefit statement provided by applicable large employers (ALEs) will be granted a permanent 30 day extension. Generally the statement must be provided to individuals by January 31 following the year to which it applies. (See [HRB 159](#))

These regulations, which can be relied on for the 2021 reporting year due in early 2022, change the date to March 2 or the next business day if March 2nd falls on a weekend day or legal holiday. This does not change the dates by which the forms must be submitted to the IRS (generally February 28 for forms filed in hard copy and March 31 for electronic filings).



CBIZ Health Reform Bulletin

The good faith standard penalty reprieve for incomplete or incorrect forms will no longer be granted. It will be important to make sure every effort is made to ensure accuracy.

Updates: State-required Individual Mandate Reporting

The states of California, District of Columbia, Massachusetts, New Jersey, Rhode Island and Vermont have enacted individual mandate laws that require residents to be covered by minimum essential coverage (MEC) or pay a state tax. Further, certain states require entities who provide MEC to file information returns to the relevant state revenue departments. Most of these states accept the Form 1094 and 1095 series used for federal MEC filing purposes. Recently, several state revenue departments have issued updates relating to these reporting obligations, as reflected in the charts below.

Notably, unlike many other employment laws, these state individual mandates are not based on place of employment; rather, the applicability of the state individual mandate laws is based on state of residence.

Individual State Mandate Reporting				
<i>State</i>	<i>Covered entities</i>	<i>Applicable form(s)</i>	<i>Report due</i>	<i>Resources</i>
California	<ul style="list-style-type: none"> ◆ Self-funded plan sponsors, health insurers ◆ Employers required to report the information if insurer does not 	Same forms used for federal purposes (Form 1094/1095)	<ul style="list-style-type: none"> ◆ File annually by March 31 electronically ◆ Provide written statement annually by January 31 to individuals 	California Franchise Tax Board Reporting Information
District of Columbia	<ul style="list-style-type: none"> ◆ Self-insured health plans, fully insured health plans covering min. 50 full-time employees, health insurers ◆ Third party service providers may file forms for applicable entities 	Same forms used for federal purposes (Form 1094/1095)	<ul style="list-style-type: none"> ◆ File 30 days after IRS deadline for submitting 1095-B/C forms, including any extensions, electronically ◆ Form 1095-B/C satisfies DC obligation; no further benefit statement to individuals required 	District of Columbia Office of Tax and Revenue Updated Guidance
Massachusetts	<ul style="list-style-type: none"> ◆ Employers, health insurers and other entities that provide health coverage ◆ Employers may contract with TPA to fulfill this obligation 	Form MA 1099-HC	Provide annually by January 31 to primary subscriber, and file with Department of Revenue	Massachusetts Department of Revenue Health Care Reform for Employers
	<ul style="list-style-type: none"> ◆ Employers with six or more employees 	Health Insurance Responsibility Disclosure (HIRD) form	Annual HIRD filing period: begins Nov. 15 and ends Dec. 15	Massachusetts Department of Revenue HIRD FAQs

Individual State Mandate Reporting, cont'd				
State	Covered entities	Applicable form(s)	Report due	Resources
New Jersey	<ul style="list-style-type: none"> Employers, health insurers and other entities that provide health coverage Employers must submit the forms if the insurer does not 	<ul style="list-style-type: none"> Forms 1095-B/C Form NJ-1095 	<ul style="list-style-type: none"> File report annually by March 31, electronically Provide Form 1095-B to each primary enrollee by March 2, 2022 	New Jersey Division of Taxation Guidance
Rhode Island	<ul style="list-style-type: none"> Employer/plan sponsors, licensed insurers Employers may contract with a third party for reporting and disclosure obligations 	Forms 1094/1095	<ul style="list-style-type: none"> File report annually by January 31 (for tax year 2021, deadline extended to March 31, 2022), electronically Provide written statement annually by January 31 to individuals 	Rhode Island Division of Taxation Health Coverage Mandate
Vermont	As of January 1, 2020, Vermont residents must maintain a minimum level of health coverage. The law requires residents to self-report compliance when filing his/her taxes. There is no penalty for failure to have health coverage.			

Year-end Reminders

Preventive Health Services

Prior to the beginning of each plan year, a group health plan sponsor or administrator should review its coverage for preventive services to determine whether any additional benefits need be offered. For insured plans, generally, the insurer manages this process.

As background, the Affordable Care Act requires health plans to cover certain preventive services, without imposing any cost-sharing requirements (co-pay, co-insurance, or deductible), when such services are delivered by in-network providers. The types of covered preventive services, some of which are recommended by the U. S. Preventive Services Task Force (USPSTF), are updated periodically. Generally, once the USPSTF approves a particular recommendation, the service would become applicable as of the first plan year beginning one year following issuance of the recommendation. The USPSTF website provides a list of its recommended A and B preventive services by [date](#) and [alphabetically](#). Further, a complete list of ACA-required preventive services can be accessed from the [Healthcare.gov website](https://www.healthcare.gov).

As a reminder, the coronavirus vaccine became a preventive service required to be covered without cost to the individual beginning January 5, 2021.

Employer Shared Responsibility Provisions

- ♦ **Applicability.** For purposes of the ACA's employer shared responsibility requirement as well as the reporting and disclosure requirements, applicable large employer (ALE) status is determined each calendar year, based on the average size of the employer's workforce during the prior year. Thus, if you averaged at least 50 full-time employees, including full-time equivalent employees during 2020, you are most likely an ALE for 2021, and are subject to the reporting and disclosure requirements due in early 2022.

- ◆ **Affordability Standard.** For purposes of determining affordability, coverage under an employer-sponsored plan is deemed affordable if the employee’s required contribution to the plan does not exceed 9.61% (indexed for 2022; down from 9.83% in 2021) of the employee’s household income for the taxable year, based on the cost of single coverage in the employer’s least expensive plan.
- ◆ **Increase in Excise Tax Penalties.** The chart below reflects the amount of penalties for purposes of calculating the ‘no coverage’ excise tax pursuant to Code Section 4980H(a), and the ‘inadequate or unaffordable’ excise tax pursuant to Code Section 4980H(b) for 2020 to 2022. These are the excise taxes that could apply if an applicable large employer is found not to have offered health coverage to a full-time employee. These amounts are based on the HHS inflationary percentage contained in its annual benefit and payment parameter standards for the relevant year, and as officially released by the Internal Revenue Service.

'No Coverage' Excise Tax IRC Section 4980H(a)		'Inadequate or Unaffordable' Excise Tax IRC Section 4980H(b)	
2020	\$2,570	2020	\$3,860
2021	\$2,700	2021	\$4,060
2022	\$2,750 estimated	2022	\$4,120 estimated

- **Small Business Tax Credit (SBTC).** Small businesses and tax-exempt employers who provide health care coverage to their employees under a qualified health care arrangement are entitled to a tax credit, known as the small business tax credit (SBTC). To be eligible for the SBTC, the employer must employ fewer than 25 full-time equivalent employees, whose average annual wages are less than \$57,400 (indexed for 2022; the wage ceiling in 2021 is \$55,600).

The tax credit phases out for eligible small employers when the number of its full-time employees (FTEs) exceeds 10; or, when the average annual wages for the FTEs exceeds \$28,700 in the 2022 tax year (the phase-out wage limit in 2021 is \$27,800). As a reminder, only qualified health plan coverage purchased through a SHOP marketplace is available for the tax credit, and only for a 2-consecutive year period.

For purposes of calculating the SBTC, the Form 8941 is filed annually on the employer’s tax return as a general business credit; tax exempt entities would file the Form 8941 with its Form 990-T.

□ **Additional ACA-related Fees**

Patient-Centered Outcomes Research Institute (PCORI) Fees

The PCORI fee is assessed on the average number of lives covered under the policy or plan. The fee will continue to be assessed through 2029.

For policy and plan years ending between October 1, 2019 and October 1, 2020, the fee was \$2.54 per covered life. The fee increases to \$2.66 per covered life for policy and plan years ending between October 1, 2020 and before October 1, 2021, according to [IRS Notice 2020-84](#). Affected entities are required to pay the fees and file the Form 720 by July 31 of each year.

□ **ACA Cost Share Restrictions**

The chart below reflects the 2022 and 2021 inflationary adjustments applicable to out-of-pocket (OOP) limits including deductibles, co-insurance and co-payments in ACA plans. These cost-share restrictions apply to insured plans offered via the marketplace, and insured and self-funded plans

CBIZ Health Reform Bulletin

offered outside marketplace. These amounts differ from the OOP limits applicable to high deductible health plans used in conjunction with a health savings account (HSA).

	2022		2021	
	Self-only	Family	Self-only	Family
ACA Plans - Out-of-Pocket (OOP) Limits				
	\$8,700	\$17,400	\$8,550	\$17,100
Health Savings Accounts	<i>Individual</i>	<i>Family</i>	<i>Individual</i>	<i>Family</i>
HDHP Annual Deductible	\$1,400	\$2,800	\$1,400	\$2,800
HDHP Annual Out-of-Pocket Limit	\$7,050	\$14,100	\$7,000	\$14,000
Contribution Limit	\$3,650	\$7,300	\$3,600	\$7,200

☐ Highlights of ACA-Related Reporting and Disclosure Reminders

The two tables below reflect certain reporting and disclosure requirements.

ACA-required Reporting Reminders

Form	To Whom	Due Date
Form W-2		
<p><i>ACA-required reporting includes:</i></p> <ul style="list-style-type: none"> ◆ Aggregate cost of health coverage (Box 12, using Code DD). <i>Note: employers filing <250 Form W-2s per year remain exempt from reporting the aggregate cost of health coverage on the Form W-2 until future IRS guidance is issued.</i> ◆ Total amount of permitted benefits received under a qualified small employer health reimbursement arrangement (QSEHRA) (Box 12 - Code FF) ◆ Additional Medicare tax withholding on earnings exceeding \$200,000 per calendar year (Box 6) 	<p>Internal Revenue Service (IRS) http://www.irs.gov/</p> <p>Form W-2 Instructions (2021)</p>	<p>January 31, 2022</p>
Form 1094/1095		
<ul style="list-style-type: none"> ◆ File Forms 1094C/1095C ◆ Instructions for 1094/95C ◆ File Form 1094B ◆ Instructions for 1094/95B 	<p>IRS</p>	<ul style="list-style-type: none"> ◆ Paper: Feb. 28, 2022 ◆ Efile: March 31, 2022
<ul style="list-style-type: none"> ◆ Furnish Form 1095; or, certain Form 1095-B reporting entities can utilize simplified posting method 	<p>Individuals listed in Forms 1094 and 1095</p>	<p>March 2, 2022 Note: good faith standard will no longer apply</p>
Form 720		
<p>Used for purposes of Patient Centered Outcome Research Institute (PCORI) fee</p>	<p>IRS</p>	<p>July 31 of each year</p>

Additional ACA-Related Disclosure Reminders

CBIZ Health Reform Bulletin

Note: Below are select ACA-required disclosures. For a more descriptive list of notice obligations relating to the ACA and other welfare benefit plans, ask your CBIZ representative for a Chart of Notice Obligations.

Form	To Whom	Due Date
Summary of Benefits and Coverage (SBC) SBC template and related materials available from DOL-EBSA and/or HHS-CCIIO	All plan participants	From Plan Sponsor to Plan Participants: <ol style="list-style-type: none"> 1. Upon application 2. By the first day of coverage 3. Within 90 days of enrollment by special enrollees 4. Upon contract renewal 5. Upon request
Advanced 60-day Notice of Material Change in Benefits	All plan participants	No later than 60 days prior to any material change in any terms of plan affecting Summary of Benefits and Coverage (SBC) content not reflected in the most recently-provided SBC (other than in connection with renewal or reissuance of coverage)
Notice of Marketplace Options <ul style="list-style-type: none"> ♦ Model notice for use by employers who offer coverage to some or all employees: <ul style="list-style-type: none"> ▪ English (PDF or Word) ▪ Spanish (PDF or Word) ♦ Model notice for employers who do not offer health coverage: <ul style="list-style-type: none"> ▪ English (PDF or Word) ▪ Spanish (PDF or Word) 	All new hires including full-time and part-time employees, without regard to eligibility status for the health plan	Within 14 days of date of hire

Increased Penalties for Certain Compliance Violations

Federal government agencies who enforce the ACA, including the Departments of Labor, Treasury and Health and Human Services, have authority to adjust civil penalties attributable to compliance failures.

Failure to provide Summary of Benefits and Coverage (SBC)	Up to \$1,190 per failure <i>(indexed for 2021)</i>
Failure to file a correct information return <i>Example: Form 1094/1095 and W-2</i> <ul style="list-style-type: none"> ▪ Avg. annual receipts/3 years \geq\$5M: \$280 per return (cap of \$3,426,000 per calendar year) ▪ Avg. annual receipts/3 years \leq\$5M: \$280 per return (cap of \$1,142,000 per calendar year) <i>(indexed for 2021)</i>	
Failure to provide correct payee statement <i>Example: Forms 1094/1095 and W-2</i> <ul style="list-style-type: none"> ▪ Avg. annual receipts/3 years \geq\$5M: \$280 per return (cap of \$3,426,000 per calendar year) ▪ Avg. annual receipts/3 years \leq\$5M: \$280 per return (cap of \$1,142,000 per calendar year) <i>(indexed for 2021)</i>	

CBIZ Health Reform Bulletin

About the Author: Karen R. McLeese is Vice President of Employee Benefit Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law. Ms. McLeese is based in the CBIZ Kansas City office.

The information contained herein is not intended to be legal, accounting, or other professional advice, nor are these comments directed to specific situations. The information contained herein is provided as general guidance and may be affected by changes in law or regulation. The information contained herein is not intended to replace or substitute for accounting or other professional advice. Attorneys or tax advisors must be consulted for assistance in specific situations. This information is provided as-is, with no warranties of any kind. CBIZ shall not be liable for any damages whatsoever in connection with its use and assumes no obligation to inform the reader of any changes in laws or other factors that could affect the information contained herein.