



Commonwealth Benefits Group

2 Barlo Circle
Suite C
Dillsburg, Pennsylvania 17019
(717) 432-1010

<http://www.commonwealthbenefitsgroup.com>



WHAT YOU NEED TO KNOW



Compliance Recap

September 2016

September was not a very active month for administrative rulemaking in the employee benefits world. The Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC) extended the public comment period for the proposed Form 5500 annual return/report revision. The IRS issued rules defining terms relating to marital status and setting the 2016-17 special per diem rates. The Department of Health and Human Services (HHS) issued interim final regulations on maximum civil monetary penalties. Finally, the IRS finalized the [special per diem rates](#) for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home.

UBA Updates

UBA released five new advisors in the past month:

- [Proposed 2018 Benefit Payment and Parameters Rule](#)
- [Understanding Wellness Programs and their Legal Requirements](#)
- [Employer Considerations When Offering Health Coverage under the SCA or DBA](#)
- [Medicare Secondary Payer: Who Pays First?](#)
- [Final Summary of Benefits and Coverage Template and Updates](#)

UBA updated existing guidance:

- [Sample Open Enrollment Notices Packet](#)
- [Controlled Groups and Affiliated Service Groups: How They Apply to the ACA](#)
- [Nondiscrimination Regulations Relating to Sex, Gender, Age, and More Finalized](#)

Proposed 2018 Benefit Payment and Parameters Rule

The Centers for Medicare & Medicaid Services (CMS) released a [proposed rule for the 2018 Benefit Payment and Parameters](#) and a [fact sheet](#) about the proposed rule. Among other items, the proposed rule provides updates and annual provisions relating to:

1. Risk adjustments
2. Cost-sharing parameters and cost-sharing reductions
3. The Small Business Health Options Program
4. Eligibility and appeals
5. The Medical Loss Ratio program

The Benefit Payment and Parameters rule is typically finalized in the first quarter of the year following the release of the proposed version. Comments on the proposed rule are due by October 6, 2016.

[Read the UBA Advisor on the proposed regulations.](#)

Proposed Form 5550 Rules Comment Period Extended

In July 2016, the Department of Labor (DOL), Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) published a Notice of Proposed Revision of Annual Information Return/Reports to revise Form 5500 annual return/reports. At that time, the deadline for submitting public comment was set as October 4, 2016.

On September 20, 2016, the DOL issued a [news release](#) to announce that the DOL, IRS, and PBGS would extend the public comment period deadline to December 5, 2016. The agencies will publish notice of the extension in an upcoming Federal Register edition.

Final Rule on Definition of Terms Relating to Marital Status

On September 2, 2016, the Internal Revenue Service (IRS) issued [final regulations](#) that define terms used in the Internal Revenue Code (IRC) describing the marital status of taxpayers for federal tax purposes.

In general, for federal tax purposes, the terms "spouse," "husband," and "wife" mean an individual lawfully married to another individual. The term "husband and wife" means two individuals lawfully married to each other. A marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of domicile.

Two individuals who enter into a relationship denominated as marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as marriage under the laws of at least one state, possession, or territory of the United States, regardless of domicile.

The terms "spouse," "husband," and "wife" do not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship not denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into, regardless of domicile.

The regulations were effective on September 2, 2016.

Interim Final Regulation on Maximum Civil Monetary Penalties

On September 2, 2016, the Department of Health and Human Services (HHS) issued [interim final regulations](#) that adjust for inflation the maximum civil monetary penalties (CMP) that fall under HHS's

jurisdiction. The regulations reflect changes required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act).

Adjustments under the Act were effective on August 1, 2016, and HHS's CMP adjustment regulations were effective on September 6, 2016. HHS issued its regulations for immediate implementation, without the notice and comment procedures that normally accompany new regulations.

Under prior rules, CMP adjustments required significant rounding of figures and penalty increases were capped at ten percent. The Act removed the rounding rules (that is, penalties are now simply rounded to the nearest dollar).

Under the regulations, the adjusted penalty amounts apply only to CMPs assessed after August 1, 2016, whose associated violations occurred after November 2, 2015 (the Act's enactment date).

As a result, violations occurring on or before November 2, 2015, and assessments made prior to August 1, 2016, whose associated violations occurred after November 2, 2015, continue to be subject to either:

- the CMP amounts under existing regulations.
- the amount under the statute, if a penalty had not yet been adjusted by regulations.

The regulations and introductory material include initial catch-up adjustments for CMPs, and the Act requires HHS to publish annual adjustments by January 15 of every year.

Increased CMPs Involving HIPAA Violations

The [maximum adjusted penalty](#) for each violation of HIPAA's administrative simplification provisions prior to February 18, 2009, is \$150 (increased from \$100). (February 18, 2009, was the effective date of certain increased penalties for HIPAA violations under the Health Information Technology for Economic and Clinical Health Act (HITECH)).

In addition, the maximum adjusted penalties for each violation of HIPAA's administrative simplification provisions on or after February 18, 2009, are:

- If it is established that a covered entity (CE) or business associate (BA) did not know (and by exercising reasonable diligence would not have known) that the CE or BA violated the provision:
 - \$110 (increased from \$100)
 - \$55,010 (increased from \$50,000)
- If it is established that the violation was due to reasonable cause and not willful neglect:
 - \$1,100 (increased from \$1,000)
 - \$55,010 (increased from \$50,000)
- If it is established that the violation was due to willful neglect and corrected during the 30-day period beginning on the first date the CE or BA knew (or by exercising reasonable diligence would have known) that the violation occurred:
 - \$11,002 (increased from \$10,000)
 - \$55,010 (increased from \$50,000)
- If it is established that the violation was due to willful neglect and was not corrected during the 30-day period beginning on the first date the CE or BA knew (or by exercising reasonable diligence would have known) that the violation occurred:
 - \$55,010 (increased from \$50,000)
 - \$1,650,300 (increased from \$1,500,000)

Increased Penalties for Non-HIPAA Violations

The [maximum adjusted penalty](#) for failing to provide summaries of benefits and coverage under the ACA is \$1,087 (increased from \$1,000). The maximum annual penalty for violations of the ACA's medical loss ratio

reporting and rebating rules is \$109 (increased from \$100).

The maximum adjusted penalty for an employer (or other entity) that offers a financial or other incentive for an individual who is entitled to benefits not to enroll under a group health plan or large group health plan that would be a primary plan is \$8,908 (increased from \$5,000).

The maximum adjusted penalty for any entity serving as an insurer, third party administrator (TPA), or fiduciary for a group health plan that fails to provide information to HHS identifying situations where the group health plan is (or was) a primary plan to Medicare is \$1,138 (increased from \$1,000).

Question of the Month

Q. How are health savings account (HSA) contributions calculated?

A. HSA contributions are calculated by month. In 2016, if an individual who moves from family coverage to single coverage, the individual's maximum contribution amount is calculated as

$(X/12 \times \$6,750) + (Y/12 \times \$3,350) = \$$ ____. The dollar figures used in the formula will change annually based on the IRS contribution limits.

X represents the number of months the individual was eligible under family coverage; Y represents the months the individual was eligible for single coverage.

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The UBA Compliance Advisors help you to stay up to date on regulatory changes to help simplify your job and mitigate compliance risk.



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