



COMPLIANCE ALERT



EMPLOYEE BENEFITS | NOVEMBER 19, 2018

IRS Announces Inflation Adjusted Health FSA and Commuter Benefit Limits For 2019

The IRS issued Rev. Proc. 2018-57 with the 2019 inflation adjustments to the maximum annual contribution limits for Health FSAs and Commuter Benefits. The 2019 limits will be:

Health Flexible Spending Accounts

2019 Annual Limit	2018 Annual Limit
\$2,700	\$2,650

Commuter Benefits - Parking and Transit

2019 Monthly Limit	2018 Monthly Limit
\$265	\$260

Employer Takeaways

It is important to note that although these are the maximums permitted under the tax code for 2019, employers are not required to raise their plan's limits. The IRS often issues these increases late in the calendar year when employers may have already conducted and concluded their plan's open enrollment period. Depending on the language in the ERISA plan documents, it may be necessary to amend those documents if employers ultimately decide they would like to raise the limit to the new maximum for 2019.

HHS Makes Inflation Adjustments to HIPAA, Medicare Secondary Payer, and SBC PENALTIES

HHS announced its annual cost-of-living adjustments (COLA) for statutory penalties for various failures under HIPAA,

Medicare Secondary Payer and Summary of Benefits and Coverage (SBC) rules. The COLA inflation adjustments increase the following penalties by 2.04% effective as of October 11, 2018:

HIPAA

(penalties escalate depending on culpability and correction timing)

Lack of knowledge

Minimum Penalty	Maximum Penalty
\$114 (up from \$112)	\$57,051 (up from \$55,910)

Reasonable cause (not willful neglect)

Minimum Penalty	Maximum Penalty
\$1,141 (up from \$1,118)	\$57,051 (up from \$55,910)

Willful neglect (corrected within 30 days)

Minimum Penalty	Maximum Penalty
\$11,410 (up from \$11,182)	\$57,051 (up from \$55,910)

Willful neglect (not corrected within 30 days)

Minimum Penalty	Maximum Penalty
\$57,051 (up from \$55,910)	\$1,711,533 (up from \$1,677,299)

Note that all of the penalties above are subject to a year-end calendar max of \$1,711,533 (up from \$1,677,299).

Medicare Secondary Payer

Offering incentives to Medicare-eligible employees to decline participating in the employer's group health plan:

\$9,239 (up from \$9,054)

Willful or repeated failure to provide requested group health plan information:

\$1,504 (up from \$1,474).

Failures to provide information identifying situations where group health plan is primary:

\$1,181 (up from \$1,157).

Summary of Benefits and Coverage (SBC)

The penalty for a health insurer's or health plan's willful failure to provide an SBC is \$1,128 (up from \$1,105) per failure.

Employer Takeaways

These COLA adjustments provide a good reminder that employers should review their HIPAA administrative policies and procedures and group health plan offerings to ensure good faith compliance with ever changing rules and regulations.

About the Authors: This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on the Affordable Care Act. Contact Peter Marathas or Stacy Barrow at pmarathas@marbarlaw.com or sbarrow@marbarlaw.com.

The information provided in this alert is not, is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the agency, our lawyers or our clients. This is not legal advice. No client-lawyer relationship between you and our lawyers is or may be created by your use of this information. Rather, the content is intended as a general overview of the subject matter covered. This agency and Marathas Barrow Weatherhead Lent LLP are not obligated to provide updates on the information presented herein. Those reading this alert are encouraged to seek direct counsel on legal questions.

© 2018 Marathas Barrow Weatherhead Lent LLP. All Rights Reserved.