

IRS Offers Another Extension for 1094s and 1095s

The IRS has, once again, come out with a holiday gift for employers. In the recently-released IRS [Notice 2019-63](#), the IRS provided additional reporting relief for employers for the 2019 calendar year. In short, the Notice provides:

- The due date to provide Forms 1095-C or 1095-B to employees and individuals is extended 30 days from Friday, January 31, 2020, to Monday, March 2, 2020.

Please note:

- This is a firm deadline. The IRS is not offering an additional 30-day extension beyond March 2, 2020.
- All requests for an additional 30-day extension will be denied (the IRS will not even respond).

Is there relief for carriers providing coverage details?

- New for this year, the IRS is giving carriers (aka coverage providers) a limited “pass” with providing the 1095-B statements to individuals (whereas filing must still be made to the IRS).
- The 2019 ACA-individual mandate penalty remains zero (\$0), and individuals do need to report whether they had coverage or not.
- Carriers that wish to qualify for this relief have to post a notice on their websites that the form is still available upon request, along with the promise that they provide the form within 30 days of each.

Does this relief apply to self-funded plans?

No. Employers with self-funded plans must still report about their FTEs (Full-Time Employees) on Part III of Form 1095-C, and on Part IV of Form 1095-B.

What if we cover folks other than FTEs?

Self-funded employers may take advantage of this relief if they are reporting on any employee who was not full-time for any part of 2019 (such as covered part-time employees, covered retirees, or COBRA QBs).

To take advantage of this relief, the self-funded employer would need to:

- Post a notice prominently on its website (vaguely described but not defined) that the forms are available on request; and
- Promise to respond to the request within 30 days.
- Generally, retirees and COBRA QB would not have access to an Employer’s website, so they may be defined further in subsequent guidance (but, savings from printing and mailing could be achieved).
- The extreme lateness of this guidance and the possible perceived value associated with doing less work (if you can reliably separate out these populations) may be outweighed even with an extension to March 2, 2020.

Is there good news in this Notice?

- Good faith penalty relief is also extended for the 2019 forms.
- Employers/carriers who work in good faith to complete the forms will not be assessed penalties if there is missing or inaccurate information.
- The IRS takes the employer’s (or carrier’s) efforts with its good faith compliance - reasonable efforts to prepare the reports, efforts to gather and transmit the data to appropriate parties, etc.
- Employers should never file late with the IRS or miss the deadline to furnish forms to participants. The IRS expects timeliness but the “good-faith relief” efforts permit compliance even if you aren’t perfect with your data.

Final reminder about 1094-C deadlines:

- Smaller ALEs must file their paper forms with the IRS on/before February 28, 2020.
- ALEs with 250 or more employees **must file electronically** by March 31, 2020.

Please consult your 1094/1095 service providers about these deadlines (as deadlines outlined in your services agreement may not change).



Additional Links:

- [Q&As on Section 6055](#) and [Q&As on Section 6056](#); and
- [Q&As on Employer Reporting using Form 1094-C and Form 1095-C](#)

2019 ACA Forms & Instructions

The IRS has released the final forms 1094/1095-B (B Forms) and Forms 1094/1095-C (C Forms), and related instructions, for the 2019 tax year. These forms and instructions are substantially similar to the 2018 versions.

- **Forms 1094-C and 1095-C** are used by applicable large employers (ALEs) to report under Section 6056, as well for combined Section 6055 and 6056 reporting by ALEs who sponsor self-insured plans. (Final forms [1094-C](#), [1095-C](#) and [related instructions](#))
- **Forms 1094-B and 1095-B** are used by entities (insurers and non-ALEs who sponsor self-insured plans) to report under Section 6055. (Draft forms [1094-B](#), [1095-B](#) and [related instructions](#))

Change in Benefits?

Did you make a change to the benefits you are offering to your employees for the 2020 plan year? For example, have you changed eligibility conditions or waiting periods? Have you added or dropped benefits? Have you changed insurance companies? If you have a claims administrator or COBRA administrator, have they changed? Were there other, similar changes?

If the answer to any of these questions is YES, you must notify participants of these changes by distributing either a Summary of Material Modification (SMM) or an amended Summary Plan Description (SPD). Such notification may occur up to 210 days following the close of the plan year in which the amendment was effective, except that notice of material reductions in benefits and services under a group health plan generally must be given no later than 60 days after the date of adoption of the modification.

A New SBC Template Will be Required for 2021

The DOL and HHS have made available a new template for the Summary of Benefits and Coverage (SBC), required by the Affordable Care Act (ACA). Updated instructions and other related materials have also been issued. Use of the updated materials is required beginning on the first day of the first open enrollment period for plan years beginning on or after January 1, 2021.

Links to the new template, uniform glossary and instructions/guidance can be found [here](#).

REMINDER!

For plan years beginning in 2020, employer-sponsored coverage will be considered affordable if the employee's required contribution for self-only coverage does not exceed **9.78 percent** of the employee's household income for the year, for purposes of both the pay or play rules and premium tax credit eligibility.

Are You an ALE for 2020?

The ACA's employer shared responsibility rules (aka pay or play rules) apply only to applicable large employers (ALEs). ALEs are employers with **50 or more full-time employees (including full-time equivalent employees (FTEs))** on business days during the preceding calendar year. To determine if you are an ALE for 2020, follow these steps:

1. Determine how many full-time employees you had each month of the prior calendar year. Under the ACA, a full-time employee for any calendar month is one who has, on average, at least 30 hours of service per week, or at least 130 hours per calendar month.
2. Determine how many full-time equivalent employees you had each month of the prior calendar year. To do this, combine the number of hours of service of all non-full-time employees for the month - and divide that total by 120. Make sure you do not include more than 120 hours of service per employee.
3. For each calendar month, add your full-time and full-time equivalent employees for a monthly total. Add the monthly totals. Divide the sum of the monthly totals by 12. Disregard fractions. If the result is 50 or more employees, you are an ALE.

Keep in mind that there is a special exception for employers with seasonal workers. If your workforce exceeds 50 full-time employees (including FTEs) for 120 days or fewer during the 2019 calendar year, and the employees in excess of 50 who were employed during that time were seasonal workers, you will not be an ALE for 2020.

In addition, the law treats employers in an aggregated group as a single employer for determining ALE status. You are part of an aggregated group if you have a certain level of common ownership or are otherwise related to other employers. These employers must add together all full-time employees of the aggregated group, including full-time equivalent employees, to determine the status of the combined group of employers as an ALE.

See [IRS.gov/aca](https://www.irs.gov/aca) for additional information about [determining your ALE status](#).

DOL Issues Model Health Care Transparency Disclosure Documents

The Department of Labor (DOL) has released the following three model disclosure documents related to a November proposed rule (see highlights below) on transparency in coverage for group health plans and health insurers in the individual and group markets.

- [Proposed Transparency in Coverage Model Notice](#)
- [Proposed Negotiated Rate Data Elements](#)
- [Proposed Allowed Amount Data Elements](#)

The transparency in health coverage proposals would apply to issuers of insured plans ***and sponsors of self-insured group health plans***. However, they would not apply to grandfathered plans.

The Departments have requested comments on both the proposed rule and the required disclosure documents. ***Comments must be submitted by January 14, 2020.***

Highlights of the Proposed Rule

The IRS, DOL, and HHS jointly proposed regulations in November that would require most self-insured and insured group health plans, and insurers, to make extensive price and cost-sharing disclosures to participants, beneficiaries, enrollees, and, in some cases, the public. The proposals follow an Executive Order, issued last June, intended to improve transparency in health care, as required by the Affordable Care Act. The proposals would be generally effective one year after finalized (with a good faith safe harbor). Here are highlights:

Required Disclosures to Participants, Beneficiaries, and Enrollees. Plans and insurers would be required to disclose the following personalized cost-sharing information to participants, beneficiaries, and enrollees, upon request, through an Internet-based self-service tool and in paper form:

- *Estimated Cost-Sharing Liability* - The amount the individual is responsible for paying for a covered item or service under the terms of the plan (including deductibles, coinsurance, and copayments).
- *Accumulated Amounts* - The amount of financial responsibility that an individual has incurred at the time the request for cost-sharing information is made (e.g., as a deductible or an out-of-pocket limit).
- *Negotiated Rate* - The amount a plan, insurer, or TPA has contractually agreed to pay an in-network provider for a covered item or service.
- *Out-of-Network Allowed Amount* - The maximum amount that would be paid for an item or service furnished by an out-of-network provider.
- *Items and Services Content List* - A list of the covered items and services when an item or service is subject to a bundled payment arrangement.
- *Notice of Prerequisites to Coverage* - A notice informing the individual that a specific covered item or service may be subject to a prerequisite (such as medical management techniques).
- *Disclosure Notice* - A notice about balance billing, with disclaimers about differences in actual and estimated charges.



Required Public Disclosures. The proposals would also require plans and insurers to make price transparency disclosures to the public, primarily about negotiated rates with in-network providers and historical out-of-network allowed amounts. The information would have to be provided in machine-readable files and updated on a monthly basis.

Insurer May Make Disclosures. Special rules would allow a plan to satisfy the disclosure requirements if the insurer offering the coverage provides the required information pursuant to a written agreement.

Model Notices. The agencies will develop model language that plans and insurers could use to satisfy the proposed notice requirements.

Exemptions. The proposed regulations would not apply to grandfathered plans, health reimbursement arrangements and health FSAs, excepted benefits, or short-term, limited-duration insurance. “Grandmothered plans” would be subject to the rules.

Source: Thompson Reuters/EBIA

Did You Know?

On December 5, 2019, the Internal Revenue Service released an updated version of its [W-4 Form](#), also known as the “Employee’s Withholding Certificate.”

Employers use IRS Form W-4 to determine each employee’s federal tax withholdings. The new form is intended to harmonize tax withholding declarations with the [Tax Cuts and Jobs Act](#), which affected individuals for the first time during the last tax filing season.

Employees may complete a new W-4 each year or each time they experience a change in their personal financial situation. However, the new form does not invalidate prior versions, and employers are not expected to replace W-4 forms from previous years with the 2020 version.

You should become familiar with the updates to IRS Form W-4 and make it available for all new hires and employees who wish to amend their withholding declarations in 2020.

2019 Year-End Round Up: ACA Changes - The Good, the Bad and the Ugly

On December 20, 2019, President Trump signed into law the [2020 Further Consolidated Appropriations Act](#) - spending legislation which also included important changes for employer-sponsored health plans, repealing several taxes enacted as part of the Affordable Care Act (ACA) and extending one. Here's the round up:

Gone (the Good):

- The Cadillac Tax,
- HIT (Health Insurance Tax),
- Medical Device Tax, and
- The Parking and Public Transit Benefits tax.

Extended (the Bad): PCORI has been extended for another decade.

TBD (the Ugly):

- Individual mandate still up in the air (a divided panel in the US Court of Appeals, 5th Circuit, rules 2-1 in favor of 20 states led by Texas, that filed suit seeking to strike down the ACA); and
- no ACA regulations (still/yet) on making 105(h) applicable to fully-insured plans.

The Details

- **Repealed - Cadillac Tax.** This measure would have imposed a 40% excise tax on plans with annual premiums exceeding \$10,800 for individuals or \$29,500 for a family. Implementation of the tax was supposed to happen in 2018 and has currently been delayed to 2022. While the Cadillac tax was never levied, its looming existence has made it very difficult for employers to plan future benefit levels and costs. Moreover, the way that the tax was structured would have led to many employer plans, not just the "gold-plated" ones, being subject to an excise tax in future years.
- **Repealed - Health Insurance Tax (HIT).** This provision, which went into effect in 2014, imposed an annual tax on health insurers. Actuarial analyses have found that the tax added to the cost of coverage purchased in all market segments, including individual, large and small employers. In 2018, Congress enacted a one-year suspension of the tax, but it was scheduled to go back into effect at the end of 2019. If it had not been repealed, the HIT would have imposed a \$16 billion tax on health plans in 2020.
- **Repealed - Medical Device Tax.** This was a 2.3% excise tax on the value of medical devices (x-ray machines, hospital beds, MRI machines) sold within the United States. Since it went into effect in 2013, it was suspended twice. Critics of the tax cite research that shows that it lowered the medical device industry's research and development spending.
- **Extended until 2029/2030 - Patient-Centered Outcomes Research Institute (PCORI).** This annual fee is a tax on health plans, which was included in the ACA as an initial funding mechanism for the federal program which funds research on the comparative effectiveness of medical treatments. The fee (which is set annually and was \$2.45 per person covered by the plan in 2019) is paid by insurers for fully-insured plans and employers sponsoring self-insured plans. It was set to sunset this year, with the last payment due on July 31, 2019 for calendar year plans and July 31, 2020 for non-calendar year plans. The Appropriations Act extends the PCORI fee for another 10 years, extending the financial and administrative burden on insurers and employers. Insurers and employers (with HRAs or any other self-funded plans) will be paying PCORI fees until 2029 or 2030 depending upon their plan year.
- **Retroactive-Repeal - Parking Tax (and Return of Employee-Only Parking) & Medical Device Tax.** Section 512(a)(7), enacted as part of the 2017 Tax Cuts and Jobs Act (the "2017 Act"), required tax-exempt organizations to include in unrelated business taxable income their costs for providing "qualified transportation fringe benefits" to their employees. The 2020 Act repeals section 512(a)(7) in its entirety and retroactive to the date of its enactment - in other words, it is as if section 512(a)(7) never existed.
 - It is expected that the IRS will issue guidance relating to the repeal - rules for amending Forms 990-T that included the parking tax, and for claiming refunds of those taxes.
 - In the meantime, tax-exempt organizations may cease making any estimated tax payments related to the repealed parking tax.
 - Also, just in time for the new year, nonprofits can consider promptly re-installing "employee parking only" signage that was removed in response to the 2017 Act.
- **Also, the IRS issued a set of Questions-and-Answers on 12/19/2019, explaining the Individual Shared Responsibility provisions of the ACA** after the elimination of the individual shared responsibility penalty. These Q&As:
 - define MEC (Minimum Essential Coverage);
 - explain how an individual can determine if their plan meets MEC;
 - explain who is subject to MEC requirements; and
 - provide a list of exemptions from the general coverage requirement rules.

Should you have any questions - please reach out to your Account Manager or Account Executive.

Links:

- [Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 \(Dec. 20, 2019\)](#)
- [IRS Q&A - Individual Shared Responsibility Provision \(Dec. 19, 2019\)](#)
- [PCORI \(last update with calculations and details\)](#)
- [Cadillac Tax \(prior update about delay until 2020\); now moot](#)

From all of us at AssuredPartners



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