AssuredPartners INC.
IBG INSURANCE & BENEFITS GROUP
COMPLIANCE OBSERVER
Newsletter

1st Quarter 2017

ACA REPLACEMENT BILL WITHDRAWN

On March 24, 2017, Republican leadership in the U.S. House of Representatives withdrew the American Health Care Act—their proposed legislation to repeal and replace the Affordable Care Act (ACA).

A House vote was scheduled to take place on that day, but House Republicans could not secure enough votes to approve the legislation and, instead, canceled the vote. Accordingly, the ACA remains in place as the current law of the land.

IMPACT ON EMPLOYERS

Because the House was unable to pass the American Health Care Act, the ACA remains current law, and ***employers must continue to comply with all applicable ACA provisions***.

President Donald Trump has indicated that he would not continue to pursue an ACA repeal if the American Health Care Act could not be passed. Both President Trump and House leadership have stated that they now intend to focus on other issues. Despite this, Congress may choose to pursue its own ACA repeal and replacement in the future.

AssuredPartners will keep you apprised of any pertinent developments.

Source: Zywave

IRS TO CONTINUE PROCESSING TAX RETURNS WITHOUT HEALTH COVERAGE INFORMATION

Pursuant to a recent executive order, the Internal Revenue Service (IRS) will continue to accept for processing tax returns in instances where a taxpayer does not indicate his or her health coverage status.

Background

The Affordable Care Act requires individual taxpayers to indicate on their IRS Form 1040 whether they had minimum essential coverage for each month, qualify for an exemption, or must make an individual shared

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responsibility payment. Previously, the IRS announced its intention to begin rejecting tax returns during processing in instances where the taxpayer did not provide that information on his or her Form 1040.

Recent Policy Change
A recent executive order directed federal agencies to exercise all authority and discretion available to them to minimize the economic burden of the ACA. Consistent with that order, the IRS will continue to allow electronic and paper returns to be accepted for processing in instances where a taxpayer does not indicate his or her health coverage status.

The IRS' policy change does not eliminate the ACA's individual mandate penalty. Individuals must continue to comply with the ACA's requirements, including paying any penalties that may be owed. Though returns will not be systematically rejected by the IRS at the time of filing, taxpayers remain required to follow the law. Taxpayers who fail to provide health coverage information may still receive follow-up questions and correspondence from the IRS.

Source: HR360/IRS

BEWARE!
2017 TAX SCAMS

"Phishing" schemes take the lead on the annual IRS list of "Dirty Dozen" tax scams for 2017. As in prior years, these sophisticated scams are targeting individual taxpayers as well as companies. The IRS indicated it has already seen new and evolving phishing schemes aimed at confusing tax professionals, payroll professionals, human resources personnel, schools, and average taxpayers. In some situations, scammers are victimizing organizations twice by not only obtaining employee information such as name, Social Security number and income information, but also convincing the organization to wire transfer thousands of dollars to a false account.

How the scam works: Cybercriminals use various spoofing techniques to disguise an email to make it appear as if it is from an organization executive. The email is typically sent directly to an employee in the payroll or human resources departments, requesting a list of all employees and their Forms W-2 or Social Security numbers. Once the thieves receive the information they attempt to file fraudulent tax returns for tax refunds. The cybercriminal may then follow up with an "executive" email requesting a wire transfer be made to a certain account.

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Organizations receiving a W-2 scam email should forward it to phishing@irs.gov and place "W2 Scam" in the subject line. Organizations that receive the scams or fall victim to them should file a complaint with the Internet Crime Complaint Center (IC3,) operated by the Federal Bureau of Investigation.

For more information regarding these and other Tax Scams visit https://www.irs.gov/uac/tax-scams-consumer-alerts

Source: IRS

March 31, 2017 -Deadline to Electronically File Returns with IRS

Employers subject to the Affordable Care Act's (ACA) information reporting requirements are reminded that the deadline to electronically file ACA information returns deadlines in 2017 are for the 2016 calendar year, and are as follows:

- **Applicable large employers (ALEs)**—generally those with 50 or more full-time employees, including full-time equivalents—must **electronically file** Forms 1094-C and 1095-C with the IRS **no later than March 31, 2017**. The deadline to file paper returns was February 28, 2017.
- **Self-insuring employers that are not considered ALEs**, and other parties that provide minimum essential health coverage, must **electronically file** Forms 1094-B and 1095-B with the IRS **no later than March 31, 2017**. The deadline to file paper returns was February 28, 2017.

Note: Employers filing **250 or more** Forms 1095-B or 1095-C **are required to electronically file** them with the IRS.

Additional information on electronic filing can be found on the IRS's ACA Information Returns (AIR) Program webpage.

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GROUP TERM LIFE INSURANCE
IMPUTED INCOME & THE STRADDLE RULE

Many employers provide employees with employer-paid group-term life insurance benefits or arrange for employees to purchase group-term life insurance benefits. However, understanding and managing the tax rules for these benefits is often challenging. In this Compliance Observer Newsletter, we are providing only a high-level overview of the tax consequences of group term life insurance. Please consult your legal or tax advisor for information on how your organization's benefits plan may be affected.

Group Term Life Insurance

Section 79 of the Internal Revenue Code (IRC) includes the tax rules for employer-provided group-term life insurance. Code §79 allows an employee to exclude the cost of up to $50,000 of employer-provided group term life insurance coverage from income on his/her own life. Employers are responsible for including this taxable income as wages on employees' W-2 forms. In addition, the imputed income is subject to Social Security and Medicare taxes. Any amount in excess of $50,000 is taxable even if employees pay the insurance premiums for the coverage.

Table 1 Rates

The amount of taxable income on coverage in excess of $50,000 is known as "imputed income." To calculate the imputed income for an employee, Code §79 Table 1 Rates for group term life insurance must be used.

Table 1 is a uniform premium table published by the IRS that is used to determine how much imputed income applies to each employee. The cost of the excess coverage is based on the Table 1 rate, not the rate the employer or employee actually pays for the coverage to the insurance carrier. Table 1 rates are age banded step rates, and the age of the employee as of the last day of the taxable year must be used in calculations.

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TABLE 1 RATES

AGE BRACKET	Monthly Cost per $1,000 of Excess Coverage
Less than 25	$.05
25 - 29	$.06
30 – 34	$.08
35 – 39	$.09
40 – 44	$.10
45 – 49	$.15
50 – 54	$.23
55 – 59	$.43
60 – 64	$.66
65 – 69	$1.27
70 and Older	$2.06

The amount of imputed income is calculated using the following formula:
(Total group term life insurance amount – $50,000) / $1,000) x (Table 1 rate for employee's age)
– employee monthly after-tax contributions
= Monthly imputed income amount

Example
John is 44 years old and earns $40,000 annually. The employer offers a term life benefit of three times salary; John contributes $2.50 a month after-tax toward the cost. John's life insurance benefit is $120,000. John's excess coverage amount is $70,000 ($120,000 minus $50,000). To calculate imputed income, $70,000 is divided by $1,000 (since Table 1 rates are per thousand), then multiplied by $.10 (the Table 1 rate). John's imputed income (monthly taxable amount) is $4.50. ($7.00 per month, less John's contribution of $2.50)

To avoid the Code §79 tax burden of imputed income, many employers limit group term life insurance benefits to $50,000 and then offer supplemental (voluntary) coverage to employees looking for additional coverage. However, unless certain requirements are met, even supplemental coverage will result in imputed income.

Supplemental (Voluntary) Term Life Insurance
If a voluntary term life plan is deemed by the IRS to be "carried" directly or indirectly by the employer, then Code §79 applies and imputed income must be calculated for some employees.

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To avoid being carried, supplemental group term life insurance plans must meet all of the following requirements:

- The Voluntary Life program is employee pay-all.
- The Voluntary Life rates are adequate on their own, and determined independently of the rates for Basic Life.
- The Voluntary Life rates do not "straddle" the Table 1 rates (see next section for details.)
- The employer treats the Voluntary Term Life and the Basic Life as separate policies.
- The Voluntary Life plan is not under Section 125 and paid with pre-tax dollars.

Straddling Table 1 Rates

"Straddling" occurs when employees in one age group are charged a rate equal to or higher than the Table 1 rates while employees in another age group are charged a rate less than the Table 1 rates. Once the rates "straddle," the Voluntary Term Life would fall under Code §79 and imputed income would apply. Income must be imputed for the value of the coverage for any rate tiers that fall ***below*** the Table 1 rates. If an age band for a group of employees straddles Table 1 rates, both the employer-paid and voluntary coverage must be included when each affected employee's imputed income is determined.

Example

Mary is a 36-year old employee and has $40,000 of employer-paid group term life insurance, which is below the $50,000 threshold and does not require imputed income calculations. However, Mary has also elected $100,000 in voluntary term life coverage. In this example, the employee rate for Mary's age bracket is $.075, which is ***below*** the Table 1 rate of $.09. Since the employee rate for at least one other age group exceeds the Table 1 rate, the rates "straddle" the Table 1 rates and therefore the supplemental plan is considered carried by the employer. Accordingly, the company must include both the employer-paid and supplemental coverage when calculating Mary's imputed income, i.e. her imputed income must be calculated for the value of $90,000 ($140,000 in total coverage minus $50,000).

Dependent Term Life Insurance

Dependent term life insurance for spouses or children can be offered as employer-paid or supplemental benefits. In either case, if the coverage for any dependent is over $2,000, the cost of the coverage, less any after-tax contributions from the employee for the coverage, is considered taxable as imputed income based on Table 1 rates. The entire amount is taxable, not just the amount that exceeds $2,000.

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REMINDER!
NEW SUMMARY OF BENEFITS & COVERAGE (SBC)

Plan sponsors that have an annual open enrollment period are required to use the new SBC template beginning on the first day of the first open enrollment period that begins **on or after April 1, 2017** (with respect to coverage beginning on or after that date). For example, if a plan sponsor conducts open enrollment in May 2017 for a July 1 plan year, the plan sponsor would need to distribute the new SBC template with the open enrollment materials prepared for that May 2017 open enrollment period. Calendar-year plans with open enrollment must use the new SBC template for open enrollment for coverage beginning on January 1, 2018 (generally in the fall of 2017).

For plans that do not have an annual open enrollment period, the new SBC template must be used beginning on the first day of the first plan year that begins on or after April 1, 2017. Under existing regulations, plan sponsors must generally distribute SBCs 30 days before the start of a plan year. Thus, for a plan year beginning on April 1, the new SBC would have to be provided by March 1, 2017. Calendar-year plans without open enrollment would have to distribute the SBC by December 1, 2017.

Failure to provide the SBC can result in a fine of $1,105 (indexed annually) for each participant who did not receive the SBC.

TELEMEDICINE – IMPACT ON HSA ELIGIBILITY

Telemedicine is becoming a popular method of providing a variety of medical services. Some employers offer a telemedicine benefit that allows employees to interact with health care professionals via phone, video chat, email, or text for diagnosis, consultation and treatment.

Employers that offer high deductible health plans (HDHPs) that are compatible with health savings accounts (HSAs) should consider how a telemedicine benefit may impact participants' HSA eligibility.

The Internal Revenue Service (IRS) has not specifically addressed the impact of telemedicine on HSA eligibility. However, the general rules for HSA contributions strictly limit the types of health plan coverage that eligible individuals may have. Whether telemedicine is disqualifying coverage for HSA purposes depends on how the

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telemedicine benefit is structured. Employers that want to offer a telemedicine benefit while preserving HSA eligibility will need to make sure that the telemedicine benefit is designed in a way that is HAS-compatible.

HSA ELIGIBILITY

An HSA is a tax-favored trust or account that can be contributed to by, or on behalf of, an eligible individual for the purpose of paying qualified medical expenses. HSAs provide a triple tax advantage. Contributions, investment earnings, and amounts distributed for qualified medical expenses are all exempt from federal income tax, FICA tax and most state income taxes. Due to an HSA's potential tax savings, federal tax law imposes strict eligibility requirements for HSA contributions.

Only an eligible individual can establish an HSA and make HSA contributions (or have them made on his or her behalf). An individual's eligibility for HSA contributions is generally determined monthly as of the first day of the month. The HSA contribution limit is calculated each month, and a contribution can only be made for months in which the individual meets all of the HSA eligibility requirements. To be HSA-eligible for a month, an individual must:

- Be covered by an HDHP;
- Not be covered by other health plan coverage that is not an HDHP (with certain exceptions);
- Not be enrolled in Medicare; and
- Not be eligible to be claimed as a dependent on another person's tax return.

DISQUALIFYING COVERAGE

- Health plan coverage that provides benefits before the HDHP deductible is met will typically disqualify an individual from making HSA contributions.
- Generally, telemedicine programs that provide free or reduced-cost medical benefits before the HDHP deductible is satisfied are disqualifying coverage for purposes of HSA eligibility.

APPLICATION TO TELEMEDICINE

The IRS has not addressed how telemedicine benefits impact individuals' eligibility for HSA contributions. Due to the growing popularity of telemedicine and HSAs, more guidance from the IRS on this topic is welcome. Under the IRS' general rules for HSA eligibility, a telemedicine program may not prevent an individual from contributing to an HSA if the program satisfies one of the design options described below.

- ✓ **The telemedicine program is offered as part of the HDHP and the program's benefits are subject to the HDHP deductible (with the exception of preventive care benefits).** This means that participants would be required to pay the fair market value of the services (or managed care rates for discounted health

services, if applicable) until the HDHP deductible is satisfied. Once their HDHP deductibles have been satisfied, employees can have access to free or low-cost medical benefits without jeopardizing their HSA eligibility.

- ✓ **The telemedicine program is not considered a "health plan" under the HSA eligibility rules because it does not provide significant benefits for medical care or treatment.** Unfortunately, the IRS has not provided specific rules for determining when medical benefits are significant. The IRS has indicated, however, that the amount, scope and duration of covered services should be considered. Because telemedicine benefits are often similar to the services covered under the HDHP, it may be difficult for most programs to satisfy this exception.
- ✓ **Benefits under the telemedicine program are limited to preventive care services.** Because most HDHPs are required to cover preventive care benefits without cost sharing, this design option may not be attractive for many employers.

Source: Zywave

Please contact your local member of the AssuredPartners team if you have questions or need assistance with these or other compliance matters.

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