



## Compliance Recap

July 2015

July brought the benefits industry increased fines relating to the Patient Protection and Affordable Care Act (ACA) as well as some much-anticipated updates and information on a variety of subjects. A trade bill passed in early July increased penalties for employers that fail to file IRS forms relating to the ACA's play or pay provision, while a Final Rule brought clarity to requirements regarding preventive services that must be offered by all non-grandfathered group health plans. The Department of Labor (DOL) issued guidance on how to properly determine if a worker is an employee or an independent contractor, and the IRS issued further information on potential methods of implementing the 2018 Cadillac Tax. Finally, in a bill aimed at assisting veterans, changes were made to the way some veterans are included in the headcount for determining applicable large employer (ALE) status under the ACA, and health savings account (HSA) eligibility rules were relaxed for individuals with healthcare from the Department of Veterans Affairs.

### UBA Guides and Compliance Documents

UBA released an updated guide titled "Transition Relief and Community Rating."

Read more about [transition relief and community rating](#).

### Trade Bill Increases ACA Penalties

Most employers are familiar with the penalties assessed to applicable large employers (ALEs) that fail to offer minimum essential coverage that is minimum value and affordable. In addition to being required to offer coverage, employers (all applicable large employers and all employers with self-funded plans regardless of size) are required to complete IRS reporting forms under sections 6055 and 6056 of the Patient Protection and Affordable Care Act (ACA). These forms are used to inform the IRS and employees about the coverage that was offered and enrolled in, allowing employees to satisfy the individual mandate and allowing employers to confirm they met the requirement to offer coverage.

On June 29, 2015, President Obama signed the [Trade Preferences Extension Act of 2015](#). The bill included significant increases for failure to file a number of required tax reporting forms, including the forms required under sections 6055 and 6056. The Trade Preferences Extension Act of 2015 also

# UBA Compliance Center

restored the Health Coverage Tax Credit (HCTC) for all eligible coverage months beginning before January 1, 2020.

Read more about the [Trade Preferences Extension Act of 2015](#) and its impact.

## Preventive Services and Closely Held Corporations

Federal agencies released [final regulations](#) on the preventive services mandate of the Patient Protection and Affordable Care Act (ACA) that requires non-grandfathered group health plans to provide coverage without cost-sharing for specific preventive services, which for women include contraceptive services. The 2015 Final Rules (applicable for plan years beginning on or after September 14, 2015) provide the following:

- Formalizes prior guidance requiring a plan to cover out-of-network services without cost sharing if the plan does not have an in-network provider who can provide a required preventive service.
- Provides for midyear plan changes if a recommended preventive service is downgraded (by task force or advisory body) to a "D" rating or is subject to a safety recall or other significant safety concern.
- Provides contraceptive coverage accommodations for eligible organizations.

Read more about the Final Rules and [preventive services coverage](#).

## Cadillac Tax Notice

The IRS has issued its second notice regarding the upcoming implementation of the Patient Protection and Affordable Care Act's (ACA's) excise tax on high cost employer-sponsored health coverage, also known as the "Cadillac tax." Beginning in 2018, plans that provide coverage that exceeds a set threshold will owe the tax. On July 30, 2015, the agency released [Notice 2015-52](#), which addresses IRS thoughts on: (1) the definitions of applicable coverage; (2) the determination of the cost of applicable coverage; and (3) the application of the dollar limit on the cost of applicable coverage to determine any excess benefit subject to the excise tax. The IRS is seeking public comment on all of these issues.

Read more about the potential process for [implementing the 2018 Cadillac Tax](#).

## Veteran Exception to ALE Status; New HSA Eligibility Rule

The [Surface Transportation and Veterans Health Care Choice Improvement Act](#) (STVHCC) of 2015 was signed into law by President Obama on July 31, 2015. The Act is focused on surface transportation programs but has impact on rules regarding how to count employees under the Patient Protection and Affordable Care Act (ACA) as well as health savings account (HSA eligibility) for individuals receiving care through the Veterans Administration. The STVHCC allows employers (effective months beginning after December 31, 2013), solely for purposes of determining ALE status, to disregard in any month an employee that has medical coverage for that month through TRICARE or under a federal health care program through the Department of Veterans Affairs. The STVHCC also provides that individuals who receive hospital care or medical services under any law administered by the Secretary of Veterans Affairs for service-connected disability are still HSA eligible for any months after December 31, 2015.

Read more about the [Surface Transportation and Veterans Health Care Choice Improvement Act](#).

# UBA Compliance Center

## Question of the Month

**Q.** Are all members of a controlled group required to offer the same benefit plans, or may each (or some) members of the controlled group offer different plans?

**A.** Each member of a controlled group may offer its own benefit plan, or may join in the benefit plan or plans of other member or members of the controlled group. Members of a controlled group should exercise special caution to ensure their plan documents and employee handbooks, particularly in regard to definitions of eligibility, are properly written to convey who is eligible to be covered by the plan. The ACA does not require that all members of a controlled group offer the same plan, but if the controlled group is subject to play or pay provisions, each controlled group member is responsible for offering minimum value, affordable coverage to 70% (95% for 2016 and later) of its full time employees.

**Example:** ABC Corp. is part of a controlled group. The total controlled group has 300 full-time employees and 260 are offered minimum essential coverage. ABC Corp. has 50 full-time employees and 20 (40%) are offered coverage in 2015. ABC will owe the \$2,000 penalty on each of its 50 full-time employees, less its share of the 80 “free” employees.

8/3/2015

---

This information is general and is provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.



Shared Wisdom. Powerful Results.®