



legislativeUPDATE

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Affordable Care Act Tax Provisions

The Affordable Care Act (the “Act”) contains many tax provisions that are in effect and more that will be implemented during the next several years. The following is a list of provisions of interest to employer-sponsored plans for which the IRS has issued proposed and/or final guidance.

Health Flexible Spending Arrangements. Effective Jan. 1, 2011, the cost of an over-the-counter medicine or drug cannot be reimbursed from Flexible Spending Arrangements (FSAs) or health reimbursement arrangements (HRAs) unless a prescription is obtained. The change does not affect insulin, even if purchased without a prescription, or other health care expenses such as medical devices, eye glasses, contact lenses, co-pays and deductibles. This standard applies only to purchases made on or after Jan. 1, 2011. A similar rule went into effect on Jan. 1, 2011, for Health Savings Accounts (HSAs), and Archer Medical Savings Accounts (Archer MSAs). Employers and employees should take these changes into account as they make health benefit decisions. For more information, see news release [IR-2010-95](#), [Notice 2010-59](#), [Revenue Ruling 2010-23](#) and our [questions and answers](#). FSA and HRA participants can continue using debit cards to buy prescribed over-the-counter medicines, if requirements are met. For more information, see news release [IR-2010-128](#) and [Notice 2011-5](#). In addition, starting in 2013, there are new rules about the amount that can be contributed to an FSA. Notice 2012-40 provides information about these rules and flexibility for employers applying the new rules and requests comments about other possible administrative changes to the rules on FSA contributions.

Small Business Health Care Tax Credit. This new credit helps small businesses and small tax-exempt organizations afford the cost of covering their employees and is specifically targeted for those with low- and moderate-income workers. The credit is designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have. In general, the credit is available to small employers that pay at least half the cost of single coverage for their employees. Learn more by browsing the IRS page on the [Small Business Health Care Tax Credit for Small Employers](#) and the IRS [news release](#).

Health Coverage for Older Children. Health coverage for an employee's children under 27 years of age is now generally tax-free to the employee. This expanded health care tax benefit applies to various workplace and retiree health plans. These changes immediately allow employers with cafeteria plans — plans that allow employees to choose from a menu of tax-free benefit options and cash or taxable benefits — to permit employees to begin making pre-tax contributions to pay for this expanded benefit. This also applies to self-employed individuals who qualify for the self-

employed health insurance deduction on their federal income tax return. Learn more by reading the IRS [news release](#) or this [notice](#).

Adoption Credit. The Act raises the maximum adoption credit to \$13,360 per child, up from \$13,170 in 2010 and \$12,150 in 2009. The adoption tax credit is refundable for tax year 2011, meaning that eligible taxpayers can get it even if they owe no tax for that year. In general, the credit is based on the reasonable and necessary expenses related to a legal adoption, including adoption fees, court costs, attorney's fees and travel expenses. Income limits and other special rules apply. In addition to attaching [Form 8839](#), Qualified Adoption Expenses (see [instructions](#)), eligible taxpayers must include with their 2011 paper tax return one or more adoption-related documents to [avoid delaying their refund](#). Taxpayers may also be asked, after filing their returns, to substantiate any qualified adoption expenses they paid.

Group Health Plan Requirements. The Act establishes a number of new requirements for group health plans. Interim guidance on changes to the nondiscrimination requirements for group health plans can be found in [Notice 2011-1](#), which provides that employers will not be subject to penalties until after additional guidance is issued. Additionally, guidance issued by DOL, HHS and IRS, provide information on the summary of benefits and coverage (SBC) and the uniform glossary. [Notice 2012-59](#) provides guidance to group health plans on the waiting periods they may apply before coverage starts. Other information on group health plan requirements is available on the websites of the Departments of Health and Human Services and Labor and in additional [guidance](#).

Excise Tax on Indoor Tanning Services. A 10-percent excise tax on indoor UV tanning services went into effect on July 1, 2010. Payments are made along with Form 720, Quarterly Federal Excise Tax Return. The tax doesn't apply to phototherapy services performed by a licensed medical professional on his or her premises. There's also an exception for certain physical fitness facilities that offer tanning as an incidental service to members without a separately identifiable fee. For more information on the tax and how it is administered, see the [Indoor Tanning Services Tax Center](#).

Medical Loss Ratio (MLR). Beginning in 2011, insurance companies are required to spend a specified percentage of premium dollars on medical care and quality improvement activities, meeting a medical loss ratio (MLR) standard. Insurance companies that are not meeting the MLR standard will be required to provide rebates to their consumers beginning in 2012. For information on the federal tax consequences to an insurance company that pays an MLR rebate and an individual policyholder who receives an MLR rebate, as well as information on the federal tax consequences to employees if an MLR rebate stems from a group health insurance policy, see the IRS [frequently asked questions](#).

Reporting Employer Provided Health Coverage on Form W-2. The Act requires employers to report the cost of coverage under an employer-sponsored group health plan on an employee's Form W-2, Wage and Tax Statement, in Box 12, using Code DD. Many employers are eligible for transition relief for tax-year 2012 and beyond, until the IRS issues final guidance for this reporting requirement. The amount reported does not affect tax liability, as the value of the employer excludible contribution to health coverage continues to be excludible from an employee's income, and it is not taxable. This reporting is for informational purposes only, to show employees the value of their health care benefits so they can be more informed consumers. More information

about the reporting can be found on [Form W-2 Reporting of Employer-Sponsored Health Coverage](#).

Minimum Value. On April 26, 2012, the Department of the Treasury and IRS issued [Notice 2012-31](#), which provides information and requested public comment on an approach to determining whether an eligible employer-sponsored health plan provides minimum value. Starting in 2014, whether such a plan provides minimum value will be relevant to eligibility for the premium tax credit and application of the employer-shared responsibility payment.

Information Reporting on Health Insurance Coverage. On April 26, 2012, the Department of the Treasury and IRS issued Notices [2012-32](#) and [2012-33](#), which invited comments to help inform the development of guidance on annual information reporting related to health insurance coverage. The information reporting is to be provided in 2014 by health insurance issuers, certain employers that sponsor self-insured plans, government agencies and certain other parties that provide health insurance coverage.

Disclosure of Return Information. On April 27, 2012, the Department of the Treasury and the IRS issued [proposed regulations](#) with rules for disclosure of return information to be used to carry out eligibility determinations for advance payments of the premium tax credit, Medicaid and other health insurance affordability programs.

Health Insurance Premium Tax Credit. Starting in 2014, individuals and families can take a new premium tax credit to help them afford health insurance coverage purchased through an Affordable Insurance Exchange. Exchanges will operate in every state and the District of Columbia. The premium tax credit is refundable so taxpayers who have little or no income tax liability can still benefit. The credit can also be paid in advance to a taxpayer's insurance company to help cover the cost of premiums. On May 18, 2012, the IRS issued [final regulations](#) which provide guidance for individuals who enroll in qualified health plans through Exchanges and claim the premium tax credit, and for Exchanges that make qualified health plans available to individuals and employers. The [portion of the law](#) that will allow eligible individuals to use tax credits to purchase health coverage through an Exchange is not effective until 2014. Exchanges will offer individuals a choice of health plans that meet certain benefit and cost standards. The Department of Health and Human Services (HHS) administers the requirements for the Exchanges and the health plans they offer.

Employer Shared Responsibility Payment. Starting in 2014, certain employers must offer health coverage to their full-time employees or a shared responsibility payment may apply. Information may be found in news releases [IR-2011-92](#) and [IR-2011-50](#) and Notices [2011-73](#), [2011-36](#) and [2012-17](#). Additionally, [Notice 2012-58](#) expands upon and modifies previous guidance and describes safe harbors that employers may use to determine whether certain workers are full-time employees and to establish that coverage is affordable at least through the end of 2014. [Notice 2012-59](#) provides related guidance for group health plans on the waiting periods they may apply before starting coverage.

Patient-Centered Outcomes Research Institute. The Affordable Care Act establishes the Patient-Centered Outcomes Research Institute. Funded by the Patient-Centered Outcomes Research Trust Fund, the institute will assist patients, clinicians, purchasers and policy-makers in making informed health decisions by advancing clinical effectiveness research. The trust fund will be

funded in part by fees paid by issuers of certain health insurance policies and sponsors of certain self-insured health plans. The IRS and the Treasury Department have issued [rules](#) on this fee.

Transitional Reinsurance Program. The Act requires all health insurance issuers and self-insured group health plans to make contributions in 2014 under the Transitional Reinsurance Program to support payments to individual market issuers that cover high-cost individuals. For information on the tax treatment of contributions made under the Reinsurance Program, see the IRS [Frequently Asked Questions](#).

Net Investment Income Tax. This goes into effect starting in 2013. The 3.8 percent Net Investment Income Tax applies to individuals, estates and trusts that have certain investment income above certain threshold amounts. The IRS and the Treasury Department have issued [proposed regulations](#) and [questions and answers](#) on the Net Investment Income Tax.

Additional Medicare Tax. A new Additional Medicare Tax goes into effect starting in 2013. The 0.9 percent Additional Medicare Tax applies to an individual's wages, Railroad Retirement Tax Act compensation, and self-employment income that exceeds a threshold amount based on the individual's filing status. The threshold amounts are \$250,000 for married taxpayers who file jointly, \$125,000 for married taxpayers who file separately, and \$200,000 for all other taxpayers. An employer is responsible for withholding the Additional Medicare Tax from wages or compensation it pays to an employee in excess of \$200,000 in a calendar year. The IRS and the Treasury Department have issued [proposed regulations](#) and [questions and answers](#) on the Additional Medicare Tax.

For more information on these and other tax provisions under the Act, see the IRS [Affordable Care Act Tax Provisions](#) page which is updated as additional information becomes available. For tips, fact sheets, questions and answers, videos and more, see the IRS [Affordable Care Act of 2010: News Releases, Multimedia and Legal Guidance](#) page. Should you have questions about any aspect of healthcare reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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