

FYI[®] In-Depth

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2016 Planning for Health and Welfare Benefit Plan Operations

As 2015 comes to a close, it's time to look forward to compliance issues for 2016. We have several resources that can help you stay on top of deadlines. The calendar below presents a schedule of activities that address important deadlines for 2016. The newly released [Complyendar](#), a customized calendar, can be used to help you track and anticipate compliance events. Additionally, the recently updated [Reporting and Disclosure Guide](#) identifies and addresses other activities that are event-based and participant specific. Below we highlight some issues you'll want to consider as the year is ending.

(This FYI In-Depth was updated January 28, 2016 to reflect the IRS extension of the ACA reporting requirements. See our [December 29, 2015 FYI Alert](#).)

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ACA Reporting

One of the foremost compliance tasks for employers in 2016 will be the Affordable Care Act (ACA) information reporting obligation. Employers with 50 or more full-time (or full-time equivalent) employees are subject to the reporting requirement. The IRS will use the reported information to enforce the individual and employer shared responsibility requirements, and to administer the low-income subsidies provided to eligible individuals who purchase coverage in the marketplace. (See our [April 17, 2014 FYI In-Depth](#).) Employers must file the first information returns with the IRS by June 30, 2016 (May 31, 2016, if not filed electronically) and provide them to individuals by March 31, 2016. The IRS has issued forms and instructions for this purpose. With the deadline rapidly approaching, employers should have the information and service provider support needed for this filing.



Out-of-Pocket Maximums

The 2016 annual out-of-pocket (OOP) maximums on essential health benefits for non-grandfathered group health plans are \$6,850 for self-only coverage and \$13,700 for coverage other than self-only. Plan sponsors can still allocate a plan's OOP limit among different coverage categories so long as the combined amounts don't exceed the annual OOP limit. (See our [March 25, 2015 For Your Information](#).)

New for 2016 is the requirement to include an embedded self-only OOP maximum in certain circumstances. For plan years beginning on and after January 1, 2016, the OOP maximum of \$6,850 for self-only coverage applies to all individuals — including those enrolled in other than self-only coverage. Non-grandfathered group health plans (including self-insured plans and large group health plans) must apply an embedded self-only OOP maximum to each individual enrolled in family coverage if the plan's family OOP maximum exceeds the ACA's OOP limit for self-only coverage. This requirement applies to deductibles as well. If a plan's family deductible exceeds the self-only OOP maximum (\$6,850 for 2016), the plan must apply an embedded self-only deductible. Plan sponsors should review plan limits to ensure compliance with this new requirement. (See our [June 4, 2015 For Your Information](#).)

Wellness Programs

In 2016, employers and plan sponsors should consider whether their wellness programs align with recently proposed EEOC regulations under the Americans with Disabilities Act (ADA) and Genetic Information Nondiscrimination Act (GINA). Earlier this year, the EEOC issued proposed ADA regulations addressing wellness programs and incentives associated with disability-related inquiries and/or medical examinations. Generally, the proposed regulations permit employers to offer wellness incentives to employees under certain conditions and as long as the maximum incentive offered under the group health plan is not more than 30 percent of the total cost of employee-only coverage. (See our *FYI Alert* from [April 17, 2015](#).)

The EEOC also issued proposed regulations under GINA that address incentives offered in connection with a spouse's participation in an employer's wellness program. The GINA proposed rules provide that while offering such an incentive could violate GINA's prohibition on collecting genetic information, limited incentives offered for wellness program participation under the employer's group health plan would be permissible as long as the information obtained (i.e., through a health risk assessment and/or medical examination) relates only to a spouse's current or past health status. The incentive limitation generally coordinates with the EEOC's proposed 30 percent rule for compliance with the ADA, but, where the ADA limit is based on employee-only coverage, the GINA limit is based on the cost of coverage in which the employee is enrolled. (See our [October 30, 2015 FYI Alert](#).)

Employers should review their wellness programs with legal counsel in light of these proposed regulations and consider whether to make design changes.



Transitional Reinsurance Fee

2016 is the third and final year during which insurers and sponsors of self-insured group health plans must make payments to the transitional reinsurance program. With the goal of stabilizing premiums in the individual insurance market, the program collects contributions from insurers and plan sponsors for the 2014, 2015 and 2016 calendar years. For 2015, enrollment counts were due to CMS by November 16, 2015. Plan sponsors may pay the amount in one payment by January 15, 2016 or make two payments, the first of which is due by January 15, 2016, and the second by November 15, 2016. (See our [September 25, 2015 For Your Information](#).)

PCORI Fee

Plan sponsors of self-insured group health plans will pay the Patient Centered Outcomes Research Institute (PCORI) fee again in 2016. The fee, which helps to fund patient-centered outcomes research, applies to plan years ending after September 30, 2012 and before October 1, 2019 and is based on the average number of lives covered under the plan. The fee used to calculate the payment amount for plan years that end on or after October 1, 2015, and before October 1, 2016 (including 2015 calendar year plans), is \$2.17. (See our [October 14, 2015 For Your Information](#).) Plan sponsors must pay the PCORI fee by July 31 of the calendar year immediately following the last day of that plan year.

Summary of Benefits and Coverage

The Departments of Labor, Treasury, and Health & Human Services (departments) are expected to release a revised summary of benefits and coverage (SBC) template, instruction guide, uniform glossary and other supporting material by January 2016. Under the ACA, group health plans must provide SBCs to participants and beneficiaries to help them compare coverage options and understand their health benefits. Earlier this year, the departments adopted final SBC regulations addressing substance, form and distribution of SBCs. Those regulations generally apply for open enrollment periods beginning on or after September 1, 2015. The new template and supporting materials, when released, are expected to apply to coverage for plan years beginning in 2017. (See our [July 7, 2015 For Your Information](#).) Plan sponsors should watch for these documents to be issued and update their SBCs in time for open enrollment in 2016.



Preventive Care

Non-grandfathered group health plans must cover preventive care without cost-sharing. This year, the departments issued [FAQs](#) and final regulations addressing the preventive services requirement (see our [August 7, 2015 For Your Information](#)). The list of recommendations and guidelines that make up the required preventive services changes over time. As noted in the final regulations, when a new recommendation or guideline is added, a plan must cover it beginning with the first plan year that starts on or after the date that is

one year after the recommendation or guideline goes into effect. For example, if a new preventive service coverage recommendation is adopted on August 1, 2015, a calendar year plan must begin covering this service on January 1, 2017. Plan sponsors should review the [list](#) of preventive services recommendations and guidelines at least once a year to ensure their plans include the current required services.

2016 Benefit Limits

The IRS issued the health and welfare benefit plan limits for 2016, including those for health flexible spending accounts (FSAs), long-term care premiums, adoption assistance programs, and health savings account (HSAs) and high-deductible health plans. (See our [May 7, 2015](#) and our [October 21, 2015](#) editions of *For Your Information*.) The limit for health FSAs remains the same as in 2015 (\$2,550), but the other limits have changed. Plan sponsors should review and update their plan documents to reflect these 2016 limits.

Same-Sex Spouse Issues

With the Supreme Court's ruling that same-sex couples have a constitutional right to marry, employers may want to evaluate their approach to coverage of spouses. The Court held that the 14th Amendment's equal protection and due process clauses guarantee the right of all couples to marry, regardless of gender. Accordingly, all states must permit same-sex marriages and recognize those marriages performed in other states. Although this does not mean that private employers must offer coverage to same-sex spouses, those who don't may be at risk for litigation claiming sex discrimination. (See our [June 26, 2015 FYI Alert](#).) Employers should take the opportunity to consult with legal counsel on this issue.

In Closing

Planning ahead to identify tasks and set compliance goals for the coming year is an important first step for assuring smooth operations during the year. In addition to the significant items noted above, plan sponsors may want to perform an annual "checkup" (i.e., an audit of operational practices and fiduciary responsibilities) to address plan compliance and design considerations. Plan sponsors may conduct their own review or contract with an independent party. Regardless of who performs the review, identifying problems and initiating corrections in advance of any official governmental audit is certainly the preferred course of action.

We have published companion pieces to this *FYI In-Depth* that cover year-end planning for defined contribution and defined benefit retirement plans: [2016 Planning for ERISA Single-Employer Defined Contribution Plan Operations](#) and [2016 Planning for ERISA Single-Employer Defined Benefit Plan Operations](#).

Calendar of Health and Welfare Benefit Plan Compliance Tasks¹

Action Item	Due Date
January	
Reporting of value of health coverage on Form W-2	January 31, 2016*
February	
Disclosure of creditable/noncreditable status of prescription drug coverage to CMS	February 29, 2016
March	
DOL Form M-1 (for MEWAs)	March 1, 2016*
Last day for flexible spending accounts with 2½ month grace periods	March 15, 2016
Provide ACA information reporting returns to individuals	March 31, 2016*
May	
Form 990 or Form 8868 if requesting extension	May 16, 2016
File ACA information reporting returns with IRS (if not filing electronically)	May 31, 2016*
June	
File ACA information reporting returns with IRS (if filing electronically)	June 30, 2016*
July	
Summary of Material Modifications for prior year amendments	July 28, 2016
Form 720 filing and payment of PCORI fee	July 31, 2016*

¹ Assumes calendar plan and sponsor tax year. Does not account for weekends, extended due dates other than for Forms 5500 and 990, short plan years, or new plans. The “weekend rule,” which extends due dates falling on weekends to the following Monday, generally applies to filing deadlines and certain other acts under tax rules.

August	
Form 5500 or file Form 5558 to request an extension	August 1, 2016
Form 990 (if on extension) or Form 8868 if requesting additional extension	August 15, 2016
September	
Summary Annual Report (if no extension)	September 30, 2016
October	
Provide notice of creditable/noncreditable prescription drug coverage to participants	October 14, 2016*
Form 5500 filed if on extension	October 17, 2016
November	
Transitional reinsurance fee — report to HHS on number of covered lives for 2016	November 15, 2016*
Form 990 (if additional 3 month extension)	November 15, 2016
December	
Summary Annual Report (if on extension)	December 15, 2016
Deadline for correcting DCAP discrimination test failures	December 31, 2016

*Date does not vary regardless of plan year

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