



Legislative Brief

Final Regulations on Excise Taxes for Group Health Plans



Group health plans are responsible for compliance with a number of federal laws governing issues such as continuation coverage and portability of health coverage. If a group health plan does not comply with applicable group health plan requirements, the employer maintaining the plan is subject to an excise tax. Employers are also subject to an excise tax if they do not satisfy comparable contribution rules for health savings accounts (“HSAs”) and Archer medical savings accounts (“MSAs”). The Internal Revenue Service (IRS) has issued final regulations on reporting and paying the applicable excise tax, which are effective **January 1, 2010**.

Group Health Plan Rules Subject to Excise Tax

Generally, an excise tax of **\$100 per individual per day** will apply to violations of the following rules (“Group Health Plan Requirements”):

- Continuation coverage (COBRA);
- Portability and nondiscrimination for health coverage (HIPAA);
- Genetic information nondiscrimination (GINA);
- Parity between mental health benefits and medical/surgical benefits (Mental Health Parity and Addiction Equity Act);
- Minimum hospital lengths of stay in connection with childbirth (Newborns’ and Mothers’ Health Protection Act); and
- Continued coverage for post-secondary students with a serious medical condition (Michelle’s Law).

For violations of the comparable contribution rules for HSAs and Archer MSAs, the excise tax will generally be **35 percent of the amount contributed by the employer** to the Archer MSAs or the HSAs of all employees within the applicable calendar year.

Exceptions to Excise Tax

The excise tax may be waived for violations of the comparable contribution rules for HSAs and MSAs if the excise tax imposed is excessive in comparison to the violation. If an employer has not made a sufficient contribution to an HSA, it has until April 15 of the following year to make up the payments and must pay interest.

For failures to comply with the other Group Health Plan Requirements, no excise tax will be imposed if the failure is not discovered when exercising reasonable diligence, or is due to reasonable cause and is timely corrected. A failure is corrected if it is retroactively undone to the extent possible and the affected beneficiary is placed in a financial position as good as he or she would have been in if the failure had not occurred.

Reporting and Paying Excise Taxes

Any applicable excise taxes must be reported on IRS Form 8928, “Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code.” Form 8928 is not yet available, but a draft may be viewed at www.irs.gov/pub/irs-dft/f8928--dft.pdf.

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The due date for paying the excise tax is the same as the due date for filing Form 8928. That due date will depend on what type of violation has occurred and the entity responsible.

| Rule(s) Violated | Responsible Entity | Due Date |
|--------------------------------|--|--|
| Group Health Plan Requirements | Employer, insurer, third-party administrator | On or before the due date for the entity's Federal income tax return (without regard to extensions) |
| Group Health Plan Requirements | Multiemployer or some multiple-employer health plans | On or before the last day of the 7 th month after the end of the plan year |
| Comparable Contributions | Any | On or before the 15 th day of the 4 th month after the calendar year in which the non-comparable contributions were made |

Rules on Contributions to HSAs

In addition to the excise tax rules described above, the regulations finalize proposed rules regarding comparable employer contributions to HSAs. Those rules clarify the maximum permitted employer contribution for employees who become eligible individuals mid-year. The regulations state that an employer may contribute up to the maximum annual contribution amount for the calendar year (based on the employees' high deductible health plan, or HDHP, coverage) to the HSAs of all employees who are eligible individuals on the first day of the last month of the employees' taxable year. This includes employees who worked for the employer for less than the entire calendar year and employees who became eligible individuals after January 1 of the calendar year. If the employer makes more than a pro rata contribution for any such employee, it must do so for all comparable participating employees.

The rules also state that larger contributions may be made for non-highly compensated employees than for highly compensated employees. Employers generally may not make larger contributions for highly compensated individuals unless the discrepancy is due to a higher coverage level (for example, larger contributions may be made for employees with self plus two HDHP coverage than those with self plus one coverage, even if the employees with self plus two coverage are all highly compensated).

Please contact your RPG Solutions, Inc. representative with any questions.

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