

# Benefits BULLETIN

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## New Spending Bill Delays Cadillac Tax

On Dec. 18, 2015, President Barack Obama signed a \$1.1 trillion year-end spending agreement into law that prevented a government shutdown and funds the federal government through the 2016 fiscal year.

Among its many provisions, the new legislation affects three major Affordable Care Act (ACA) taxes. The first, and perhaps the most controversial, is the “Cadillac tax,” which would levy a 40 percent excise tax on employer health plans that are deemed to be overly generous. This tax would affect health plans that cost more than \$10,200 for an individual and \$27,500 for a family.

The Cadillac tax is intended to help slow health care spending and finance the expansion of health coverage under the ACA. However, many politicians across party lines oppose the tax because they believe it will force employers to shift more health care costs onto employees, many of whom are already facing high out-of-pocket costs. Politicians have also experienced significant push back

from unions and employers regarding the tax.

The Cadillac tax was slated to take effect at the beginning of 2018; however, the new legislation delays its implementation another two years (until 2020). The new law also makes the Cadillac tax a tax-deductible expense for employers, which could help alleviate the tax’s burden.

The future of the Cadillac tax remains uncertain, especially with the upcoming presidential election. Republican and Democratic presidential candidates alike have stated that they support a repeal of the Cadillac tax—putting its future into jeopardy.

Despite this recent delay and the uncertainty surrounding the tax, employers would be wise to review their health plans to determine if they could be held liable if the tax is implemented as well as identify any cost-saving strategies that can be taken in the meantime.

In addition to the Cadillac tax, the law also includes a two-year suspension on the ACA’s medical device tax, which requires manufacturers and importers to pay a 2.3 percent excise tax on certain medical devices. The medical device tax initially took effect in 2013, but under the new law, it is suspended until the end of 2017. The new law also suspends a tax on health insurance providers for the 2017 calendar year.

## Final ACA Market Reform Rules Released

On Nov. 18, 2015, the Departments of Labor, Health and Human Services and the Treasury (Departments) issued final regulations regarding a number of ACA market reform requirements, including annual limits, dependent coverage up to age 26 and patient protections.

While this final rule largely reaffirms proposed interim final rules, there are a few measures to be aware of. For example, the final rule clarifies that lifetime and annual dollar limits on essential health benefits (EHBs) are generally prohibited, regardless of whether care is provided in network or out of network.

In regards to dependent coverage, the final rule confirms that a plan or issuer cannot deny or restrict coverage based on a child’s financial dependency, residency, student status or employment. The term “child” refers to a son, daughter, stepson, stepdaughter, adopted child or eligible foster child. Plans are not required to make coverage available to grandchildren.

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## Final ACA Market Reform Rules Released (contd.)

The final rule also addresses patient protection requirements, including clarifying that a plan or issuer may not require a female participant (of any age) to obtain an authorization or referral for obstetric or gynecological care provided in network. Plans and issuers, however, are allowed to apply reasonable and appropriate geographic limitations with respect to participating primary care providers.

In the final rule, the IRS declined to define the term “primary care provider.” Instead, this term should be determined under the terms of an employer’s plan or coverage and in accordance with state law.

These are just a few of the provisions outlined in the final rule. Other topics covered include grandfathered plans, pre-existing condition exclusions, rescissions, and internal and external appeals.

The final rule is effective for plan years beginning on or after Jan. 1, 2017. For a more complete understanding of the final rule and what it means for you, contact Brown & Brown Benefit Advisors today.

## IRS Releases Tax Guidance on Same-sex Marriage Issues

On Dec. 9, 2015, the IRS issued Notice 2015-86 to address how the Supreme Court’s *Obergefell* ruling—which declared same-sex marriage legal in all 50 states—impacts employee benefit plans.

According to the IRS, employees in same-sex marriages should be treated the same as employees in opposite-sex marriages for federal tax purposes, including employee health benefits. For example, under this guidance:

- An employer should not impute additional income to an employee who covers his or her same-sex spouse as a dependent under the employer’s health plan.
- An employee may pay for a same-sex spouse’s health coverage on a pre-tax basis through a

Section 125 (cafeteria) plan in the same manner as an employee with an opposite-sex spouse.

- Employees may receive tax-free reimbursements for medical expenses of their same-sex spouses through a health flexible spending account (FSA), health reimbursement account (HRA) or health savings account (HSA).

Notice 2015-86 offers guidance regarding how Code Section 125’s mid-year election change rules apply when a health plan expands eligibility during a plan year to include same-sex spouses. While employers do not have to allow for any exceptions, the IRS permits employers to design their cafeteria plans to allow employees to change their elections during the year if certain conditions are met.

One of these conditions is if there is a significant improvement in coverage under an existing coverage option. For example, if an employer decides to add coverage for same-sex spouses during the plan year, the addition of this coverage would qualify as a significant improvement enabling participants to revoke existing elections and to submit new elections to add coverage for same-sex spouses.

It is important to note that the IRS’ tax rules for same-sex spouses do not apply to registered domestic partners, civil union partners or individuals in similar relationships that are not designated as marriage under state law.

## ACA Automatic Enrollment Requirement Repealed

On Nov. 2, 2015, President Obama signed into law the Bipartisan Budget Act of 2015, which includes a provision repealing the ACA’s automatic enrollment requirement.

Previously, under the ACA, certain large employers would have been required to automatically enroll new employees and re-enroll current employees in one of the employer’s health plans, subject to a permissible waiting period. This requirement would have applied to employers subject to the Fair Labor Standards Act (FLSA) with more than 200 full-time employees.

Some experts opposed the automatic enrollment requirement because they believed it would cause administrative issues for employers, such as having an

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employee enrolled in the employer's coverage who is also covered by a spouse's plan. The requirement was intended to take effect once final regulations were issued and an effective date was set.

Under the new law, though, employers will not be required to automatically enroll employees in coverage. In certain cases, however, employers can choose to create an automatic enrollment process if employees are provided enough notice and the opportunity to opt out of the plan. Employers should also be aware of any applicable wage withholding laws in their state, which may require an affirmative election for employees before any payroll deductions can be legally made.

For more information about setting up an automatic enrollment option, contact Brown & Brown Benefit Advisors.

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