



4TH QUARTER 2020

Benefits Bulletin

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2021 Open Enrollment Checklist

To prepare for open enrollment, group health plan sponsors should be aware of the legal changes affecting the design and administration of their plans for plan years beginning on or after Jan. 1, 2021.

Plan Design Changes

There are a variety of plan design changes to be aware of for plan years beginning on or after Jan. 1, 2021, including:

- **Affordable Care Act (ACA) affordability standard**—The affordability percentage for 2021 is 9.83%.
- **Out-of-pocket maximum (OOPM)**—The annual OOPM limit for 2021 is **\$8,550** for self-only coverage and **\$17,100** for family coverage.
- High deductible health plan (HDHP) and health savings account (HAS) limits—For 2021:
 - HSA contribution limits:
 - \$3,600 for Individuals
 - \$7,200 for families
 - HDHP minimum deductible:
 - \$1,400 for Individuals
 - \$2,800 for families
 - HDHP OOPM:
 - \$7,000 for Individuals
 - \$14,000 for families

- **Flexible spending account (FSA) limit:**
The IRS has not yet announced the FSA limit for the 2021 plan year.

Contact Brady, Chapman, Holland & Associates for more information about plan changes for the 2021 plan year.

Health plan sponsors should also confirm that their open enrollment materials contain certain required participant notices, when applicable—for example, the summary of benefits and coverage.

Employer Action Steps

Changes to a health plan's benefits for the 2021 plan year should be communicated to eligible employees in advance of open enrollment. Plan participants may also need to be informed of some changes through an updated summary plan description or a summary of material modifications.

Open Enrollment 2021—Benefits Notices

Employers that sponsor group health plans should provide certain benefits notices in connection with their plans' open enrollment periods. Some of these notices must be provided at open enrollment time, such as the summary of benefits and coverage (SBC).

Other notices, such as the Women's Health and Cancer Rights Act (WHCRA) notice, must be distributed annually. Although these annual notices may be provided at different times throughout the year, employers often choose to include them in their open enrollment materials for administrative convenience.

In addition, employers should review their open enrollment materials to confirm that they accurately reflect the terms and cost of coverage.

Below is a list that summarizes the applicability of the benefits notices employers should provide. Note, the following chart is not exhaustive and only includes the notice title and its applicability.

- **SBC** — Group health plans and health insurance issuers
- **Summary plan description** — Group health plans subject to ERISA
- **Medicare Part D notice of creditable or non-creditable coverage** — Employers with group health plans that provide prescription drug coverage
- **WHCRA notice** — Group health plans that provide medical and surgical benefits for mastectomies
- **Children's Health Insurance Program (CHIP) notice** — Group health plans that cover residents in a state that provides a premium assistance subsidy under a Medicaid plan or CHIP

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- **COBRA general notice** — Group health plans subject to COBRA
- **Grandfathered plan notice** — Plans that have grandfathered status under the ACA
- **Notice of patient protections** — Non-grandfathered group health plans that require designation of a participating primary care provider
- **HIPAA privacy notice** — Self-insured group health plans
- **HIPAA special enrollment notice** — All group health plans
- **Wellness notice - HIPAA** — Group health plans with health-contingent wellness programs
- **Wellness notice - ADA** — Wellness programs that collect health information or include medical exams
- **Individual coverage HRA (ICHRA)** — Employers that sponsor ICHRAs for specific classes of employees (or all employees)

For more details about a specific benefits notice or its requirements, speak with Brady, Chapman, Holland & Associates.

ACA Pay or Play Penalties Will Increase for 2021

The ACA requires applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees or pay a penalty. This employer mandate provision is also known as the “employer shared responsibility” or “pay or play” rules.

The IRS recently updated its [frequently asked questions](#) (FAQs) on the pay or play penalties to include increased penalty amounts for the 2021 calendar year.

For the 2021 calendar year, the adjusted \$2,000 amount is \$2,700 and the adjusted \$3,000 amount is \$4,060.

Pay or Play Penalties

Two separate penalties can apply under the employer shared responsibility rules—the Section 4980H(a) penalty and the Section 4980H(b) penalty.

- The Section 4980H(a) penalty can apply when an ALE does not offer coverage to “substantially all” full-time employees (and dependents). The annual Section 4980H(a) penalty is calculated as the ALE’s number of full-time employees (minus 30) x \$2,000 (as adjusted).
- The Section 4980H(b) penalty can apply when an ALE does not offer coverage to all full-time employees, or the ALE’s coverage is unaffordable or does not provide minimum value. The annual Section 4980H(b) penalty is calculated as \$3,000 (as adjusted) x the number of the ALE’s full-time employees who receive an Exchange subsidy.

After 2014, the applicable per-employee dollar amounts of \$2,000 and \$3,000 are increased based on the premium adjustment percentage for the year. According to the IRS’ FAQs, for the 2021 calendar year, the adjusted \$2,000 amount is \$2,700, and the adjusted \$3,000 amount is \$4,060.

Affordability Percentages Will Increase for 2021

The IRS recently issued Revenue Procedure 2020-36 to index the contribution percentages in 2021 for determining affordability of an employer’s plan under the ACA.

Overview of the Affordability Requirement Under the ACA, the affordability of an employer’s plan may be assessed in the following three contexts:

- The employer shared responsibility penalty for applicable large employers (also known as the pay or play rules or employer mandate)

- An exemption from the individual mandate tax penalty for individuals who fail to obtain health coverage
- The premium tax credit for low-income individuals to purchase health coverage through an Exchange

Although all of these provisions involve an affordability determination, the test for determining a plan’s affordability varies for each provision.

Further, although the individual mandate penalty no longer applies, some individuals may still need to seek this exemption for other purposes, such as eligibility for catastrophic coverage.

New Affordability Percentage for 2021

For plan years beginning in 2021, employer-sponsored coverage will be considered affordable if the employee’s required contribution for self-only coverage does not exceed:

- 9.83% of the employee’s household income for the year, for purposes of both the pay or play rules and premium tax credit eligibility; and
- 8.27% of the employee’s household income for the year, for purposes of an individual mandate exemption (adjusted under separate guidance). Although this penalty was reduced to zero in 2019, some individuals may need to claim an exemption for other purposes.

The updated affordability percentages are effective for taxable years and plan years beginning Jan. 1, 2021. This is a slight increase from the affordability contribution percentages for 2020. As a result, some employers may have additional flexibility in setting their employee contributions for 2021 to meet the adjusted percentage.