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Check out the new POP educational videos for you and your employees at [ezpop.com](http://ezpop.com)

## How the IRS Audits Premium only Plans

If other aspects of your business are audited, your POP will likely fall under the same scrutiny. It's important to be well prepared and versed on what types of documents the IRS could request. Such materials include:

- Executed plan document and all amendments
- Summary Plan Description (SPD)
- Signed election forms
- Change of election forms
- List of employees who are eligible and ineligible for the plan
- Related insurance policies
- Results of nondiscrimination tests
- Form 5500 and Schedule F (requirement suspended April 4, 2002 in IRS Notice 2002-24)
- Payroll records
- Reconciliation of employee pre-tax deductions with Form W-2
- Schedule of employee and employer contributions
- Calculations used to determine employment taxes paid, including FICA and FUTA taxes



See our **compliance questionnaire** on the next page to see if your POP is in violation.

## New Guidelines for Excepted Benefits and Annual and Lifetime Limits

There's more to benefits than just major medical coverage. Other types of insurance are utilized by employers; however, confusion reigns in the murky waters of these "other" types of coverage. See our alerts "New Rules for Excepted Benefits" and "Final Rules for Excepted Benefits." On June 10, 2016, the Departments of Labor (DOL), Health and Human Services (HHS) and the IRS ("The Departments") issued proposed regulations with respect to requirements for short-term limited-duration insurance, travel insurance, similar supplemental health coverage, and prohibition on lifetime and annual limits.

Final rules for these excepted benefits and prohibition on lifetime and annual dollar limits were issued October 28, 2016 and apply to group health plans and health insurance issuers beginning on the first day of the first plan year (or, in the individual market, the first day of the first policy year) beginning on or after January 1, 2017.

**Short-Term, Limited-Duration Insurance** is designed to fill temporary gaps in coverage when someone is moving from one plan to another or changing jobs, is not an excepted benefit, and is not exempt from the annual or lifetime annual dollar limits. It cannot take the place of regular insurance cover either.

## Coming Soon

Enhancement to EZPOP.com

- On-line Discrimination testing
- On-line Payment Option.

In order for short-term insurance to qualify as an excepted benefit, the coverage must be less than three months in duration. The plan must have an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder with or without the issuer's consent) that is less than three months after the original effective date of the contract. The plan also must prominently display in the contract or any application materials, in at least 14 point type, "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE ADDITIONAL PAYMENT WITH YOUR TAXES."

**Travel Insurance** is defined as insurance coverage for personal risks related to planned travel, and is a new category of excepted benefits. It may include, but is not limited to, interruption or cancellation of a trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel. Travel insurance is an excepted benefit provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverage.

**Similar Supplemental Health Coverage** is designed to fill in the gaps in cost sharing of the primary coverage only if the benefits covered by supplemental insurance products are not an essential health benefit (EHB). If any benefit provided by the supplemental policy is either included in the primary coverage or is an EHB in the State where the coverage is issued, the insurance coverage would not be supplemental excepted benefits.

However, supplemental health insurance products that both fill in the gaps of cost sharing in the primary coverage, such as coinsurance and deductibles, and cover additional categories of benefits that are not EHB, would be considered supplemental excepted benefits provided all other criteria are met.

**Definition of EHB for Purposes of the Prohibition** on Lifetime and Annual Limits. For plan years or policy years beginning on or after January 1, 2017, a plan or issuer that is not required to provide EHB must define EHB for purposes of the prohibition on lifetime and annual dollar limits in a manner consistent with any (1) one of the EHB-benchmark plans applicable in a State under 45 CFR 156.110, and includes coverage of any additional required benefits that are considered EHB consistent with 45 CFR 155.170(a)(2); or (2) one of the three Federal Employees Health Benefit Program (FEHBP) plan options as defined by 45 CFR 156.100(a)(3), supplemented as necessary, to meet the standards in 45 CFR 156.110.

The revised definitions apply to policy years beginning on or after January 1, 2017. However, due to policies currently in force, HHS will not take enforcement action against the issuer before April 1, 2017.

The Departments intend to address hospital indemnity or other fixed indemnity insurance and expatriate health plans in further rule-making, taking into account comments received on these issues.

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## POP Kit Makes Re-Enrollment and Compliance a Snap

Don't forget that your POP Kit is an excellent resource for 2018 re-enrollment and compliance information, such as:

- New participant election forms
- An updated Plan Document and Summary Plan Description (SPD)
- Instructions for complying with IRS Regulations on annual nondiscrimination testing
- An IRS Code Sections and Regulations reference

Be sure to leverage the kit materials as needed.

## POP Compliance Questionnaire

Only one plan deficiency needs to be found during an Internal Revenue Service (IRS) audit for the plan to be declared invalid. If the plan is invalid and no Premium Only Plan (POP) exists, it means that all contributions to your plan would be taxable. Both you and your employees miss out on the tax savings.

Please answer the following questions to assess your compliance with the POP rules and regulations.

Section 125 Premium Only Plan Self-Audit Compliance Worksheet	YES (✓)	NO (✓)
Do you have a current written plan document and summary plan description?		
Does the POP document identify the plan name, plan number, sponsoring employer and any participating employers (e.g. controlled group members and affiliates)?		
Have participating employers that are tax affiliates properly adopted the plan for their employees?		
Is the POP administered in accordance with the IRS permitted election change Regulations and FMLA Regulations as outlined in your POP document?		
Is the POP administered in accordance with the plan document and disclosures to participants?		
Is the POP properly adopted by the appropriate entity, and executed and dated by a duly authorized representative of the plan?		
Was the POP adopted before beginning operation?		
Are board resolutions regarding the POP and all component plans (e.g., adopting plan, authorizing action on behalf of plan sponsor), contained in the POP-Kit?		
If the POP is sponsored by a partnership, Subchapter S corporation or limited liability corporation, are the shareholders/owners restricted from participating in the POP?		
Are elections made prior to the coverage period and are election changes being administered in accordance with applicable regulations?		
Are election/salary reduction forms completed appropriately (e.g., signed, filled in, etc.)?		
Are Summary Plan Descriptions provided to employees and copies of Summary Plan Descriptions retained in the POP-Kit?		
Are Health Savings Account (HSA) contributions paid through your POP properly reported on the participants' W-2s?		
Have nondiscrimination tests been run and passed for the component plans and the POP each year?		

If you answered "No" to one or more questions, your Premium Only Plan could be out of compliance. Call the hotline for further assistance at 800-876-7548 or go to [ezpop.com](http://ezpop.com) and click on "contact us."

800-876-7548  
www.ezpop.com

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