

Recent Health and Welfare Developments 2016 – Winter Edition

This winter edition *FYI Roundup* focuses on developments affecting health and welfare benefits. Among other things, we discuss recent ACA-related guidance, wellness programs, heightened claims procedures for disability plans and information about benefit limits for 2016.

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Affordable Care Act

Recent Affordable Care Act (ACA) guidance includes the updated PCORI fee for 2015 calendar year plans, out-of-pocket maximums for 2017 and extended ACA reporting deadlines. Also, the Supreme Court agreed to consider whether the Religious Freedom Restoration Act (RFRA) applies to nonprofit organizations with religious objections to providing contraceptive coverage.

IRS Announces PCORI Fee

The ACA requires sponsors of self-insured group health plans to pay a fee to help fund the Patient-Centered Outcomes Research Institute (PCORI). For plans with a plan year that ends on or after October 1, 2015, and before October 1, 2016 (including 2015 calendar year plans), the fee is \$2.17 per covered life. The fee is due by July 1, 2016. (See our [October 14, 2015 For Your Information](#).)

HHS Proposes 2017 OOP Maximums and Marketplace Guidance

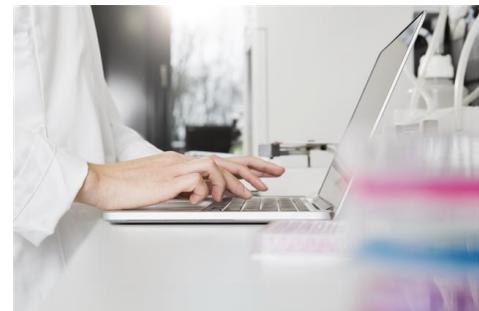
In November, the Department of Health & Human Services (HHS) proposed benefit and payment parameters that provide guidance on various ACA provisions for 2017. Important to employers are the proposed out-of-pocket maximums for 2017:

- \$7,150 for self-only coverage
- \$14,300 for other than self-only coverage

And the marketplace open enrollment period for the 2017 benefit year:

- November 1, 2016, through January 31, 2017

(See our [December 23, 2015 For Your Information](#).)



Departments Issue FAQs Addressing Preventive Care, Wellness and Mental Health Parity

The Departments of Labor, Health & Human Services, and Treasury issued FAQs that address various health and welfare compliance issues. The FAQs offer further guidance on the ACA preventive services obligation, specifically addressing coverage requirements for lactation services and screenings for obesity, colon cancer and breast cancer. They also address non-financial incentives offered under wellness programs and clarify when medical necessity criteria must be disclosed under the Mental Health Parity and Addiction Equity Act. (See our *For Your Information* from [December 15, 2015](#).)

IRS Extends ACA Reporting Deadlines

Recognizing that employers may need extra time to comply with the reporting requirements for this first year of ACA reporting (Forms 1094-C and 1095-C), the IRS extended the reporting deadlines. For health coverage offered in 2015, the deadline for furnishing forms to individuals is March 31, 2016, and the deadline for filing with the IRS is June 30, 2016 (if filing electronically). This extension applies only for this year. (See our [December 29, 2015](#) *FYI Alert*.)

High Court to Hear Nonprofit Employers' Objections to ACA Contraceptive Coverage Mandate, Again

Churches, conventions of churches and certain other nonprofit entities (i.e., those holding themselves out as religious organizations) may be exempt from the "contraceptive coverage mandate" and able to take advantage of an accommodation provided by HHS. In 2014, the Supreme Court ruled that under the RFRA, closely held for-profit entities have the right to refuse to provide such coverage if it conflicts with the company owners' sincerely held religious beliefs. Since then, several religious-oriented nonprofits have challenged the mandate and accommodation. In March, the Supreme Court will consider the narrow issue of whether the mandate and the HHS accommodation provided to religious nonprofits violates the RFRA. A decision expected by the end of the Court's term in June. (See our [November 16, 2015](#) *For Your Information*.)

Wellness Programs

Wellness programs have been in the spotlight with the EEOC issuing proposed regulations under the Americans with Disabilities Act (ADA) and, more recently, under the Genetic Information Nondiscrimination Act (GINA).

EEOC Addresses Spousal Participation in Wellness Programs

GINA prohibits discrimination on the basis of an individual's genetic information, which includes the medical



conditions of an individual's spouse. The EEOC issued proposed regulations addressing the questions of whether (1) a spouse's information about his or her own medical condition would be considered genetic information of the employee, and (2) a financial incentive provided to an employee for a spouse's participation in a wellness program violates GINA. The regulations generally permit limited inducements for spousal participation in a wellness program. (See our [October 30, 2015](#) *FYI Alert*.)

Wellness Plans — Diagnosing Compliance Concerns

Our [December 9, 2015 FYI In-Depth](#) addresses the proposed ADA and GINA regulations, but also explains the wide array of rules that govern wellness programs and discusses the complexity of complying with the various rules.

DOL Proposes More Stringent Rules for Disability Claims Procedures

Employee benefit plans subject to ERISA are required to follow specific claims and appeals procedures. The DOL issued proposed regulations that would change the procedures ERISA plans must follow for disability claims, including claims for disability retirement benefits. The proposed rules generally adopt the expanded internal claims and review requirements that apply to non-grandfathered group health plans under the ACA. (See our [December 15, 2015 For Your Information](#).)



IRS Chimes in on Applying Same-Sex Marriage Ruling to Benefit Plans

The IRS issued guidance responding to the Supreme Court's ruling permitting same-sex marriage and requiring the recognition of marriages performed in other states. Although health and welfare plans are not required to change their terms as a result of the decision, the IRS guidance discusses how the decision potentially affects plan operations. It also provides that cafeteria plans may permit mid-year election changes to add a same-sex spouse. (See our [December 23, 2015 For Your Information](#).)

Important Benefits Information for 2016

Revenue Procedure 2015-53 contains 2016 limits for qualified transportation fringe benefits, adoption assistance programs, long-term care premiums, health flexible spending accounts, and medical savings accounts. (See our [October 21, 2015 For Your Information](#).)

The Centers for Medicare & Medicaid Services released the 2016 Medicare Part A and B premium, deductible and coinsurance amounts. There is a small increase in the Part A premiums, deductible and coinsurance amounts. Part B premiums will not increase for most Medicare beneficiaries; however, for beneficiaries not protected by a "hold harmless provision," Part B premiums will increase by 16.1 percent. The Part B deductible will increase 12.9% for all beneficiaries. The 2016 Medicare Part D premiums were released earlier this year as noted in our [April 30, 2015 For Your Information](#). (Also, see our [November 18, 2015 For Your Information](#).)

State and Local Issues

Several states have enacted laws that touch on health and welfare issues.

California and Oregon Pharmacists May Furnish Contraceptives without a Prescription

Historically, pharmacists in California and Oregon generally required a prescription from a physician to dispense contraceptives. Both states, however, enacted laws permitting pharmacists to dispense non-emergency

contraceptives to patients without a physician prescription. The California law became effective on October 1, 2015, and the Oregon law on January 1, 2016. (See our [October 13, 2015 For Your Information](#).)

NYC and DC Employers Required to Offer Commuter Benefit Programs

Federal law allows (but does not require) employers to offer employees the opportunity to pay for qualified commuting expenses on a pretax basis up to a specified dollar amount. As of January 1, 2016, employers in



New York City and Washington, D.C. with 20 or more employees are required to offer commuter benefit programs to eligible employees working in the city or district. (See our [December 7, 2015 For Your Information](#).)

California Requires Embedded Cost-Sharing and Deductible Limits for Insured Plans

Insured plans in California must now apply a self-only, out-of-pocket maximum (this includes deductibles, co-pays and co-insurance) on essential health benefits for each individual enrolled in family coverage under the plan. The requirement generally is effective beginning in 2016 (although carriers had an opportunity to apply for a one-year extension). Additionally, in 2016, individual and small group insured plans must apply an embedded self-only deductible. Large group plans will be subject to this requirement in 2017. (See our [December 31, 2015 For Your Information](#).)

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