

ACA Pay or Play Penalties Increase for 2023

On Aug. 16, 2022, the IRS updated its [FAQs](#) on the Affordable Care Act's (ACA) employer shared responsibility (pay or play) rules to include updated penalty amounts for 2023. The adjusted \$2,000 penalty amount is **\$2,880** and the adjusted \$3,000 penalty amount is **\$4,320**.

Pay or Play Penalty Calculations

An applicable large employer (ALE) is only liable for a penalty if at least one full-time employee receives a subsidy for Exchange coverage. Employees who are offered affordable, minimum value coverage are generally not eligible for these subsidies.

Depending on the circumstances, one of two pay or play penalties may apply—the **4980H(a) penalty** or the **4980H(b) penalty**.

Under Section 4980H(a), an ALE will be subject to a penalty if it does not offer coverage to “substantially all” (generally, at least 95%) of its full-time employees (and

dependents) and any full-time employee receives a subsidy toward their Exchange plan. The monthly penalty assessed under Section 4980H(a) is equal to **the ALE's number of full-time employees (minus 30) multiplied by one-twelfth of \$2,000 (as adjusted) for any applicable month**.

Under Section 4980H(b), ALEs offering coverage to substantially all full-time employees (and dependents) may still be subject to a penalty if at least one full-time employee obtains an Exchange subsidy because the ALE did not offer coverage to all full-time employees, or the ALE's coverage is unaffordable or does not provide minimum value. The monthly penalty assessed under Section 4980H(b) for each full-time employee who receives a subsidy is **one-twelfth of \$3,000 (as adjusted) for any applicable month**. However, the total penalty is limited to the 4980H(a) penalty amount.

Inflation Reduction Act Contains Health Reforms

On Aug. 16, 2022, President Joe Biden signed the [Inflation Reduction Act](#) into law. While this law is primarily aimed at fighting inflation and reducing carbon emissions, it also contains a number of reforms that will impact health coverage. These reforms have staggered effective dates and will be implemented over the next several years.

Overview of the New Health Reforms

The health reforms primarily impact those with Medicare coverage. Specifically, the law implements the following measures:

- It allows the Department of Health and Human Services to **negotiate the prices of some Medicare drugs**, effective in 2026 for 10 drugs covered by Medicare, increasing to 20 drugs in 2029.

- Beginning in 2023, **the cost of insulin will be capped at \$35 per month for diabetics enrolled in Medicare**.
- Beginning in 2025, **out-of-pocket prescription drug costs will be capped at \$2,000 per year for Medicare beneficiaries**.
- The law also implements a **three-year extension on increased health insurance subsidies for coverage purchased through an Exchange**. These enhanced subsidies were originally provided as part of the [American Rescue Plan Act](#) and were set to expire at the end of 2022.