

FYI[®] Roundup

For Your Information[®]

Volume 38 | Issue 31 | February 25, 2015

Health and Welfare Benefits – Year in Review

2014 was a busy year for employers and their health and welfare benefit plans. While the Supreme Court addressed the ACA contraceptive coverage mandate, the regulators continued to turn out guidance implementing the ACA. Additionally, the benefits community saw developments affecting wellness programs, same-sex spouse benefits, limited-scope dental and vision benefits, and cafeteria plan election changes. This *FYI Roundup* looks back at some of the most prominent developments for health and welfare benefit plans in 2014.

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Affordable Care Act

Affordable Care Act (ACA) developments included shared responsibility compliance and reporting, the contraceptive coverage mandate, premium tax subsidies, marketplace enrollment, and many more.

ACA Employer Shared Responsibility Regulations

Getting to the heart of the ACA requirements, early in 2014, the IRS issued final regulations addressing the employer shared responsibility requirements. (See our [February 11, 2014](#) and [April 17, 2014](#) editions of *For Your Information*.) Later in the year, the IRS set out a proposed approach for determining full-time employment status if the measurement period for a particular employee changes or if the employer changes the measurement method for a category of employees. (See our [November 25, 2014](#) *For Your Information*.)

ACA Reporting

In March, the IRS issued final regulations providing guidance for employers and insurers about the ACA requirements for reporting on healthcare coverage offered to individuals and employees. (See our [March 6, 2014](#) *FYI Alert*.) Additionally, this past summer, the IRS released draft forms and instructions for reporting. (See our *FYI Alert* publications from [July 25, 2014](#) and [August 29, 2014](#).) Note, recently the IRS issued final forms and instructions, which we cover in our [February 10, 2015](#) *FYI Alert*.

Agency Alphabet Soup

“Departments”: Departments of Labor, the Treasury, and Health & Human Services

HHS: Department of Health & Human Services

CMS: Centers for Medicare and Medicaid Services

EEOC: Equal Employment Opportunity Commission

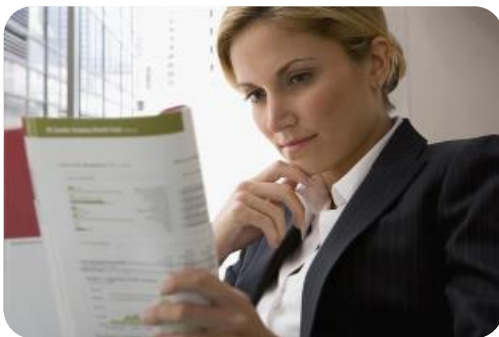
Contraceptive Coverage Mandate

In late summer, the departments set out the methods by which nonprofit religious entities meeting certain requirements can take advantage of an accommodation for satisfying the ACA contraceptive coverage mandate. (See our [September 9, 2014 For Your Information.](#)) Additionally, the Supreme Court ruled this summer that closely held, for-profit employers have the right to refuse to provide coverage of contraceptive methods that conflict with the company owners' sincerely held religious beliefs. (See our [July 24, 2014 For Your Information.](#)) Following this decision, the departments proposed regulations that would permit these entities to follow the same regulatory processes as nonprofit entities. (See our [September 9, 2014 For Your Information.](#))

Marketplace Premium Subsidies

The issue of whether low income subsidies are available for health coverage purchased in federally facilitated marketplaces (FFM) was the subject of nationwide litigation in 2014. In July, the DC Circuit held that subsidies are available only to individuals purchasing health coverage in marketplaces established by the states. The Fourth Circuit, in contrast, determined that subsidies are available in all marketplaces whether federally facilitated or state-operated. (See our [July 23, 2014 FYI Alert.](#)) The Supreme Court will decide the issue when it hears the Fourth Circuit case in March 2015, with a decision expected by the end of July. (See our [November 11, 2014 For Your Information.](#))

Marketplace Special Enrollment



CMS updated rules governing marketplace special enrollment opportunities, allowing individuals to enroll in marketplace coverage outside the annual open enrollment period. The updated rules offer guidance on providing marketplace-related information to qualified COBRA beneficiaries, early retirees, employees on unpaid leave, and others who have lost or are about to lose coverage. (See our [August 4, 2014 For Your Information.](#))

Additionally, the DOL issued new model COBRA notices (election notice and general COBRA notice) that advise beneficiaries of available marketplace coverage. (See our [June 3, 2014 For Your Information.](#))

Marketplace Premium Reimbursement Arrangements

This past summer, the IRS provided guidance that an arrangement reimbursing an employee for individual health insurance coverage on a pre-tax basis is a group health plan that is subject to the ACA, but it fails to meet the requirements of the ACA market reforms, such as the annual and lifetime limit prohibition. (See our [July 8, 2014 For Your Information.](#)) In November, the departments issued three FAQs that reinforce this position and caution that employers could be subject to significant excise taxes if they reimburse employees' individual health insurance premiums either on a pre- or post-tax basis. (See our [November 19, 2014 For Your Information.](#))

90-Day Waiting Period Rules

Last spring, the departments issued final regulations on the ACA 90-day waiting period limit for individuals otherwise eligible for coverage. (See our [April 2, 2014 For Your Information.](#)) The regulations permit use of a "reasonable and bona fide" orientation period as a substantive eligibility condition that must be satisfied before a waiting period begins to run. In light of this, the departments issued final regulations setting out the rules for such an orientation period. (See our [July 3, 2014 For Your Information.](#))

Transitional Reinsurance Program

Last March, HHS issued final regulations on the transitional reinsurance program. The guidance finalized a fee payment schedule, provided an exemption for self-administered, self-insured plans, and set out a definition of “major medical coverage” for purposes of the fee. (See our [March 25, 2014](#) *For Your Information*.) In November, CMS delayed the November 17, 2014 payment deadline, but did not change the January 15, 2015 or November 15, 2015 payment deadlines. (See our [November 17, 2014](#) *FYI Alert*.) Fees are paid by using the Transitional Reinsurance Annual Enrollment and Contributions Submission form available on pay.com. See our *FYI Alert* from [October 21, 2014](#), as well as our [November 6, 2014](#) *For Your Information* for answers to some employer questions about the fee.

ACA and Territorial Employees

Employees working in US territories generally have a special status for ACA shared responsibility purposes. That is, these employees are not counted for purposes of shared responsibility, so an employer will not be subject to a shared responsibility assessment if affordable, minimum value health coverage is not offered to them. However, employer plans covering employees in US territories are subject to the ACA’s market reform requirements. (See our [September 17, 2014](#) *For Your Information*.)

Out-of-Pocket Maximums

The departments provided guidance on the application of out-of-pocket maximum limits in circumstances including tiers of prescription drugs, reference-based pricing, and balance billing. (See our [March 11, 2014](#), [June 10, 2014](#) and [November 12, 2014](#) editions of *For Your Information*.)



ERRP Deadline for Using Funds

Plan sponsors who received Early Retiree Reinsurance Program (ERRP) funds were required to use those funds for a permitted purpose by the end of 2014. Early last year, HHS issued guidance about maintenance and disposal of ERRP records. (See our [February 20, 2014](#) *For Your Information*.)

Denial of EEOC Request to Block Wellness Program

This past fall, the EEOC’s regional attorney in the Chicago District office came to the forefront of legal challenges to employer wellness programs. Several lawsuits have been filed, but in November, a federal court in Minnesota denied the EEOC’s request for a temporary restraining order and preliminary injunction, rejecting the EEOC’s claim that employees would be irreparably harmed if the wellness program were implemented. (See our *FYI Alert* publications from [October 30, 2014](#) and [November 4, 2014](#).)

Same-Sex Spouse Issues for Cafeteria Plans and HSAs

Following the Supreme Court’s 2013 DOMA decision, the IRS released guidance on the impact on cafeteria plans, including health and dependent care flexible spending accounts and HSAs. The contribution limits that apply to dependent care accounts and HSAs will apply on a combined basis for same-sex married couples. (See our [January 8, 2014](#) *For Your Information*.)

Duration of Retiree Health Benefits



Last spring, the Supreme Court agreed to resolve an appellate court split about the interpretation of collective bargaining agreements that provide retiree health benefits but are silent on the duration of those benefits. (See our [May 23, 2014 For Your Information.](#)) Note that the High Court has now issued a ruling in this case. It struck down the Sixth Circuit's interpretation that retiree health benefits vest for life unless a collective bargaining agreement expressly provides otherwise. Instead, it held that ordinary principles of contract law apply in determining the parties' intentions where a collective bargaining agreement is silent on the duration of those benefits. (See our [January 27, 2015 FYI Alert.](#))

Delay in HPID Requirements

CMS indefinitely delayed the requirement that health plans obtain and use Health Plan Identifiers (HPIDs) for certain HIPAA transactions. The CMS release indicates that the HHS is reviewing the future use of the HPID. (See our [November 3, 2014 FYI Alert.](#))

Expansion of Permissible Cafeteria Plan Election Changes

The IRS released guidance expanding the cafeteria plan election change rules to permit mid-year election changes in two ACA-related circumstances: when an employee experiences a reduction in hours during a shared responsibility stability period and for special or open enrollment periods in the public marketplace. Employers who would like to allow these mid-year election changes will need to amend their cafeteria plans. (See our [October 21, 2014 For Your Information.](#))

Limited-Scope Vision and Dental Benefits and EAPs

The departments issued final regulations focusing on limited-scope vision and dental benefits, long-term care benefits, and EAPs as HIPAA-excepted benefits. The regulations outline the requirements for these commonly offered benefits to avoid compliance with ACA market mandates and/or prevent individuals from eligibility for premium tax credits. (See our [October 8, 2014 For Your Information.](#))

Health FSAs

The IRS Office of Chief Counsel issued a memorandum providing guidance on how employers may allow carryover of unused funds from a general purpose health FSA without adversely affecting employees' HSA eligibility. The memorandum also discusses how the "uniform coverage rule" for health FSAs is applied when amounts are carried over from a general purpose health FSA to an HSA-compatible health FSA. (See our [April 24, 2014 For Your Information.](#)) In later guidance, the departments clarified that health FSA carryovers will not be taken into account when determining if a health FSA satisfies the minimum benefit payable limit for purposes of determining a health FSA's status as an excepted benefit. (See our [June 10, 2014 For Your Information.](#))

Additionally, the IRS Chief Counsel's office released a memorandum providing guidance on procedures for correcting improper payments and reporting procedures for health FSAs. (See our [May 6, 2014 For Your Information](#).)

Electronic Process for HIPAA Opt-Out for Self-Funded Non-Federal Governmental Plans

Last June, HHS issued final regulations on the HIPAA opt-out process for self-funded, non-federal governmental group health plans. (See our [June 16, 2014 For Your Information](#).) CMS provided guidance on the mandated electronic election process. (See our [August 18, 2014 For Your Information](#).)

State and Local Developments

Following repeal of certain employer provisions of the Massachusetts health reform law, the Massachusetts Health Connection board of directors voted to repeal regulations that enforced those provisions. However, the state's mandate that individuals maintain health coverage or pay a penalty remains in effect. (See our [July 10, 2014 For Your Information](#).)

In August, California Governor Jerry Brown repealed a law that prohibited insured group health plans from imposing a waiting period of more than 60 days on individuals otherwise eligible for coverage. Repeal of the law allows California law to align with the ACA waiting period rules. (See our [August 29, 2014 For Your Information](#).)

San Francisco's Office of Labor Standards Enforcement issued updated guidance addressing the city's requirement that employers pay a certain amount toward the healthcare costs of their San Francisco employees. In addition to confirming that the law remains in effect after the ACA, it explains that excepted benefit coverage satisfies the spending requirement and clarifies how HRAs may be used to fulfill the employer obligation. (See our [For Your Information from February 26, 2014](#).)

Benefits Information

The IRS released 2015 limits for HSAs and HDHPs, all of which increased over the 2014 amounts. (See our [For Your Information from April 29, 2014](#).) The IRS also announced the 2014 PCORI fee and the 2015 limits for qualified transportation fringe benefits, adoption assistance programs, long-term care premiums, health flexible spending accounts, and medical savings accounts.

HHS released the 2015 ACA out-of-pocket maximum amounts and transitional reinsurance fee. (See our [For Your Information publications from October 30, 2014](#) and [November 6, 2014](#).) Also, in addition to proposing a 2016 transitional reinsurance rate of \$27 and 2016 out-of-pocket maximums of \$6,850 (self-only coverage) and \$13,700 (other than self-only coverage), HHS provided guidance on several key areas of the transitional reinsurance program and on the marketplace open enrollment periods for 2016 and later years. (See our [December 3, 2014 For Your Information](#).)

CMS released the 2015 Medicare Part A and B premium, deductible, and coinsurance amounts. There is a slight decrease in Part A premiums and a small increase in Part A deductible and coinsurance amounts; Part B amounts

are unchanged. (See our [October 13, 2014 For Your Information](#).) The 2015 Medicare Part D amounts were released earlier this year as described in our [April 30, 2014 For Your Information](#).

Planning for 2015

Now is the time to consider compliance issues for 2015 and beyond. Our [December 2, 2014 For Your Information \(2015 Planning for Health and Welfare Benefit Plan Operations\)](#) can help you set up your own schedule of activities on which to focus as the year progresses so that you don't miss important deadlines. Our updated [Reporting and Disclosure Guide](#) can also aid you in identifying and addressing other event-based and participant-specific activities.

Authors

Kimberley Mitchell, JD
Sharon Cohen, JD

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