

ACA Penalty Chart

2020



COMPLIANCE & LEGAL



HEALTH CARE REFORM PENALTIES FOR COMPLIANCE FAILURES

DECEMBER 2, 2019

The Patient Protection and Affordable Care Act's (ACA) coverage mandates and market reforms are implemented via amendments to the Public Health Service Act (PHSA), the Internal Revenue Code of 1986, as amended (the Code), and the Employee Retirement Income Security Act of 1974 (ERISA).

Many of the ACA's mandates are made in the form of amendments to the PHSA, which apply directly to insurers and governmental plans. However, the ACA makes these provisions applicable to employer-sponsored group health plans (including self-insured plans) through Section 715 of ERISA and Section 9815 of the Internal Revenue Code of 1986 (Code).

Penalties for Failure to Comply with PHSA Mandates¹

Requirement	Penalty
<p>Provision of minimum essential coverage to full-time employees through a group health plan by employers with 50 or more employees.</p> <p>ACA §1513; Code §4980H</p>	<p>If the employer does not offer coverage to at least 95% of full-time employees and at least one full-time employee receives subsidized coverage through an Exchange, the employer is penalized \$2,000*/yr for each full-time employee.</p> <p>If the employer offers unaffordable coverage, the employer must pay lesser of: \$3,000*/year for each full-time employee receiving the premium credit or \$2,000*/year for each full-time employee.</p> <p>For purposes of calculating the \$2,000*/employee penalty, the first 30 employees are disregarded</p> <p>* Penalties are indexed for inflation after 2014:</p> <ul style="list-style-type: none"> • 2015: \$2,080 / \$3,120 • 2016: \$2,160 / \$3,240 • 2017: \$2,260 / \$3,390 • 2018: \$2,320 / \$3,480 • 2019: \$2,500 / \$3,750 (est.) • 2020: \$2,570/\$3,860 (est.)

¹Other penalties apply for various employee benefit plan violations under ERISA and the Code.

Requirement	Penalty
<p>Uniform explanation of coverage (summary of benefits and coverage) and 60-day notice of material modifications made other than in connection with a plan's renewal.</p> <p>PHSA §2715; ACA §1001</p>	<p>\$1,128 fine for each willful failure to comply.</p>
<p>Individual Mandate</p> <p>ACA §1501(b), Code §5000A(c)</p> <p>Notes:</p> <p>For 2017 the national average for a bronze-level Marketplace plan is \$3,264 per individual, \$16,320 for a family with five or more members.</p> <p>For 2018 the national average for a bronze-level Marketplace plan is \$3,396 per individual, \$16,980 for a family with five or more members.</p> <p>Starting in 2019, the federal Individual Mandate penalty has been set to \$0.</p>	<p>The applicable penalty is the greater of the flat dollar penalty or the gross income penalty.</p> <p>The flat dollar penalty in 2017 is \$695 per individual to a maximum of \$2,085 per family. The flat dollar penalty is halved for dependents under 18.</p> <p>For 2018, the flat dollar amount is based on the 2017 amount plus an inflation adjustment. As of 2019, the individual mandate penalty is reduced to \$0.</p> <p>The gross income penalty in 2017 and 2018 is 2 ½% of household income in excess of a specified filing threshold**. As of 2019, the individual mandate penalty is reduced to \$0. Waivers are allowed for specified individuals and circumstances. The gross income penalty is capped at the national average premium of a bronze level Marketplace plan (for 2018, the national average is \$3,396 for a single individual and \$16,980 for a family of five or more).</p> <p>**The minimum amount of gross income an individual of the same age and with the same filing status (e.g., single, married filing jointly, head of household) must make to be required to file a tax return (e.g., for 2018, \$12,000 single under age 65; \$24,000 married filing jointly under 65 (both spouses)).</p>

Requirement	Penalty
Nondiscrimination Rules PHSA §2716; ACA §§1001, 10101	\$100/day 4980D excise tax per individual affected by the violation. Note: Compliance with this provision is currently delayed pending further guidance
No Lifetime Limits or Annual Limits on Essential Benefits PHSA §2711; ACA §1001	\$100/day 4980D excise tax per individual affected by the violation.
Group Health Plan Coverage Must Extend Eligibility for Dependents to Age 26 (if dependent coverage is offered) PHSA §2714; ACA §1001	\$100/day 4980D excise tax per individual affected by the violation.
No Retroactive Rescissions of Coverage after Enrollment PHSA §2712; ACA §1001	\$100/day 4980D excise tax per individual affected by the violation.
First Dollar Coverage for Preventive Care PHSA §2713; ACA §1001	\$100/day 4980D excise tax per individual affected by the violation.
Revised Appeals Process, PHSA §2719; ACA §1001	\$100/day 4980D excise tax per individual affected by the violation.
Disclosure in all Plan Materials Providing Notice of Grandfathered Status for Health Plan ACA §1251	\$100/day 4980D excise tax per individual affected by the violation.
Disclosure of Plan Information to HHS PHSA §2715A; ACA §1311(e)	\$100/day 4980D excise tax per individual affected by the violation.

Requirement	Penalty
Prohibition on Emergency Room Restrictions PHSA §2719A; ACA §1001	\$100/day 4980D excise tax per individual affected by the violation.
Prohibition on Primary Care Physician Restrictions PHSA §2719A; ACA §10101	\$100/day 4980D excise tax per individual affected by the violation.
No Pre-Existing Condition Exclusions PHSA §2704; ACA §§1255, 10301	\$100/day 4980D excise tax per individual affected by the violation.
Limit on Employee Out-of-Pocket Expenses PHSA §1302, ACA §1101 2017 Limit: \$7,150 / \$14,300 (individual/family) 2018 Limit: \$7,350 / \$14,700 (individual/family) 2019 Limit: \$7,900 / \$15,800 (individual/family) 2020 Limit: \$8,150 / \$16,300 (individual/family)	\$100/day 4980D excise tax per individual affected by the violation. Note: Out-of-pocket limits apply on a per-member basis starting with 2016 plan years

Requirement	Penalty
<p>Provider and Applicable Large Employer Reporting (Forms 1094-B, 1095-B, 1094-C, 1095-C, as applicable)</p> <p>Reporting required by employers sponsoring self-insured plans and employers with 50+ full-time equivalent employees</p> <p>ACA §1514, Code §§6055, 6056</p>	<p>Penalties are indexed annually:</p> <p>2018 and 2019 reporting years (i.e., returns due in 2019 and 2020, respectively): Standard penalties for reporting failures can be \$270 per return, up to ~\$3M per year (for large businesses) and ~\$1M per year (for small businesses)</p> <p>Willful failures: \$550 per return with no cap (\$540 for returns due in 2019)</p> <p>Note: Penalties may be lower (\$50) when failures are corrected within 30 days of the required filing date or by August 1 (\$110) (\$100 for returns due in 2019). Accuracy-related penalties may be waived if reports were filed timely and in good-faith compliance with the requirements (2015-2017 reporting years; not yet extended to 2018).</p>
<p>Required Coverage for Clinical Trials for Life-Threatening Diseases</p> <p>PHSA §2709</p>	<p>\$100/day 4980D excise tax per individual affected by the violation.</p>
<p>90-Day Limit on Waiting Periods</p> <p>PHSA §2708; ACA §1201</p>	<p>\$100/day 4980D excise tax per individual affected by the violation.</p>
<p>Increase in Wellness Program Incentives from 20% of the Total Cost of Coverage to 30% (50% for tobacco cessation programs)</p> <p>PHSA §2717; ACA §1001</p>	<p>\$100/day per individual affected by the violation.</p>
<p>Community Rating Restrictions Regarding Premium Variations for Health Insurers Providing Individual or Small Group Policies and Insurers Offering Large Group Policies using an Exchange</p> <p>ACA §1334</p>	<p>\$100/day 4980D excise tax per individual affected by the violation.</p>

4980D Excise Tax for Failure to Comply with Code §9815 Code § 4980D imposes an excise tax for a group health plan's failure to comply with certain requirements contained in the Code. Specifically, the tax applies to the requirements in Chapter 100 of the Code, which includes Code § 9815, the provision that incorporates the PHSA mandates of health care reform. Failure to comply with a PHSA mandate will potentially trigger an excise tax of \$100 per day under the Code "with respect to each individual to whom such failure relates." The tax could apply to private-sector group health plans, insurers of group health plans, and church plans, but not to state and local government group health plans.

The minimum excise tax for a compliance failure discovered after a notice of examination generally is \$2,500. The minimum excise tax is increased to \$15,000 if violations are "more than de minimis." The maximum excise tax for "unintentional failures" for a single employer plan is the lower of 10% of the amount paid during the preceding tax year by the employer for group health plans, or \$500,000.

For single employer plans, the tax is imposed on the plan sponsor. For multiemployer plans, the tax is imposed on the plan.

Exceptions:

Code § 4980D excise tax does not apply to small employers (fewer than 50 employees) that provide health coverage solely by means of a fully insured plan through a contract with a health insurance issuer if the failure is solely caused by the health insurance coverage offered by the insurer.

It does not apply to any period for which the entity otherwise liable for the tax can demonstrate that it did not know (and, in exercising reasonable diligence, would not have known) that there was a compliance failure.

The tax may not apply if the entity can demonstrate that the failure was due to reasonable cause rather than willful neglect and was corrected within 30 days after the responsible entity first knew (or, in exercising reasonable diligence, should have known) that the failure existed.

Self-Reporting on Form 8928

Any person who is liable for the excise tax under Code § 4980D must file and self-assess this tax on Form 8928 (Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code). Interest and penalties may also apply for the failure to timely file the Form 8928 and pay any excise tax owed. Employers should consult with benefits counsel before filing Form 8928.

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