



**POST-ELECTION  
PREDICTIONS FOR  
THE ACA**



**IRS EXTENDS  
REPORTING DUE  
DATES FOR 1095  
FORMS**



**NEW EXPIRATION  
DATE FOR  
EMPLOYER CHIP  
NOTICE, COBRA  
GENERAL &  
ELECTION NOTICES**



**APPLICABLE  
DOLLAR AMOUNT  
USED TO DETERMINE  
PCORI FEE  
ADJUSTED**

# HEALTHCARE ALERT



## Post-Election Predictions for the ACA

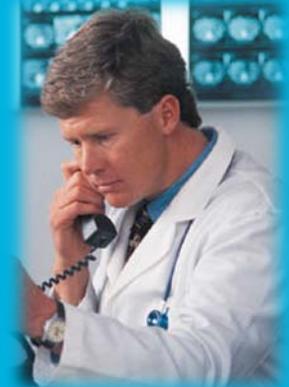
Predictions "post Trump" era indicate that certain provisions of the ACA will be eliminated immediately, while others may be here to stay. Heres' what is in the forecast, or at least, speculations regarding the ACA:

- 1) The Cadillac Tax is history;
- 2) Regulations as to employer reporting and IRS oversight are gone;
- 3) The individual mandate demanding everyone have coverage is probably gone as well, however, Trump will probably replace this with premium tax credits;

There are certain provisions of the ACA that will go away immediately, while there are others that are more lasting,

- 4) **The biggest provision of interest is the ACO provision permitting providers to act, State by State and across State lines, as a monopoly. A challenging task for the Trump administration, however, if this provision is repealed, there will be many providers negatively impacted due to the millions invested under this provision;**
- 5) Discrimination provisions may remain since they are actually applications of ERISA provisions to all health care plans;
- 6) The affordability provision is most likely gone;
- 7) Small group, large group, and the provisions that apply to large vs. small groups are probably history as well.
- 8) All of the provisions that apply to employers being mandated to offer coverage to 95% of their employees, establishing look back periods, administrative periods, and stability periods will be a thing of the past;
- 9) Mandated benefits such as age 26, no pre-existing condition limitations and the Mental Health Parity Act will most likely remain;
- 10) The 30 hour week eligibility mandate will probably be gone;
- 11) The need for wrap agreements as an IRS and DOL oversight mechanism is probably history.
- 12) The funding of health care cooperatives as well as the reinsurance subsidy to the exchanges is most certainly dead. It will be interesting to see if the exchanges are continued in any form or fashion. That decision may be left up to each state.
- 13) Limitations on deductibles, out-of-pocket maximums, and other restrictions will pass away in favor of HDHPs and HSAs.
- 14) Fully-insured carriers will most likely be able to return to underwriting by pools determined by THEM, as well as to rate ratios which they also determine as appropriate for underwriting. This is good news for health insurance companies because there will be a rejection of government intervention into their underwriting practices. **Rates on fully-insured programs may actually decrease and become more competitive.**
- 15) The success of level-funded premium plans has been greater than even the Marketplace expected. While there may be carriers, who do not develop such plans, there will be many others, especially in the TPA marketplace hooked with certain reinsurers, who will continue those programs for groups all the way down to 5 or 10 employee lives.

The ACO provision allowing providers to act, State by State and across State lines, as a monopoly will remain a question for approximately the first 100 days of Trump presidency.



- 16) Self-funded health plans are expected to increase in the market, simply because employers have learned how to self-fund successfully;
- 17) The attack of the current administration on narrow networks is over, and there will be fierce battles of provider-owned systems who partner, merge, consolidate, and create new entities that function like HMOs. These plans will feature narrow networks because the battle is over patient market share. This will be a return to the old that is new;
- 18) Efforts to control prescription drug profiteering and cost will be a joint and fierce effort that both Republicans and Democrats can agree on and work toward together. Drug companies and PBMs will likely be targets;
- 19) There will most likely be an end to the employer tax exemptions for benefits.

## Deadlines Extended for Furnishing Forms 1095-B and 1095-C in Early 2017

The IRS has [extended](#) the due dates for furnishing 2016 Forms 1095-B and 1095-C to covered individuals and full-time employees, respectively, **from January 31, 2017, to March 2, 2017**. In addition, the IRS is also **extending good faith penalty relief** to reporting entities who can show they made good faith efforts to comply with the calendar year 2016 information reporting requirements.



### Who is Required to Report

[Applicable large employers](#) (generally those with **50 or more full-time employees**, including full-time equivalents or FTEs) must use Forms [1094-C](#) and [1095-C](#) to report information to the IRS and to their **full-time employees** about their compliance

with the [employer shared responsibility provisions](#) ("pay or play") and the health care coverage they have offered in a calendar year. Alternatively, Forms [1094-B](#) and [1095-B](#) are used by [insurers, self-insuring employers, and other parties that provide minimum essential health coverage](#) (**regardless of size, except for large self-insuring employers**) to report information on this coverage to the IRS and to covered individuals. Employers subject to **both** reporting provisions (generally **self-insured employers with 50 or more full-time employees**, including FTEs) will satisfy their reporting obligations using Forms 1094-C and 1095-C.

**Note:** Reporting entities are required to report in early 2017 for coverage offered (or not offered) in calendar year 2016.

### Furnishing Deadline Extension

The IRS has extended the due dates for furnishing 2016 Forms 1095-B and 1095-C to covered individuals and full-time employees, respectively, **from January 31, 2017, to March 2, 2017**. However, the deadline to file 2016 Forms 1094-B, 1095-B, 1094-C, and

1095-C with the IRS **was not extended**, and remains **February 28, 2017** (or March 31, 2017, if filing electronically).

### **Good Faith Penalty Relief Extension**

Internal Revenue Code sections [6721](#) and [6722](#) impose penalties for failing to file and furnish an accurate and complete information return, including Forms 1094 and 1095. However, the IRS is **extending penalty relief** to reporting entities that can show that they made **good faith efforts** to comply with the calendar year 2016 information reporting requirements. This relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement.

In determining good faith, the IRS will take into account whether an employer made **reasonable efforts** to prepare for reporting the required information to the IRS and furnishing it to employees and covered individuals, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the IRS, or testing its ability to transmit information to the IRS. In addition, the IRS will take into account the extent to which the employer is taking steps to ensure that it will be able to comply with the reporting requirements for calendar year 2017.

### **Extensions Apply to Calendar Year 2016 Reporting Only**

The extensions for furnishing Forms 1095-B and 1095-C apply to **calendar year 2016 reporting only** and have no effect on the requirements for other years or on the effective dates or application of the pay or play provisions. Specifically, **the IRS does not anticipate extending due dates or good faith penalty relief to reporting for calendar year 2017.**

## **New Expiration Date for Employer CHIP, COBRA General, and COBRA Election Notices is December 31, 2016**

### **Model Notices Previously Set to Expire on November 30, 2016**

The US Department of Labor (DOL) has extended the effective dates of its model [Employer CHIP Notice](#), [General Notice of COBRA Rights](#), and [COBRA Election Notice](#) through **December 31, 2016.**

Previously, these model notices were set to expire on November 30, 2016.



### **These model notices are the most current**

**versions provided by the DOL.** For the latest guidance regarding these notices, please visit the DOL's [Children's Health Insurance Program Reauthorization Act](#) and [COBRA Continuation Coverage](#) webpages or contact the DOL directly at 1-866-487-2365.

## Applicable Dollar Amount Used to Determine PCORI Fee Adjusted to \$2.26

The Internal Revenue Service (IRS) recently issued [guidance](#) that increases the applicable dollar amount used to determine the Patient-Centered Outcomes Research Institute (PCORI) fee, for plan years that end on or after October 1, 2016 and before October 1, 2017.

### Background

PCORI fees are imposed on plan sponsors of [applicable self-insured health plans](#) for each plan year ending on or after October 1, 2012 and before October 1, 2019. The fees support research to evaluate and compare health outcomes and the clinical effectiveness of certain medical treatments, services, procedures, and drugs.

For plan years ending on or after October 1, 2015 and before October 1, 2016, the fee for an employer sponsoring an applicable self-insured plan was \$2.17 multiplied by the average number of lives covered under the plan. Details on how to determine the average number of lives covered under a plan, as well as various examples, are included in [final regulations](#).

### Fee Increase

Pursuant to [IRS Notice 2016-64](#), **for plan years ending on or after October 1, 2016, and before October 1, 2017, the fee is \$2.26** (multiplied by the average number of lives covered under the plan).



For plan years ending on or after October 1, 2017 and before October 1, 2019, the fee will be further adjusted to reflect inflation.

## New Form I-9 Released

US Citizenship and Immigration Services (USCIS) has released a new version of Form I-9, *Employment Eligibility Verification*.

### Background

Federal law requires employers to hire only individuals who may legally work in the United States, i.e. either US citizens or foreign citizens who have the necessary authorization. To comply with the law, employers must verify the identity and employment authorization of each person they hire by completing and retaining Form I-9.

### New Form I-9 Dates

The [new Form I-9](#) is dated November 14, 2016 and has an expiration date of August 31, 2019. Employers may continue using a Form I-9 with a revision date of March 8, 2013

(or may use the new version) through January 21, 2017. **Beginning January 22, 2017, however, employers must use only the new version.**

Employers should also continue to follow existing [storage and retention rules](#) for all of their previously completed Forms I-9.

**Note:** The [instructions](#) for completing Form I-9 are now separate from the form.

## New ADA Wellness Program Notice Requirement Effective January 1, 2017

### Q&As Available on Notice Requirement

Employers subject to the Americans with Disabilities Act (ADA) - generally those with **15 or more employees**, that offer a wellness program that collects employee health information are reminded that they must provide a new [notice](#) to employees as of the first day of the plan year that begins **on or after January 1, 2017**.

### Background

The ADA restricts the medical information employers may obtain from employees by generally prohibiting them from making disability-related inquiries or requiring medical examinations. However, employers are generally allowed to ask health-related questions and conduct medical examinations if the employer is providing health services as part of a **voluntary** wellness program. In order for participation to be considered voluntary, an employer must (among other things) provide a [notice](#) to employees that explains the medical information that will be obtained, how it will be used, who will receive it, and what will be done to keep it confidential.



### Notice Requirement

The requirement to provide the notice takes effect as of the first day of the plan year that begins **on or after January 1, 2017**, for the health plan an employer uses to calculate any incentives it offers as part of the wellness program. (So, for example, if the plan year of the plan used to calculate the level of incentives begins on March 1, 2017, the notice requirement will apply to the wellness program as of that date.)

The rule **does not require** that employees get the notice at a particular time - once the notice requirement becomes effective, employees must simply receive the notice **before** providing any health information, and with enough time to decide whether to participate in the program.

## Q&As Also Released

To help employers comply with the new notice requirement, the Equal Employment and Opportunity Commission (EEOC) has released a set of [Q&As](#), which clarify, among other items:

- Who must provide the notice;
- The format in which the notice should be provided;
- Whether an employee's signed authorization is required as part of the notice requirement; and
- Whether the current notice required under the federal Health Insurance Portability and Accountability Act (HIPAA) satisfies the new notice requirement under the ADA.

For more information, please review this EEOC [fact sheet](#).

## 2016 Form 8941, Credit for Small Employer Health Insurance Premiums, Now Available

### Form Used by Eligible Employers to Claim Small Business Health Care Tax Credit

The IRS has [released](#) Form 8941, *Credit for Small Employer Health Insurance*



*Premiums*, and related instructions, for tax year 2016.

Eligible small employers use this form to figure the credit for health insurance premiums under the Small Business Health Care Tax Credit.

The [Small Business Health Care Tax Credit](#) is designed to encourage small businesses and tax-exempt employers to offer health insurance coverage to their employees.

Among other requirements, an employer may be eligible for the credit for tax year 2016 if:

- It had **fewer than 25 full-time equivalent employees** (FTEs) for the tax year;
- It paid **at least 50% of the premium cost** for single health care coverage for each employee;
- The average annual wages of its employees for the year were **less than \$52,000**; and
- It paid premiums on behalf of employees **enrolled in a qualified health plan** offered through a [Small Business Health Options Program \(SHOP\) Marketplace](#) (or qualifies for an exception to this requirement).

[Click here](#) to access Form 8941 and its instructions.

## Employers May Apply a Reasonable, Good Faith Interpretation of the Term "Seasonal Worker"

Employers that hire seasonal workers this holiday season are reminded that there is an exception when measuring workforce size to determine whether they are an [applicable large employer](#) (ALE) subject to the Affordable Care Act's employer shared responsibility ("pay or play") and corresponding information reporting provisions.

### Seasonal Worker Exception

If an employer's workforce exceeds 50 full-time employees (including full-time equivalent employees) **for 120 days or less (or 4 calendar months) during the preceding calendar year**, and the employees in excess of 50 who were employed during that period were seasonal workers, the employer is **not considered an ALE for the current calendar year**. A seasonal worker for this purpose is an employee who performs labor or services on a seasonal basis (e.g., retail workers employed exclusively during holiday seasons are seasonal workers).



### Seasonal Worker Versus Seasonal Employee

While the terms "seasonal worker" and "seasonal employee" are both used in the pay or play provisions, **only the term "seasonal worker" is relevant for determining whether an employer is considered an ALE**. For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker". For more information on the difference between a seasonal worker and a seasonal employee under pay or play, please refer to [IRS Pay or Play Q&A #54](#).

## Marketplace Enrollment Has Been Simplified for 2017 Plan Year

New for plan year 2017, returning customers using the Marketplace Pathway will be taken to their pre-populated 2017 application once they log into [Healthcare.gov](#) and select the "Start a new application or update an existing one" button.

Consumers no longer have to manually search for existing applications. This insures that consumers do not create duplicate accounts, saving time and improving efficiency.

## IRS: Tax Filing Season Begins January 23

### Tax Returns Due April 18

The Internal Revenue Service (IRS) has [announced](#) that tax season will begin Monday, **January 23, 2017** and that the filing deadline to submit 2016 tax returns is April 18, 2017.

### **Tax Season Begins January 23**

The IRS will begin accepting electronic tax returns on **January 23, 2017**. Many software companies and tax professionals will be accepting tax returns before January 23 and then will submit the returns when IRS systems open. The IRS will begin processing **paper tax returns** at the same time. According to the IRS, there is no advantage to filing tax returns on paper in early January instead of waiting for the IRS to begin accepting e-filed returns.

The IRS also reminds taxpayers that they should **keep copies of their prior-year tax returns for at least 3 years**. Taxpayers who are changing tax software products this filing season will need their adjusted gross income from their 2015 tax return in order to file electronically. The Electronic Filing Pin is no longer an option.

According to the IRS, "[Where's My Refund?](#)" remains the best way to check the status of a refund.

### **April 18 Filing Deadline**

The filing deadline to submit 2016 tax returns is **April 18, 2017**, rather than the traditional April 15 date. In 2017, April 15 falls on a Saturday, and this would usually move the filing deadline to the following Monday, April 17. However, [Emancipation Day](#) - a legal holiday in the District of Columbia - will be observed on that Monday, which pushes the nation's filing deadline to Tuesday, April 18, 2017. Under the tax law, legal holidays in the District of Columbia affect the filing deadline across the nation.

[Click here](#) for additional information.

## **New Income Tax Withholding Tables Now Available**

### **Notice Available for Download**

The Internal Revenue Service (IRS) has released [Notice 1036](#), *Early Release Copies of the Yearly Percentage Method Tables for Income Tax Withholding*. Highlights of the notice include the following:

- Early release copies of the **percentage method tables** for income tax withholding that will appear in [Publication 15 \(Circular E\)](#), *Employer's Tax Guide*
- Withholding adjustments for **nonresident aliens**
- Social Security and Medicare **tax rates** for 2017
- **Additional Medicare** tax withholding
- Withholding on **supplemental wages**

[Click here](#) to read IRS Notice 1036. For the latest information about developments related to Notice 1036, such as legislation enacted after it was published, go to [www.irs.gov/notice1036](http://www.irs.gov/notice1036).

