

Health Care Reform – What You Should Know For 2017

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This Advisory supplements our previous advisories dated [December 2015](#) (as supplemented in [January 2016](#)), [October 2014](#), [October 2013](#), [November 2012](#), [November 2011](#), and [October 2010](#), addressing the requirements of the Affordable Care Act (“ACA”). Unlike prior years, there are few new statutory requirements for 2017. This Advisory summarizes some of the new requirements as well as other changes effective in 2017.

2016 Federal Elections and the Future of the ACA

Though President-elect Trump previously expressed his intention to repeal the ACA, he has since indicated that he plans to retain certain portions of it. Until legislation is passed or guidance issued revoking or rescinding existing ACA rules, we suggest clients continue complying with all ACA mandates, including mandates taking effect in 2017. We will provide periodic updates on future ACA changes.

ACA Nondiscrimination Requirements

The Department of Health and Human Services (“HHS”) issued final rules implementing Section 1557 of the ACA, which builds on existing Federal civil rights law by extending nondiscrimination protections (e.g., race, age, gender) to individuals participating in health plans receiving HHS funding. Section 1557 applies to most insurers and, for many employer-sponsored plans, will be triggered by receipt of a Medicare Part D subsidy, (*i.e.*, the HHS subsidy provided to plans covering Medicare-equivalent prescription drug coverage). While the rules are generally effective July 18, 2016, certain notice and administrative requirements went into effect in October 2016 and required changes to health coverage must be in place before January 1, 2017. Affected plan sponsors should confirm with their brokers and third-party administrators that their covered health plans are in compliance with these new non-discrimination rules.

Note that these non-discrimination rules are not to be confused with the long-awaited IRS regulations prohibiting discrimination in favor of highly compensated employees in insured medical plans. As yet, there is no indication of when the IRS plans to issue such guidance and when such rules would be effective.

ACA Reporting Deadline and Good Faith Transition Relief Extended

For employers subject to the ACA's 2016 information-reporting requirements, the due date for delivering the 2016 Forms 1095-C or -B to employees was extended from January 31, 2017 to March 2, 2017. The deadline for filing the appropriate forms with the IRS was **not** changed; forms must be mailed by February 28, 2017 or filed electronically by March 31, 2017. Updated 2016 forms and instructions are available on the IRS website.

Additionally, penalties will not be assessed for incomplete or incorrect information on the 2016 ACA forms, provided the forms are filed on time and completed in “good faith.” In determining good faith, the IRS will consider whether reasonable efforts were made to prepare for filing and the extent to which an employer is taking steps to ensure that it can comply with next year’s reporting obligations. The IRS does not anticipate extending its transition relief (i.e., due dates or good-faith relief) to future years.

Other ACA Changes to Note

Anti-Retaliation

Section 1558 of the ACA prohibits an employer from discharging or otherwise discriminating against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment merely because the employee receives an advance premium tax credit under the Code or a subsidy under the ACA, or the employee has taken, or is about to take, certain actions to report a violation of the ACA. Employers should be cautious when taking negative employment action against such employees as the government has provided an avenue for employees to file whistleblower complaints regarding alleged retaliatory actions.

Treatment of Opt-out Payments

Earlier this fall, the IRS issued guidance on the treatment of opt-out payment arrangements for purposes of determining affordability under the ACA’s employer mandate.

Updated SBC Template and Supporting Documents

Substantive changes have been made to the Summary of Benefits and Coverage (SBC) template, Uniform Glossary, and related documents (*e.g.*, an additional coverage example, Minimum Essential Coverage, Minimum Value, and revised continuation coverage language were added). Formatting changes intended to help plan sponsors comply with the SBC’s four double-sided page limit have also been made. Health plans should use the revised documents beginning on the first day of the first open enrollment period that begins on or after April 1, 2017. The revised documents are available on the website for the Centers for Medicare and Medicaid Services.

IRS Cost-of-Living Adjustments Impacting Welfare Plans

The IRS has issued guidance providing for the following cost-of-living adjustments for 2017:

Description of Item	2017 Amount	2016 Amount
Maximum Health Care Flexible Spending Account Contribution	\$2,600	\$2,550
Maximum Dependent Care Flexible Spending Account Contribution	\$5,000	\$5,000
Maximum Qualified Transportation Fringe Benefit – Commuter Highway Vehicle/Mass Transit (per month)	\$255	\$255
Maximum Qualified Transportation Fringe Benefit – Parking (per month)	\$255	\$255
Maximum Excludable Adoption Assistance Expenses	\$13,570	\$13,460
Minimum Deductible for High Deductible Health Plan (Individual/Family)	\$1,300/\$2,600	\$1,300/\$2,600
Maximum In-Network Out-of-Pocket	\$6,550/\$13,100	\$6,550/\$13,100

for HDHP Paired with HSA (Individual/Family)		
Maximum HSA Deductible Contribution (Individual/Family)	\$3,400/\$6,750	\$3,350/\$6,750
Maximum HSA Catch-up Amount for Employees Age 55 or Over	\$1,000	\$1,000
Maximum In-Network Out-of-Pocket on Essential Health Benefits (Individual/Family)	\$7,150/\$14,300	\$6,850/\$13,700
Patient Centered Outcomes Research Institute (“PCORI”) Fee (cost per covered life)	\$2.26	\$2.17
Transitional Reinsurance Fee* (cost per covered life)	Not Required after 2016	\$27
Employer Mandate Excise Tax Amount Per Participant under Code § 4980H(a) (per month)	Not Yet Published	\$180
Employer Mandate Affordability Threshold under Code § 4980H(b) Excise Tax	9.69%	9.66%
Employer Mandate Excise Tax Amount Per Participant under Code § 4980H(b) (per month)	Not Yet Published	\$270

* Even though this program is ending, insurers and plan sponsors are required to retain records relating to their contributions for a minimum of 10 years. Data retention policies should be reviewed to ensure compliance.

Kelley Drye will continue to monitor health care reform and keep you updated on any new developments. In the meantime, please contact our [Employee Benefits group](#) for any questions or compliance assistance with any Affordable Care Act requirements.

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