



## Compliance Recap

March 2018

March was a quiet month in the employee benefits world.

The Internal Revenue Service (IRS) released a bulletin that lowered the family contribution limit for health savings account (HSA) contributions. The U.S. Department of Labor (DOL) updated its model Premium Assistance Under Medicaid and the Children's Health Insurance Program notice (CHIP notice).

The IRS issued its updated Employer's Tax Guide to Fringe Benefits, issued transition relief regarding HSA eligibility of individuals with health insurance that provides benefits for male sterilization or male contraceptives without a deductible, and issued its updated Guide on Health Savings Accounts and Other Tax-Favored Health Plans.

### UBA Updates

UBA released two new advisors:

- [2018 HSA Contribution Limits for Family Coverage Impacted Retroactively](#)
- [Understanding Your Client's IRS Play-or-Pay Penalty Assessment Letter](#)

UBA updated existing guidance: [2018 Annual Benefit Plan Card](#)

### IRS Releases Adjusted Annual Inflation Factor

The Internal Revenue Service (IRS) released its [Internal Revenue Bulletin No. 2018-10](#) that adjusted the annual inflation factor from the Consumer Price Index (CPI) to a new factor called a chained CPI. This is retroactively effective to January 1, 2018.

As a result of the change, the family contribution limit for Health Savings Account contributions is lowered to \$6,850 from \$6,900. Individuals with family coverage who planned to contribute to the full family amount should decrease their contributions going forward.

Review our updated [2018 Annual Benefit Plan Card](#) and [read more](#).

## **DOL Updates Employer CHIP Notice**

The U.S. Department of Labor (DOL) updated its model [Premium Assistance Under Medicaid and the Children's Health Insurance Program notice](#) (CHIP notice).

Employers that provide health insurance coverage in states with premium assistance through Medicaid or the Children's Health Insurance Program (CHIP) must provide their employees with the CHIP notice before the start of each plan year. The CHIP notice provides information to employees on how to apply for premium assistance, including how to contact their state Medicaid or CHIP office. The DOL usually updates its model CHIP notice biannually.

## **IRS Issues Updated Employer's Tax Guide to Fringe Benefits**

The Internal Revenue Service (IRS) issued its 2018 [Publication 15-B](#) which contains information for employers on the employment tax treatment of fringe benefits. The guide is updated to reflect, among other items:

- The suspension of qualified bicycle commuting reimbursements from an employee's income for any tax year beginning after December 31, 2017, and before January 1, 2026.
- The suspension of the exclusion for qualified moving expense reimbursements from an employee's income for tax years beginning after December 1, 2017, and before January 1, 2026. However, the exclusion remains available for a U.S. Armed Forces member on active duty who moves because of a permanent change of station.
- Limits on the deduction by employers for certain fringe benefits, such as meals and transportation commuting benefits.
- The definition of items that aren't tangible personal property for purposes of employee achievement awards.

The guide lists fringe benefits' tax treatment in its Table 2-1 "Special Rules for Various Types of Fringe Benefits."

## **IRS Issues Transition Relief Notice for Plans with Male Sterilization or Contraceptive Benefit**

Recently, some states adopted laws that require certain health insurance policies to provide benefits for male sterilization and male contraceptives without cost-sharing.

However, under health saving account (HSA) eligibility requirements, a high deductible health plan (HDHP) generally may not provide benefits for any year until the minimum deductible for that year is satisfied. Although an HDHP may provide preventive care without a deductible or with a deductible that is below the minimum annual amount required by HSA eligibility requirements, male sterilization and male contraceptives are not considered preventive care under the Social Security Act or any Treasury Department guidance.

The Internal Revenue Service (IRS) released its [Notice 2018-12](#) (Notice) to clarify that if a health plan provides benefits for male sterilization or male contraceptives before satisfying the minimum deductible for an HDHP, then the plan is not an HDHP, regardless of whether state law requires coverage of such benefits. Further, an individual who is not covered by an HDHP with respect to a month is not an HSA-eligible individual and may not deduct contributions to an HSA for that month. Similarly, HSA contributions made by an employer on behalf of the individual are not excludible from income and wages.

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To allow states time to change their laws so their residents will be able to purchase health insurance coverage that qualifies as an HDHP, the Notice provides transition relief for periods before 2020 to individuals who are, have been, or become participants in or beneficiaries of a health insurance policy that provides benefits for male sterilization or male contraceptives without a deductible or with a deductible below the minimum deductible for an HDHP.

During the transition relief period, an individual with this type of health insurance policy will not be treated as HSA-ineligible, merely because the policy fails to qualify as an HDHP.

### IRS Issues Updated Guide on Health Savings Accounts and Other Tax-Favored Health Plans

The Internal Revenue Service (IRS) updated its [Publication 969](#) for taxpayers to use in preparing their 2017 returns. The publication explains health savings accounts (HSAs), medical savings accounts (Archer MSAs and Medicare Advantage MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs).

#### Question of the Month

**Q.** How does a person who is 65 years old or older maintain HSA eligibility and continue working? Also, when the person plans to retire, what should the person do about HSA contributions to avoid IRS penalties?

**A.** To maintain HSA eligibility, an individual who is working and age 65 or older must:

- Not apply for or waive Medicare Part A, and
- Not apply for Medicare Part B, and
- Waive or delay Social Security benefits.

For example, if a person delays Social Security benefits and delays Medicare Part A and B, retires at the end of April at the age of 65 or older, and applies for Social Security benefits and Medicare on May 1, 2018, then the general rule is that the person's Social Security entitlement and Medicare Part A coverage will be retroactive for six months, meaning that the benefits would be retroactively effective as of November 2017.

IRS regulations state that a person can't contribute to an HSA when the person has Medicare, so a person would need to stop contributing six months in advance of applying for Social Security benefits and Medicare. If a person contributes to an HSA after Medicare coverage begins, then the person may be subject to IRS penalties.

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