

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

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## Q&A FROM ASSUREX GLOBAL WEBINAR

MARCH 23, 2017

### KEEPING UP WITH CHANGES TO EMPLOYEE BENEFITS RULES (PART 2)

**Q.** Any recommendations from the government on how an employer would remove caps on the Health FSA mid-2017?

**A.** There was not any guidance provided in this regard. If health FSA salary reduction limitations are removed retroactively, we expect there would be corresponding guidance provided from the IRS addressing such things.

**Q.** What is a roth HSA?

**A.** A Roth HSA (a new concept introduced in proposed legislation) would operate similarly to HSAs available today, except that money deposited in the HSA would be subject to taxation, similar to a Roth IRA. Only investment income on funds contributed to the Roth HSA and withdrawals for qualifying medical expenses would be available on a tax-favored basis.

**Q.** Is Affordability for an employer set at 9.5% or 9.69% for CY 2017?

**A.** The affordability percentage, for all purposes, is indexed annually. It started at 9.5% in 2014, increased to 9.56% in 2015, increased to 9.66% in 2016, and is currently at 9.69% for 2017. 9.69% is the percentage to use for all purposes, including determining affordability for subsidy eligibility, using the safe harbors (FPL, Form W-2 and rate of pay), and meeting simplified reporting criteria (qualifying offer method).

**Q.** I have heard from a tax professional, effective March 1, 2017, they are no longer required to ask if you have health care coverage, you no longer have to report it. Have you heard of anything like this?

**A.** While the individual mandate (requiring individuals to have minimum essential coverage in place all 12 months) is still in effect, the IRS indicated that it will not reject tax returns if individuals fail to report coverage information. In other words, individuals may leave the box blank. That being the case, if the individual was audited, it would not change the fact that the IRS could impose penalties if the individual cannot provide proof of coverage in compliance with the individual mandate.

**Q.** Regarding the removal of the limit and over the counter -what date did this change or when is it expected to change?

**A.** Nothing has changed at this point. This was part of the proposed legislation which failed to obtain enough votes in the House last month.



**Q.** Has anyone else had problems with the IRS saying the name and/or SSN does not match for 1095 and 1094 reporting?

**A.** Certainly the most common error we've run into for employer reporting has been related to name and SSN/TIN mismatches. So long as the employer can establish "reasonable cause", the employer should not be subject to any potential penalties. To establish reasonable cause for not providing accurate TIN/SSN information, the employer is required to make 3 reasonable attempts using the following steps for an incorrect TIN/SSN:

1. Make an initial solicitation at the individual's first enrollment (i.e. application for coverage submitted);
2. If the first solicitation is unsuccessful, make a second solicitation by December 31 of the year in which the error is discovered;
3. If the second solicitation is unsuccessful, make a third solicitation by December 31 of the year following the first solicitation.

If at any point in time the employer discovers corrected information, the 1095 should be corrected as soon as possible. But if the employer follows the process and is unable to obtain better information, there is nothing further to do, other than to internally document the process for audit purposes.

In some cases, the formatting of the name may be causing issues. The IRS has developed name control rules, which can be found at <https://www.ftb.ca.gov/professionals/efile/forms/irsforms/namecont.pdf>. We have also heard that it is worthwhile to try switching the order of hyphenated or double last names for those that do not go through the first time (especially Hispanic names). In addition, according to the electronic filing instructions, hyphens are allowed, while apostrophes are not.

**Q.** Why not scrap the Cadillac Tax and replace it with a limit on benefits that can be deducted on a pre-tax basis?

**A.** That has been proposed in legislation. No changes yet, but the Cadillac Tax and limits on tax exclusions for employer-provided benefits are the two possible methods on the table currently for regaining some of the federal revenue lost to employer-provided benefits. It seems likely that we will see more on this in future healthcare legislation as well as possibly part of larger tax reform efforts.

**Q.** The premium penalty is 30% of what? Is the penalty defined as 1 year, or for the life of the contract?

**A.** As an alternative to the individual mandate, the proposed legislation suggested a penalty for those with a lapse in coverage of more than 63 days. If the individual had a break in coverage of more than 63 days in the previous year, the insurance carrier could then charge an additional 30% of the premium cost for the plan chosen for the next plan year.



**Q.** Have there been any proposed changes to pre existing conditions?

**A.** Not that we're aware of, although there is speculation that even though plans are technically not allowed to limit coverage based on pre-existing conditions, some of the proposed changes to other regulations would allow insurance carriers more flexibility to adjust plan benefits and pricing, which may adversely affect those with certain pre-existing conditions.

**Q.** Can individuals join a medical plan at anytime or are there specific enrollment periods?

**A.** For most non-governmental coverage (individual and group coverage), individuals are only allowed to join during open enrollment, unless there is a life event (e.g. change in employment status, marriage/divorce, birth of a child) allowing for a special enrollment window mid-year.

**Q.** If the employer mandate is repealed then would we still have to do all the reporting?

**A.** If the individual mandate and employer mandate are removed, or penalties are reduced to \$0, it seems unlikely that the complex employer reporting requirements in place today would remain. However, as long as tax subsidies remain available, it is likely that some type of employer reporting will be required. In addition, as other changes are made, there may be need for other types of information to be collected. In other words, it seems likely that some type of employer reporting will continue with or without repeal of the employer mandate, although there is certainly a possibility that such requirements will be simplified.

**Q.** Is the proposed Tax Excluding Limit for the 'large' 50+ employers only?

**A.** The proposed tax exclusion limits for employer-provided benefits have not so far indicated that they would apply only to employers of a certain size. Therefore, it's possible such limits would apply to both large and small employers.

**Q.** What is the Cadillac Tax threshold limit for plans that use a super composite premium rate, such as union plans? Under these plans self-only coverage or family coverage is charged the same under the super-composite rate.

**A.** We're unaware of clear guidance in this regard. If the Cadillac Tax moves forward, we will need significantly more guidance in regard to what types of coverage need to be included and how to calculate the cost of coverage.

**Q.** How do you determine "minimum value, affordable coverage" via a company contribution or otherwise? Will guidelines be provided based on a company's FTE?

**A.** An employer's plan is considered to provide "minimum value" if the actuarial value of the benefits provided by the plan is 60% or better.

An employer's plan is "affordable" if the employee contribution for single coverage does not exceed 9.69% (in 2017) of the employee's household income (modified adjusted gross income (MAGI)). Alternatively, for purposes of §4980H compliance, the coverage will also be considered affordable if one of the three affordability safe harbors is met (federal poverty level (FPL), rate of pay, or Form W-2).



**Q.** One of the employer mandate definitions includes assessing affordability based on household income. How are employers assessing an employee's "household income" given that it is unlikely everyone in the household works for the same company, and with all the privacy restrictions the employer is handicapped from asking about personal information, like who is in your household and how much to they earn?

**A.** While affordability for purposes of subsidy eligibility through a public Exchange is based off an individual's household income (modified adjusted gross income), because an employer is unlikely to ever know actual household income, an employer has the option to use three different affordability safe harbors; and although it cannot be handled on an employee-by-employee basis, different safe harbors may be chosen for different categories of employees.

- FPL safe harbor – coverage is affordable if the employee contribution for single coverage doesn't exceed 9.69% of FPL – employee contributions of approximately \$96/month or less will be affordable for all employees, regardless of wages. This safe harbor is the most conservative and guarantees affordability for all employees
- Rate of Pay safe harbor – coverage is affordable if the employee contribution for single coverage doesn't exceed 9.69% of the hourly rate of pay multiplied by 130 (for hourly employees) or 9.66% of monthly salary (for salaried employees). Things such as commissions, bonuses or tips cannot be taken into account, therefore this safe harbor doesn't work well for such employees.
- Form W-2 (Box 1 wages) – coverage is affordable if the annual employee contribution for single coverage doesn't exceed 9.69% of Box 1 wages, which would generally include things such as commissions, bonuses or tips, but would be reduced by any pre-tax contributions.

**Q.** Is it likely that the definition of an HDHP will change with the increase in HSA limits?

**A.** We haven't seen anything yet that would change the definition of a qualifying high-deductible health plan (HDHP) for purposes of HSA-eligibility, other than that the proposed Roth HSA could be paired with any creditable coverage (similar to minimum essential coverage requirements).

**Q.** The proposed unlimited amount for FSA - does that apply to both dependent care and health FSA?

**A.** No, only health/medical flexible spending accounts (FSAs).

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