

FYI[®] Roundup

For Your Information[®]

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Recent Health and Welfare Developments — Fall 2015 Edition

This *FYI Roundup* highlights issues affecting health and welfare benefits in the third quarter of 2015. Affordable Care Act-related matters include final regulations on SBCs and preventive care services, additional “Cadillac” tax guidance, and penalty increases for IRS reporting failures. Also this quarter: reminders for Medicare Part D creditable coverage disclosures and transitional reinsurance fees, as well as a discussion of retiree health reimbursement arrangements.

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Departments Finalize SBC Rules; Updated Template Expected by 2016

The Departments of Labor, Treasury and Health & Human Services (departments) adopted final regulations governing the Summary of Benefits and Coverage (SBC). These final rules track the 2014 proposed rules and adopt some changes to the SBC content, appearance, form and distribution. Plan sponsors should make sure that SBCs provided in connection with fall 2015 open enrollment comply with these new rules. The departments intend to release a new SBC template and associated material by January 2016, which will apply for coverage beginning in 2017. (See our [July 7, 2015 For Your Information.](#))

Election of Federal External Review Process by Self-Insured, Non-Federal Governmental Plans

HHS issued guidance modifying election procedures for self-insured, non-federal governmental (non-grandfathered) plans on the ACA’s external review process. Generally, self-insured, non-federal governmental plans subject to state insurance laws would use the state’s external review process. If the state law does not provide for such a process or the process is inadequate, those plans must comply with the federal external review process. The plan may elect to comply with either the external review process administered by HHS or the private accredited independent review



organization process that applies to ERISA plans. Modified procedures provide that rather than emailing HHS its election, a plan will notify HHS through the Health Information Oversight System. (See our [July 7, 2015 For Your Information](#).)

IRS Issues Additional Cadillac Tax Guidance

The IRS and the Treasury released a notice discussing aspects of the ACA's so-called "Cadillac" tax — the nondeductible 40% excise tax on applicable employer-sponsored coverage in excess of specified statutory thresholds. This supplements a notice released earlier this year and addresses a number of issues related to the tax that include identifying the entity responsible for paying the tax, the consequences of passing through the nondeductible tax to the employer, timing and manner of payment, and the challenges associated with aggregating employers that are part of a controlled group. Comments on this guidance were due October 1, 2015. (See our [August 3, 2015 FYI Alert](#).) The tax will be imposed with respect to coverage provided in 2018.

Departments Issue Final Regulations on Preventive Services

The departments issued final regulations discussing the preventive services mandate. Consolidating the proposed regulations, interim final regulations and FAQs, these final regulations provide guidance on using reasonable medical management techniques, determining the primary purpose of the services, and imposing cost-sharing for services not on an approved list, among other things. Additionally, the regulations address how employers that have religious objections to covering FDA-approved contraceptive services under the preventive service mandate can qualify for an accommodation. These final regulations are effective the first day of the first plan year that begins on or after September 14, 2015. (See our [August 7, 2015 For Your Information](#).)



Trade Bill Increases Penalties for IRS Reporting Failures Including ACA, Extends HCTC

The Trade Preferences Extension Act of 2015 signed into law this third quarter includes two important provisions that affect welfare benefit plans. First, the Act sizably increases penalties for information return and statement filing failures under the Internal Revenue Code, effective for filings after December 31, 2015. As a result, employers now face significantly larger penalties for failing to correctly file and furnish ACA Forms 1094/1095-B and 1094/1095-C (shared responsibility reporting requirements). Second, the Act extends and modifies the Health Care Tax Credit. (See our [August 20, 2015 For Your Information](#).)

Retiree HRAs and the ACA — Doing It Right

With the Supreme Court settling the issue on whether premium subsidies are available in all public marketplaces, more employers may want to transition their pre-Medicare retirees to marketplace coverage — and provide them with financial assistance to help pay for the coverage or to offset some of the cost-sharing burden. While this approach might reduce ongoing costs and help mitigate or eliminate the Cadillac tax on retiree coverage,

employers should proceed carefully to avoid potentially unwelcome consequences. For a discussion of the issues related to retiree health reimbursement arrangements (HRAs), see our [August 24, 2015 FYI In-Depth](#).

FSA Contribution Limit Unlikely to Change for 2016

The ACA amended the Code to impose an annual limit on salary reduction contributions to health flexible spending accounts. This annual limit is subject to indexing each year based on CPI-U. For 2015, the limit is \$2,550. Although all data is not yet available, based on current information, we project that the limit will remain at \$2,550 for 2016. (See our [August 31, 2015 For Your Information](#).)

2015 Deadline for Medicare Part D Creditable/Non-Creditable Coverage Notices



Group health plan sponsors that offer prescription drug coverage must provide annual notice to Medicare-eligible individuals about whether the plan's prescription drug coverage is "creditable" or "non-creditable." The year's notice was due by October 14 (the date before the start of the Medicare Part D annual enrollment period) and could be provided in annual enrollment materials, separate mailings or electronically. Plan sponsors could use the CMS model notices or other notices that meet prescribed standards. (See our [September 15, 2015 For Your Information](#).)

CMS Announces 2015 Transitional Reinsurance Fee Submission Process

The deadlines for the 2015 transitional reinsurance fee are approaching. The 2015 submission process is largely unchanged from 2014. Enrollment counts for purposes of determining the 2015 reinsurance fee must be submitted by November 16, 2015. Also, the second contribution for the 2014 reinsurance fee must be made by November 15, 2015. (See our [September 25, 2015 For Your Information](#).)

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