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2020 Federal Poverty Level (FPL) Guidelines

The Department of Health and Human Services has released the federal poverty level (FPL) **guidelines for 2020**. These poverty guidelines are important for a number of reasons, not the least of which is the Affordable Care Act.

- ◆ The FPL guidelines are used to determine eligibility for premium assistance and cost-sharing.
- ◆ Further, for employer shared responsibility purposes, use of the FPL guidelines is one of three safe harbor methods that can be utilized to determine an individual's household earnings for purposes of satisfying the ACA's affordability standard. Coverage under an employer-sponsored plan is deemed affordable to a particular employee if the employee's required contribution to the plan does not exceed 9.78% (indexed for 2020) of the employee's household income for the taxable year, based on the cost of single coverage in the employer's least expensive plan.

As background, employers subject to the ACA's employer shared responsibility provisions who fail to offer minimum essential coverage to their full-time employees or fail to offer adequate and affordable coverage may be subject to an excise tax if at least one of its employees qualifies for premium assistance through a marketplace. If an employer is using the FPL as its affordability standard, it is allowed to use the FPL guidelines in effect six months prior to beginning of the plan year.

- ◆ In addition, these FPL guidelines are used to determine eligibility for other federal entitlement programs such as the Children's Health Insurance Program, certain parts of Medicaid, and subsidies for Medicare Part D prescription benefits.



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The 2020 FPL guidelines became applicable on January 14, 2020 (unless an office administering a program using the guidelines specifies a different effective date for that particular program). Below is a chart reflecting the 2020 and 2019 levels.

2020 Poverty Guidelines for the 48 Contiguous States and District of Columbia		
Note: The FPL limits vary slightly in Alaska and Hawaii		
Persons in family/household	2020 Poverty Guidelines	2019 Poverty Guidelines
1	\$12,760	\$12,490
2	\$17,240	\$16,910
3	\$21,720	\$21,330
4	\$26,200	\$25,750
5	\$30,680	\$30,170
6	\$35,160	\$34,590
7	\$39,640	\$39,010
8	\$44,120	\$43,430
Families/households with more than 8 persons:	Add \$4,480 for each additional person	Add \$4,420 for each additional person

Additional poverty guidelines are available from the [HHS Office of The Assistant Secretary for Planning and Evaluation](#).

Annual Health Plan Reporting Reminders

MEWA Reporting - 2019 Form M-1

If you sponsored a multiple employer welfare arrangement (MEWA), including an association health plan in 2019, make certain that you file the **2019 Form M-1 annual report** by March 1, 2020. This form is intended to ensure that such plans are complying with the Affordable Care Act, the Health Insurance Portability and Accountability Act, and other federal related laws. Failure or refusal to file a completed or accurate Form M-1 could result in penalties of up to \$1,625 per day (indexed, beginning January 15, 2020).

As a reminder, the Form M-1 can only be submitted electronically through the DOL's Online Filing System (<http://www.askebsa.dol.gov/mewa>). In addition, plans required to file a Form M-1 must also file the Form 5500 regardless of plan size or type of funding.

Annual Reporting Reminder - Medicare Part D Disclosure Notice to CMS

All group health plans, whether insured or self-funded, are required to provide notices of creditable or non-creditable coverage to the Centers for Medicare and Medicaid Services (CMS) on an annual basis. The Creditable Coverage Disclosure Form filing must be accomplished electronically, and is due within 60 days of the commencement of the plan year. For calendar year plans, this means the disclosure filing must be accomplished no later than March 1, 2020. In addition, this disclosure form must be completed within 30 days upon other events such as when the prescription drug benefit is cancelled, or if any material change in the prescription drug benefits that would cause it to change status from creditable to non-creditable, or vice versa. CMS provides both [guidance and instructions](#), as well as access to the [disclosure form](#) on its website.

Updated Medicaid/CHIP Premium Assistance Notice

Individuals who are eligible for employer-sponsored group health coverage, but are unable to afford the premium, may be eligible to receive premium assistance from a state's Medicaid agency or Children's Health Insurance Program (CHIP). Thus, employers sponsoring health plans are obligated to annually provide a premium assistance notice to their workforce. This notification can be accomplished by using a model notice provided by the Department of Labor's Employee Benefit Security Administration (EBSA).

EBSA recently revised its *Model Notice for Employers Regarding Premium Assistance Opportunities* and made current as of January 31, 2020. The revised notice differs from the model notice issued in July 31, 2019, as follows:

- ◆ With regard to program changes, contact information for California's Medicaid Program has been added. In Iowa, the state adds contact information about its CHIP program (Hawki). And in Kentucky, the state has expanded contact information relating to its Medicaid programs.
- ◆ The contact information for various Medicaid offices has changed. Specifically, the website address and/or phone numbers have changed in Kansas, Louisiana, Minnesota, Pennsylvania, Virginia and Washington.

The revised Medicaid/CHIP premium assistance notice is available for viewing and/or downloading from the EBSA’s website, in both English ([PDF](#) or [Word](#)) and Spanish ([PDF](#) or [Word](#)).

Method of distributing notice. The Medicaid/CHIP premium assistance notice can be included in other plan materials, such as open enrollment materials, or a summary plan description. Alternatively, it can be provided as a separate document. If the notice is to be included with other plan material, it must be clearly delineated as a unique document. The notice can be provided in written form; or, electronically, as long the DOL’s electronic disclosure rules are followed.

Employers are welcome to modify the model notice; though, it is very important that the document provided to affected individuals clearly explains the right to premium assistance; and most importantly, provides at least minimal information about how to contact the relevant state Medicaid or CHIP office.

Who gets the notice? The notice explaining the right to premium assistance must be provided to employees residing in the below-listed states at least once annually, without regard to where the employer is located, or where the health plan is situated:

States Offering Premium Assistance		
Alabama	Massachusetts	Pennsylvania
Alaska	Minnesota	Rhode Island
Arkansas	Missouri	South Carolina
California	Montana	South Dakota
Colorado	Nebraska	Texas
Florida	Nevada	Utah
Georgia	New Hampshire	Vermont
Indiana	New Jersey	Virginia
Iowa	New York	Washington
Kansas	North Carolina	West Virginia
Kentucky	North Dakota	Wisconsin
Louisiana	Oklahoma	Wyoming
Maine	Oregon	

Penalty for failure to provide notice. Failure to notify employees of premium assistance opportunities could result in a penalty assessment of up to \$119 per day, per employee (as indexed, beginning January 15, 2020).

2020 Inflationary Adjustments to Certain Reporting and Disclosure Failures

Failure to abide by certain reporting and disclosure obligations could result in civil penalties assessed by the Department of Labor (DOL). These civil penalties may be adjusted at certain times for inflationary reasons due to enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Below are **select inflationary adjustments** published by the DOL’s Employee Benefit Security Administration. These amounts became effective for penalties assessed on or after January 15, 2020.

	2020 Penalty Amount	2019 Penalty Amount
Failure or refusal to file the annual Form 5500 return/report	Up to \$2,233 per day	Up to \$2,194 per day
Failure to file Form M-1	Up to \$1,625 per day	Up to \$1,597 per day
Failure to provide Summary of Benefits and Coverage (SBC)	Up to \$1,176 per failure	Up to \$1,156 per failure
Failure to notify employees of Children’s Health Insurance Program (CHIP) coverage opportunities	Up to \$119 per day	Up to \$117 per day

It should also be noted that several penalty adjustments apply to the protections afforded under the Genetic Information Nondiscrimination Act (GINA). For example, individuals denied access to group health coverage based on his/her genetic information could result in civil penalties of up to \$119 per day of noncompliance (up from \$117 per day).

An employer subject to the federal Family and Medical Leave Act is required to post a notice in their work site locations that summarizes the major provisions of the Family and Medical Leave Act. Failure to post this notice could result in a civil money penalty assessed by the DOL’s Wage and Hour Division of up to \$176 per each separate offense (up from \$173). The model FMLA work place poster is available in both English and Spanish from the DOL’s Wage and Hour Division’s [website](#).



HHS Further Adjusts Penalties for Compliance Failures

Due to changes in the law and indexing, the Department of Health and Human Services further adjusted its civil penalty amounts from those issued in December, 2019 (see *HHS Increases Penalties for Compliance Failures*, *Benefit Beat*, 12/4/19). These **modified amounts** apply to penalties assessed on or after January 17, 2020 for violations occurring on or after November 2, 2015.

HIPAA Privacy, Security and Breach

Failure to adhere to the HIPAA privacy, security and breach laws by covered entities could result in civil penalties. There are four tiers of civil penalties that could be imposed; following are the inflation-adjusted amounts of potential penalties:

Violation category	Each violation (minimum to maximum)	All such violations of an identical provision in a calendar year (calendar year cap)
Did not know a violation occurred	\$119 to \$59,522	\$1,785,651
Violation due to reasonable cause and not willful neglect	\$1,191 to \$59,522	\$1,785,651
Violation due to willful neglect but corrected	\$11,904 to \$59,522	\$1,785,651
Violation due to willful neglect and not corrected	\$59,522 to \$1,785,651	\$1,785,651

Summary of Benefits and Coverage

Failure to provide a summary of benefits and coverage (SBC) could result in HHS penalties, as well as penalties imposed by the Departments of Labor (DOL) and Treasury (IRS). For HHS and DOL purposes, the potential civil penalty for willful failure to provide the SBC has been increased to \$1,176 per failure.

Medicare Secondary Payor Rule Violations

- ♦ **Working-aged rule violations.** An individual who becomes entitled to Medicare due to age can, of his/her own volition, choose to decline or drop employer-sponsored coverage; thus, an employer cannot encourage or induce the individual to choose Medicare over its plan. The penalty for instances in which an employer or other entity offers any financial or other incentive to Medicare-eligible individuals to not enroll in a plan that would otherwise be primary has been increased to \$9,639 per violation.

Further, willful or repeated failures to provide timely and accurate information requested relating to an employee's group health insurance coverage could result in a \$1,569 per violation penalty.

- ♦ **Violations of Medicare mandatory reporting requirement.** The penalty for failure to provide information that identifies situations where the group health plan is (or was) a primary plan to Medicare to the HHS Secretary pursuant to the reporting obligation is \$1,232 per failure.

Updated Tax Publications to Assist Employers

Several IRS publications have recently been updated for use in 2020 that may be of interest to employers.

Employer's Tax Guide

IRS Publication 15 provides an overview of requirements relating to withholding, depositing, reporting, paying, and correcting employment taxes. There are two supplements to IRS Publication 15 that provide a more detailed overview of taxation of employer provided benefits:

- ♦ **Employer's Supplemental Tax Guide (Publication 15-A)** provides detailed employment tax information such as determining classification of individuals as employees or independent contractors, determining what constitutes taxable wages or sick pay and how to report such amounts, as well as reporting pension or annuity payments.
- ♦ **Employer's Tax Guide to Fringe Benefits (Publication 15-B)** provides information for employers on the tax treatment of various fringe benefits including health care coverage, health savings accounts, qualified small employer health reimbursement arrangements (QSEHRA), cafeteria plans, dependent care assistance plans, educational assistance plans, qualified transportation benefits, group term life insurance coverage, among other types of benefits.

Medical and Dental Expenses

For certain purposes, **Publication 502** can be used to determine expenses that are reimbursable from plans such as flexible medical spending accounts and health savings accounts; though, it is important to note that there are differences between deductible expenses and those reimbursable from such plans.

HCSO Updates and Reminders for San Francisco Employers

The City and County of San Francisco passed a Health Care Security Ordinance (“HCSO”) several years ago that requires covered employers to contribute to the health care costs of its covered employees, either through private means, or through “Healthy San Francisco”. An employer is subject to the HCSO if it employs one or more workers within the geographic boundaries of the City and County of San Francisco, is required to obtain a valid San Francisco business registration certificate, and is a for-profit business with 20 or more workers, or a nonprofit organization with 50 or more workers.

Following are updates and reminders relating to a covered employer’s obligations under the HCSO.

Annual Reporting Obligation

Employers subject to the HCSO are required to annually report their health care expenditures to the Office of Labor Standards Enforcement (OLSE). The 2019 Employer Annual Reporting Form is scheduled to be made available on the [OLSE’s website](#) by April, 2020 and is due by April 30, 2020. Employers who fail to submit an annual report on time may be subject to penalties of \$500 for each quarter the violation occurs.

2020 Expenditure Rates

For 2020, the applicable health care expenditure rate for large businesses employing 100-plus employees is \$3.08 per hour; the expenditure rate for businesses with 20-99 employees and nonprofits employing 50-99 employees is \$2.05 per hour. An employee who is a manager, supervisor, or confidential employee, and who earns more than \$104,761 in 2020 (or \$50.37 per hour) are exempt from coverage under the HCSO.

Updated HCSO Calculation Instructions for Employers with Self-funded Health Plans

OLSE recently released guidance relating to calculating expenditures for employers with self-funded health plans to clarify rules issued in 2017 (see [Updates: San Francisco’s Health Care Security Ordinance, Benefit Beat, 10/9/17](#)). Specifically, an FAQ addresses how employers with self-funded plans can determine whether its expenditures meet or exceed the required health care expenditure rate. According to OLSE, when an employer pays claims as they are incurred, and that calendar year’s average hourly expenditures meet or exceed that calendar year’s expenditure rate for that employer, then the required expenditure rate is deemed to be satisfied.

For example, in early 2020, if an employer is assessing the cost of its 2019 health plan, the employer must determine whether the 2019 average hourly expenditures meet or exceed the 2019 expenditure rate. OLSE provides [instructions](#) to assist employer in their calculations for making this determination, as well as a [sample letter](#) to provide to their employees to explain how the calculation is made.

Employee Worksite Poster

The OLSE provides a new [2020 HCSO poster](#) for employers to download or request by mail. This workplace posting is made current as of January 1, 2020, and must be placed at each job site or workplace in a location where employees can easily read it.

Paid Sick Leave Updates in the Garden State and City of Chicago

Final regulations were issued affecting the earned sick leave law in New Jersey. In addition, the City of Chicago’s paid sick leave ordinance has been amended. Following is a summary of these changes.

New Jersey’s Earned Sick Leave: Final Regulations

In May 2018, New Jersey passed an earned sick leave law which took effect October 29, 2018. More than a year later, in January 2020, [final regulations](#) were issued interpreting the Earned Sick Leave law. The regulations parallel proposed regulations issued September 18, 2018. For background about this law, see our prior [Benefit Beat](#) articles from [October](#) and [May, 2018](#)). Of particular note, the final regulations provide guidance for accrual or frontloading sick leave, establishing a benefit year, and an employer’s paid time off policy.

As a reminder, the Earned Sick Leave law requires virtually all employers to allow employees to accrue one hour of leave for each 30 hours worked, up to a maximum of 40 hours in a benefit year.

The law allows either frontloading or accrual. According to final regulations, in no event can the employer impose a use it or lose it scenario.

If the employer’s policy uses the accrual method, the employer may offer to payout unused sick leave. The employee has 10 calendar days from the date the offer was made to accept or reject the offer. The employee can take either a full payout or a 50% payout of the unused sick leave. If the employee rejects the payout entirely or takes a 50% payout, the employee may carry-over any unused sick leave to the next benefit year subject to the 40 hour limit.

If the employer's policy provides for frontloading, the employer must either provide the employee a payout for the full amount of unused sick leave, or permit the employee to carry-over any unused sick leave to the next benefit year subject to the 40 hour limit. If the employer pays out the full amount of unused sick leave to the employee, the employer may not use the accrual method with respect to that employee during the next benefit year.

Carryover notwithstanding, an employer is not obligated to allow an employee to use more than 40 hours of leave in any one benefit year.

The final regulations provide that an employer need not establish a single benefit year. There may be future guidance defining how an employer can use individualized benefit years such as an employment anniversary.

One of the significant matters addressed in the final regulations relates to an employer's paid time off (PTO) policy. An employer's PTO policy can satisfy the obligations of the law but only if the entire PTO policy complies with each aspect of the Earned Sick Leave law. Effectively, what this means is, if for example, an employer provides a PTO policy that can be used for any purpose, such as sick leave, vacation, personal time, etc., the full amount provided by the PTO policy must comply with the requirements of the Earned Sick Leave law.

In summary, employers subject to New Jersey Earned Sick Leave law will want to review their policies to ensure compliance. New Jersey's Department of Labor and Workforce Development provides on its [website](#) resources for employers, such as FAQs, fact sheets, guidance for earned sick leave policies and employer handouts.

It is certainly possible that additional guidance, and perhaps, even additional legislation may impact the Earned Sick Leave law.

City of Chicago's PSL Ordinance Amended

In December 2019, the City Council amended Chicago's Minimum Wage Ordinance. Specifically, the amendment redefines employer and employee for purposes of the Chicago's Minimum Wage Ordinance and Chicago's Paid Sick Leave Ordinance. The amendments take effect July 1, 2020.

As background, Chicago's Paid Sick Leave Ordinance took effect July 1, 2017, requiring employers to provide up to 40 hours of paid sick leave in a 12-month period (see our prior [Benefit Beat](#) article).

Employers subject to the Ordinance

A covered employer is any employer who employs at least one covered employee and maintains a place of business in the city limits or is required to maintain a Chicago business license.

Effective July 1, 2020, a covered employer is defined as a person who gainfully employs at least one employee regardless of whether the employer has a Chicago worksite or is subject to business license requirements.

Employees entitled to leave

A covered employee is one who, in any particular two-week period, performs at least two hours of work for the covered employer while physically present within the geographic boundaries of the City. To be eligible for leave, the covered employee must work at least 80 hours within any 120-day period.

Effective July 1, 2020, excluded from the definition of employee are:

- ◆ An individual who works for an employer who has fewer than four employees;
- ◆ An outside salesperson (regularly engaged in making sales or obtaining orders or contracts for services where most of such duties are performed away from the employer's place of business);
- ◆ A member of a religious corporation or organization;
- ◆ A student at, and employed by, an accredited Illinois college or university;
- ◆ Motor carriers regulated by the U.S. Secretary of Transportation or the State of Illinois; and
- ◆ Certain camp counselors employed at a day camp.

Employer Notice Obligation. The Office of Labor Standards provides a [Model Notice](#) that must be displayed in a conspicuous place at the place of employment, and provided with each covered employee's first paycheck.

Enforcement. In 2019, Chicago created the [Office of Labor Standards](#) to enforce Chicago's labor laws, i.e. Chicago's Minimum Wage Ordinance, Paid Sick Leave Ordinance and the Fair Workweek Ordinance. The Department of Business Affairs and Consumer Protection formerly enforced the paid sick leave ordinance.



ABOUT THE AUTHOR:

Karen R. McLeese is Vice President of Employee Benefit Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law. Ms. McLeese is based in the CBIZ Kansas City office.

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