



Subject: 1) Year-end wrap-up; 2) Proposed Transparency in Coverage Rules; 3) Final 2019 Forms and Instructions for ACA Reporting; 4) Revised SBC Templates for 2021; 5) Year-end Reminders  
Date: December 17, 2019

Health care reform will continue to be hotly discussed, debated, and yes, litigated in 2020.

The *Texas v. U.S.* case concerning the constitutionality of the Affordable Care Act (ACA) continues to languish in the Fifth Circuit Court of Appeals, following oral arguments in July (see CBIZ Health Reform Bulletins [143](#) and [142](#)). The general thought is that, whatever the outcome, the matter may well find its way to the Supreme Court.

Other health care reform concepts continue to be litigated, including the Department of Labor's expanded association health plan rules (see CBIZ Health Reform Bulletin [143](#)). The issue of whether these rules stand will be decided by the Court of Appeals for the District of Columbia.

Arguments from insurers seeking billions of dollars in reimbursement from the federal government pursuant to the ACA's risk corridor program were just heard in the Supreme Court. A decision in the case is expected next summer. Litigation also continues with regard to unpaid cost share reduction payments owed to insurers. Oral arguments in four cases are scheduled in federal circuit courts in January, while other cases are stayed pending outcome of the Supreme Court's decision relating to the risk corridor matter.

The year-end government spending bill currently being deliberated in Capitol Hill includes provisions that would repeal three highly unpopular ACA taxes including the so-called Cadillac tax on high cost employer sponsored health insurance, which has been delayed several times but scheduled to take effect in 2022. The bill would also repeal the annual health insurer tax and the medical device excise tax, both of which have been off and on in the past couple years. Further, this bill would extend the Patient-Centered Outcomes Research Institute (PCORI) fee for ten years. By law, the PCORI fee is no longer assessed for policy/plan years ending on or after October 1, 2019. At this point it is uncertain whether this bill will become law in its current form. Stayed tuned for future developments.

What Congress will do in the upcoming election year is uncertain. There seems to be bipartisan support for addressing prescription drug cost containment, as well as so-called surprise medical bills. The primary culprits for surprise medical bills include air ambulance expenses, emergency room expenses, and in-network surgery care that is provided, unbeknownst to the patient, by an out of network provider. There is agreement that something has to be done about the issue, but the specifics of "how" remains debatable. It is anticipated that the surprise billing and prescription drug cost containment concepts will continue to be discussed through early part, if not further, into 2020.



### Proposed Transparency in Coverage Rules

On November 27, 2019, the tri-governing ACA agencies (Departments of Health and Human Services, Labor and Treasury) released **proposed rules**, together with a **fact sheet**, that, if finalized, would impose extensive disclosure obligations upon group health plans and insurers. These rules were issued pursuant to an **Executive Order** released earlier this year, directing these agencies to facilitate access to information for individuals about their expected out of pocket costs prior to receiving care.

According to these proposed rules, non-grandfathered group health plans and insurers issuing individual and group health plans would be required to make the following information available to participants, beneficiaries and enrollees:

1. An individual's cost-sharing information including an estimate of out of pocket costs for covered items or services furnished by a particular provider;
2. Accumulated amounts the participant or beneficiary has incurred to date;
3. Negotiated rates for in-network providers for the requested covered item or service; and
4. Out-of-network allowed amounts for the requested covered item or service when furnished by an out-of-network provider.

Access to this information must be provided in real-time accuracy through an internet-based self-service tool, as well as in paper form upon request. Further, affected entities would be required to provide access to price transparency information such as in-network provider negotiated rates and historical out-of-network allowed amounts to the public, including consumers, researchers, employers and third party developers,

The comment period on these proposed rules closes on January 14, 2020. There will likely be significant comments both supporting and opposing these regulations. It is certainly possible that the regulations will change significantly before finalized.

### Final 2019 Forms and Instructions for ACA Reporting

The IRS has released final versions of the forms and instructions that are used to satisfy the IRC Section 6055 and 6056 reporting (draft versions were released in November – see [CBIZ HRB 146](#)). Notably, the required content of the 2019 edition of the forms is essentially the same as the 2018 versions.

As background, there are two annual reporting obligations imposed by IRC Section 6055 minimum essential coverage reporting, and by IRC Section 6056, employer shared responsibility reporting.

- ♦ The minimum essential coverage (MEC) reporting obligation used to satisfy the IRC Section 6055 is accomplished on the Form 1094-B transmittal and Form 1095-B statement to individuals. Generally, this reporting is accomplished by the insurer if the plan is insured. If the plan is self-funded, the employer is obligated to complete the MEC reporting and disclosure.
- ♦ Employers subject to employer shared responsibility (those employing 50 or more employees as of December 31, 2018 for the 2019 reporting year), accomplish MEC reporting obligation by completing Part III on the Form 1095-C. Employers not subject to employer shared responsibility reporting accomplish the MEC reporting obligation by reporting on the B series described above. The employer shared responsibility reporting obligation is accomplished on the Form 1094-C transmittal and the Form 1095-C statement to individuals.

The 2019 reporting forms and instructions are available for viewing and downloading from the IRS website:



- ❑ *Health Insurance Coverage Reporting by Insurers and Sponsors of Self-funded Plans (IRC Section 6055)*
  - ◆ **Instructions** for 2019 Forms 1094-B and 1095-B ([PDF](#))
  - ◆ **Form 1094-B**, *Transmittal of Health Coverage Information Returns*
  - ◆ **Form 1095-B**, *Health Coverage*
- ❑ *Employer Health Insurance Reporting Requirement (IRC Section 6056)*
  - ◆ **Instructions** for 2019 Forms 1094-C and 1095-C ([PDF](#))
  - ◆ **Form 1094-C**, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*
  - ◆ **Form 1095-C**, *Employer-Provided Health Insurance Offer and Coverage*

### Deadlines for Filing and Distributing Forms 1094 and 1095

- ✓ [IRS Notice 2019-63](#) extended the deadline for providing the 2019 Form 1095-B and Form 1095-C disclosure statements to individuals (see [CBIZ Health Reform Bulletin 147](#)). While these statements are generally due by January 31<sup>st</sup> following the reporting year, the due date for furnishing benefit statements (Form 1095-B and Form 1095-C) to individuals has been extended from January 31, 2020 to March 2, 2020. Due to this extension, there will be no further 30-day automatic extension available. Similar to prior disclosure delays issued by the IRS, the guidance provides that taxpayers can file their personal income tax return without having to attach the relevant Form 1095 to their tax returns. Further, [IRS Notice 2019-63](#) allows reporting entities obligated to furnish the their 2019 Form 1095-B by way of website posting as long as certain requirements are met (see [HRB 147](#)).
- ✓ Electronic filing of the forms must be accomplished by March 31, 2020; or, February 28, 2020 if filing by paper. An automatic 30-day extension of time to file the 1094/1095 forms remains available by submitting the Form 8809 with the IRS on or before the filing due date.

**IRS Resources.** Additional information relating to ALE obligations, including the ACA Information Returns (AIR) system, can be found on the IRS's dedicated webpage, [ACA Information Center for Applicable Large Employers \(ALEs\)](#). Of particular note:

- ◆ [Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C](#)
- ◆ [Questions and Answers on Information Reporting by Health Coverage Providers \(Section 6055\)](#)

### Revised Summary of Benefits and Coverage (SBC) Templates for 2021

As mentioned in our prior [CBIZ Health Reform Bulletin](#), the CMS' Center for Consumer Information & Insurance Oversight (CCIIO) recently issued a revised SBC template, uniform glossary and related materials. These documents are required to be used by plan sponsors and insurers for policy/plan years beginning on or after January 1, 2021 (relates to coverage for plan years beginning on or after that date). For plans and insurers that do not use an annual open enrollment period, the revised SBC template is to be used beginning on the first day of the first plan year that begins on or after January 1, 2021. All of these revised documents are available on [CCIIO's website](#) in 5 languages (English, Spanish, Chinese, Tagalog and Navajo).

Failure to provide the SBC could result in HHS penalties, as well as penalties imposed by the Departments of Labor and Treasury. For HHS purposes, the potential civil penalty for willful failure to provide the SBC in 2020 has been increased to \$1,156 per failure (up from \$1,128 in 2019).

## Year-end Reminders

☐ **Preventive Health Services**

Prior to the beginning of each plan year, a group health plan sponsor or administrator should review its coverage for preventive services to determine whether any additional benefits need be offered. For insured plans, generally, the insurer manages this process.

As background, the Affordable Care Act requires health plans to cover certain preventive services, without imposing any cost-sharing requirements (co-pay, co-insurance, or deductible), when such services are delivered by in-network providers. The types of covered preventive services, some of which are recommended by the U. S. Preventive Services Task Force (USPSTF), are updated periodically. Generally, once the USPSTF approves a particular recommendation, the service would become applicable as of the first plan year beginning one year following issuance of the recommendation. The USPSTF website provides a list of its recommended A and B preventive services by **date** and **alphabetically**. Further, a complete list of ACA-required preventive services can be accessed from the [Healthcare.gov website](https://www.healthcare.gov).

☐ **Employer Shared Responsibility Provisions**

- ♦ **Applicability.** For purposes of the ACA's employer shared responsibility requirement as well as the reporting and disclosure requirements, applicable large employer (ALE) status is determined each calendar year, based on the average size of the employer's workforce during the prior year. Thus, if you averaged at least 50 full-time employees, including full-time equivalent employees during 2019, you are most likely an ALE for 2020, and are subject to the reporting and disclosure requirements due in early 2021.
- ♦ **Affordability Standard.** For purposes of determining affordability, coverage under an employer-sponsored plan is deemed affordable if the employee's required contribution to the plan does not exceed 9.78% (indexed for 2020; decreased from 9.86% in 2019) of the employee's household income for the taxable year, based on the cost of single coverage in the employer's least expensive plan.
- ♦ **Increase in Excise Tax Penalties.** The chart below reflects the amount of penalties for purposes of calculating the 'no coverage' excise tax pursuant to Code Section 4980H(a), and the 'inadequate or unaffordable' excise tax pursuant to Code Section 4980H(b) for 2018 to 2020. These are the excise taxes that could apply if an applicable large employer is found not to have offered health coverage to a full-time employee. These amounts are based on the HHS inflationary percentage contained in its annual benefit and payment parameter standards for the relevant year, and as officially released by the Internal Revenue Service.

'No Coverage' Excise Tax IRC Section 4980H(a)		'Inadequate or Unaffordable' Excise Tax IRC Section 4980H(b)	
2018	\$2,320	2018	\$3,480
2019	\$2,500	2019	\$3,750
2020	\$2,570	2020	\$3,860

- ☐ **Small Business Tax Credit (SBTC).** Small businesses and tax-exempt employers who provide health care coverage to their employees under a qualified health care arrangement are entitled to a tax credit, known as the small business tax credit (SBTC). To be eligible for the SBTC, the employer must employ fewer than 25 full-time equivalent employees, whose average annual wages are less than \$54,200 (indexed for 2019; the wage ceiling in 2018 is \$53,200).

The tax credit phases out for eligible small employers when the number of its full-time employees (FTEs) exceeds 10; or, when the average annual wages for the FTEs exceeds \$27,100 in the 2019 tax year (the phase-out wage limit in 2018 is \$26,600). As a reminder, only qualified health plan coverage purchased through a SHOP marketplace is available for the tax credit, and only for a 2-consecutive year period.

For purposes of calculating the SBTC, the Form 8941 is filed annually on the employer's tax return as a general business credit; tax exempt entities would file the Form 8941 with its Form 990-T. The IRS has released the 2019 edition of the [Form 8941](#) for purposes of calculating the small business tax credit.

#### ❑ Additional ACA-related Fees

**Patient-Centered Outcomes Research Institute (PCORI) Fees.** By law, the PCORI fee is no longer assessed for policy/plan years ending on or after October 1, 2019. For calendar year plans, the last fee and Form 720 filing was due by July 31, 2019. For plan years ending on or before September 30, 2019, the last fee and Form 720 filing will be due by July 31, 2020.

#### **Certain ACA Taxes and Fees.**

- ♦ Code Section 4980I, popularly known as the **Cadillac tax** that would be assessed on the amount paid for high cost employer-sponsored health insurance coverage exceeding certain threshold levels (\$10,200 for individuals; \$27,500 for family, subject to indexing) which was to take effect in 2020 remains suspended until 2022.
- ♦ Previously suspended, both the **annual fee** required to be paid by 'covered entities' (insurers) who engage in providing health insurance for U.S. health risks, and the **2.3% medical device excise tax** become applicable beginning with the 2020 tax year.

#### ❑ ACA Cost Share Restrictions

The chart below reflects the 2020 and 2019 inflationary adjustments applicable to out-of-pocket (OOP) limits including deductibles, co-insurance and co-payments in ACA plans. These cost-share restrictions apply to insured plans offered via the marketplace, and insured and self-funded plans offered outside marketplace. These amounts differ from the OOP limits applicable to high deductible health plans used in conjunction with a health savings account (HSA).

	2020		2019	
	<i>Self-only</i>	<i>Family</i>	<i>Self-only</i>	<i>Family</i>
<b>ACA Plans - Out-of-Pocket (OOP) Limits</b>	\$8,150	\$16,300	\$7,900	\$15,800
<b>Health Savings Accounts</b>	<i>Individual</i>	<i>Family</i>	<i>Individual</i>	<i>Family</i>
HDHP Annual Deductible	\$1,400	\$2,800	\$1,350	\$2,700
HDHP Annual Out-of-Pocket Limit	\$6,900	\$13,800	\$6,750	\$13,500
Contribution Limit	\$3,550	\$7,100	\$3,500	\$7,000

ACA-required Reporting Reminders

Form	To Whom	Due Date
<b>Form W-2.</b> ACA-required reporting includes: <ul style="list-style-type: none"> <li>♦ Aggregate cost of health coverage (Box 12, using Code DD). <i>Note: employers filing &lt;250 Form W-2s per year remain exempt from reporting the aggregate cost of health coverage on the Form W-2 until future IRS guidance is issued.</i></li> <li>♦ Total amount of permitted benefits received under a qualified small employer health reimbursement arrangement (QSEHRA) (Box 12 - Code FF)</li> <li>♦ Additional Medicare tax withholding on earnings exceeding \$200,000 per calendar year (Box 6)</li> </ul>	Internal Revenue Service (IRS) <a href="http://www.irs.gov/">http://www.irs.gov/</a>  Form W-2 Instructions (2019)	January 31, 2020
<b>Form 720</b> for purposes of Patient Centered Outcome Research (PCOR) fee <i>Note: Fee no longer assessed for policy/plan years ending on or after Oct. 1, 2019</i>	IRS	<ul style="list-style-type: none"> <li>▪ For calendar year plans: last fee and Form 720 filing was due by July 31, 2019</li> <li>▪ For plan years ending before Sept. 30, 2019: last fee and Form 720 filing due by July 31, 2020</li> </ul>

Additional ACA-Related Disclosure Reminders

*Note: Below are select ACA-required disclosures. For a more descriptive list of notice obligations relating to the ACA and other welfare benefit plans, ask your CBIZ representative for a Chart of Notice Obligations.*

Form	To Whom	Due Date
<b>Summary of Benefits and Coverage (SBC)</b> <ul style="list-style-type: none"> <li>♦ Currently applicable SBC template and related materials available from <b>EBSA</b> and <b>CCIIO</b></li> <li>♦ SBC template and related materials to be used for policy/plan years beginning on or after January 1, 2021 available from <b>CCIIO</b></li> </ul>	All plan participants	From Plan Sponsor to Plan Participants: <ol style="list-style-type: none"> <li>1. Upon application</li> <li>2. By the first day of coverage</li> <li>3. Within 90 days of enrollment by special enrollees</li> <li>4. Upon contract renewal</li> <li>5. Upon request</li> </ol>
<b>Advanced 60-day Notice of Material Change in Benefits</b>	All plan participants	No later than 60 days prior to any material change in any terms of plan affecting Summary of Benefits and Coverage (SBC) content not reflected in the most recently-provided SBC (other than in connection with renewal or reissuance of coverage)

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### *Additional ACA-Related Disclosure Reminders, cont'd*

Form	To Whom	Due Date
<b>Notice of Marketplace Options</b>	All new hires including full-time and part-time employees, without regard to eligibility status for the health plan	Within 14 days of date of hire
♦ Model notice for use by employers who <b>offer coverage</b> to some or all employees:		
▪ English ( <a href="#">PDF</a> or <a href="#">Word</a> )		
▪ Spanish ( <a href="#">PDF</a> or <a href="#">Word</a> )		
♦ Model notice for employers who <b>do not offer health coverage</b> :		
▪ English ( <a href="#">PDF</a> or <a href="#">Word</a> )		
▪ Spanish ( <a href="#">PDF</a> or <a href="#">Word</a> )		

### **Increased Penalties for Certain Compliance Violations**

*Federal government agencies who enforce the ACA, including the Departments of Labor, Treasury and Health and Human Services, have authority to adjust civil penalties attributable to compliance failures.*

	2020 Penalty Amount	2019 Penalty Amount
Failure to provide Summary of Benefits and Coverage	\$1,156 per failure	\$1,128 per failure
Failure to file a correct information return (Example: Form 1094/1095 and W-2)	\$280 (penalty cap: \$3,392,000)	\$270 (penalty cap: \$3,339,000)
Failure to provide correct payee statement (Example: Forms 1094/1095 and W-2)	\$280 (penalty cap: \$3,392,000)	\$270 (penalty cap: \$3,339,000)

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