



## Compliance Recap

January 2015

### IRS Releases Information and Forms for Satisfying the Individual Mandate and Claiming 2014 Premium Tax Credits

Although employers are not required to offer coverage during 2014, individuals are generally required to have health coverage during 2014 and must report on that coverage through their 2014 federal income tax return. In many cases, the employee will be able to simply state through a "yes/no" question on their federal income tax form that all individuals claimed on the tax form had minimum essential coverage during all of 2014. Individuals will not be required to attach proof of coverage, and employers and insurers are not required to supply proof of coverage provided during 2014. Individuals may wish to maintain evidence of coverage (such as pay stubs showing deductions for premiums or explanations of benefits) in case they are audited, but this is not required.

Individuals who did not have the needed coverage for the entire year, or who are claiming an exemption from the individual mandate, must use Form 8965 to claim an exemption or determine their penalty (which is determined on a month-by-month basis). The penalty for failing to have coverage in 2014 is the greater of 1% of income and \$95 per person or \$295 per family.

Individuals who received a premium tax credit/subsidy will need to complete Form 8962. Both state and federally-run Marketplaces will provide all individuals who had coverage through the Marketplace with a Form 1095-A. This form will include information the person will need to complete the Form 8962, including the employee's monthly premium and tax credit received, so that the employee can reconcile the premium tax credit already applied toward premium payments with the tax credit amount that they are actually due. Individuals who have not received their full premium tax credit will receive the balance as a tax refund, while those who have received a larger estimated subsidy than they were entitled to will owe additional taxes. The amount that must be repaid is capped, and the IRS has said it generally will waive penalties that may be due for late payment of the amount owed or for failing to pay estimated taxes.

Although employers are not obligated to help employees with these new requirements, for those that wish to do so, the IRS has created a [summary](#) and issued [Publication 5187](#) to explain the individual mandate requirements and premium tax credit rules.

### U.S. Supreme Court to Hear Same-Sex Marriage Cases

On January 16, 2015, the U.S. Supreme Court agreed to decide whether states that do not allow same-sex individuals to marry, or that refuse to recognize marriages of same-sex couples that were legally performed in another state or country, are violating the U.S. Constitution. In June 2013, the Supreme Court ruled that the Defense of Marriage Act (DOMA), which provided that for federal law purposes

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marriage could only be between a man and a woman, was unconstitutional. Because the 2013 Supreme Court decision only addressed federal laws, over the past year-and-one-half many lawsuits have been filed challenging the legality of state bans on same-sex marriage. Most of the Courts of Appeals that have considered these cases have ruled that state bans violate the U.S. Constitution (which overrides a state constitution), and currently same-sex marriages are recognized in about two-thirds of the states. However, the Court of Appeals for the Sixth Circuit, which governs Kentucky, Michigan, Ohio and Tennessee, found the state bans to be permissible. The Supreme Court has now agreed to decide which interpretation is correct. A decision is expected in late June 2015.

Until that decision is reached, the current laws generally will continue to apply. Based on the 2013 court ruling, employers in all states should be treating both same-sex and opposite-sex spouses equally for purposes of access to tax-free payment of group health premiums -- that is, income should no longer be imputed for coverage provided to same-sex spouses and their children. Income should continue to be imputed if domestic partners are covered.

Employers should remember that they need to administer their plans according to the plan's terms. This means that the employer should review the plan or policy to see how "spouse" is defined. Many plans simply state that employee's "spouse" or "lawful spouse" is eligible -- in that case, if the employee was legally married to a same-sex spouse in any state, in most cases the spouse is eligible under the plan. If the plan states that only opposite-sex spouses are eligible, and the employee or employer is located in a state that recognizes same-sex spouses, the employer should discuss the situation with local counsel.

#### 2015 Federal Poverty Guidelines

The Department of Health and Human Services has published the 2015 [federal poverty level \(FPL\) guidelines](#). These numbers are used when determining whether a person is eligible for a premium tax credit. For 2015, in most states FPL is \$11,770 for a single person and \$24,250 for a family of four. This compares to \$11,670 for a single person and \$23,850 for a family of four in 2014. FPL in Alaska for 2015 is \$14,720 for a single person and \$30,320 for a family of four and in Hawaii it is \$13,550 for a single person and \$27,890 for a family of four.

#### Qualified Transportation Benefit Adjustments

In December 2014, Congress retroactively increased some of the limits for qualified transportation benefits. Because the increase occurred so late in 2014, questions were raised about how to handle related adjustments to income and FICA. On January 9, 2015, the IRS issued a Notice that provides a streamlined method for employers to handle FICA adjustments. Employees will make income adjustments on their individual tax returns.

[Read a summary of this optional process.](#)

#### Reminder

Each year, group health plan sponsors that provide prescription drug coverage to individuals eligible for Medicare Part D due to age, disability, or certain diseases must notify the Centers for Medicare & Medicaid Services (CMS) whether the coverage they offer is "creditable" or "non-creditable." Prescription drug coverage is "creditable" when it is actuarially equivalent to Medicare Part D prescription drug coverage or is better than the Medicare coverage. This reporting to CMS is in addition to the notices that must be provided to Medicare-eligible employees and dependents before October 15 of each year. (Because an employer may not be aware if an employee or dependent is or may soon become eligible for Medicare due to disability, for example, many employers provide this notice to all employees each fall.) The CMS notice is due within 60 days after the beginning of the plan year, which means that calendar year plans must submit this year's disclosure to CMS by March 1, 2015.

Reporting must be done online using the [Disclosure to CMS Form](#) on the CMS website. [Instructions](#), including screen shots, are also available on that website.

#### Question of the Month

Q: What is a "plan year" and why does it matter?

A: Many of the requirements that apply to health plans take effect as of the start of a plan year. Under rules established by the U.S. Department of Labor, the "plan year" must be defined in the plan document or summary plan description (SPD). If the plan is large enough that a Form 5500 is needed, the plan year described in these documents should match the "plan year" on which the Form 5500 is filed. *The policy renewal year may or may not be the same as the plan year.* When deciding when new requirements will apply, the employer should use the first day of the plan year, not the policy renewal date, if the dates do not match. While most plans should have a plan document and SPD, if these documents do not exist, it is not entirely clear whether the policy year or the deductible year should be considered the plan year. To avoid this uncertainty, and meet other federal laws, employers without SPDs should seriously consider adopting them.

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