

Recent Health and Welfare Developments 2016 – Summer Edition

This *FYI Roundup* focuses on developments affecting health and welfare benefits. Among other things, we discuss recent ACA-related guidance, wellness programs, the HIPAA audit program, and guidance on mental health parity and women's health and cancer rights.

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Affordable Care Act

Recent Affordable Care Act (ACA) guidance includes final regulations on nondiscrimination in health programs and activities, the Supreme Court case on the contraceptive coverage mandate, and market reform guidance.

HHS Finalizes Regulations on ACA Nondiscrimination in Health Programs and Activities

HHS issued final regulations under ACA Section 1557, which prohibits covered entities from discriminating in their health programs and activities on the basis of race, color, national origin, sex, age or disability. Covered entities include those operating health programs that receive financial assistance from HHS — such as a hospital that accepts Medicare Part A payments or an issuer offering coverage in the marketplace. The final regulations clarify that although an issuer receiving federal financial assistance through participation in a marketplace must comply with the regulations even when it is acting as a TPA for a self-funded plan, the rules do not apply to the employer sponsoring the group health plan, unless the employer is itself a covered entity. (See our [May 17, 2016 FYI Alert](#).)

High Court Kicks Contraceptive Coverage Mandate Accommodation Back to the Circuits

The Supreme Court recently considered whether the procedures religious nonprofits must use to avoid the ACA contraceptive coverage mandate violate their religious freedom. Rather than ruling on the merits of the case, the Court sent the case back to the lower courts to work out an approach that accommodates the concerns of the religious nonprofits as well as the government's interest in ensuring that women covered by those employers' plans have access to contraceptive coverage. (See our [May 17, 2016 For Your Information](#).)



More Guidance on ACA Market Reforms

The Departments of Labor, Treasury and Health & Human Services issued FAQs providing helpful guidance and clarification on certain ACA market reforms. Topics included preventive services (colonoscopy-related medications and contraceptive coverage), rescissions, out-of-network emergency services, cost-sharing limits and reference-based pricing. (See our [May 19, 2016 For Your Information](#).)

August 1 PCORI Fee Deadline Approaching

Plan sponsors of self-insured group health plans must annually pay a fee to fund the Patient-Centered Outcomes Research Institute (PCORI). Plan sponsors should prepare to report and pay this fee by the August 1, 2016 deadline. (See our [June 28, 2016 For Your Information](#).)

Wellness Programs

Recent wellness guidance includes final regulations under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). Additionally, the IRS provided guidance on the tax treatment of certain wellness program incentives and designs.

EEOC Issues Final Wellness Regulations

The EEOC released final regulations addressing ADA requirements for wellness programs that provide incentives to participants who undergo medical examinations or respond to disability-related inquiries. On the same day, it issued final regulations under GINA explaining rules for wellness programs that offer incentives in exchange for information about a spouse's health. Generally, a wellness program that provides an incentive in exchange for



responding to disability-related inquiries, having a medical examination, or asking a spouse to provide information about his or her manifestation of disease or disorder complies with the ADA and/or GINA if it is reasonably designed, voluntary, authorized by the spouse, maintains confidentiality, and limits the amount of the incentive.

Additionally, the EEOC created a [sample notice](#) employers may use to meet the ADA written notice requirement for wellness programs that include a medical exam or disability-related inquiry. (See our [May 16, 2016 FYI Alert](#) and [June 17, 2017 FYI In-Depth](#).)

IRS Wellness Program Etiquette – Don't Double Dip

A recent IRS memorandum discusses the tax treatment of certain wellness programs and incentives that include cash rewards and reimbursements of wellness program premiums paid on a pretax basis. Specifically, the memorandum explains that an employer cannot exclude from an employee's income cash rewards for participating in a wellness program or reimbursements of premiums for participating in a wellness program if contributions were made to the wellness program by salary reduction through a Section 125 cafeteria plan. (See our [June 21, 2016 For Your Information](#).)

Office for Civil Rights HIPAA Audits Underway

HHS' Office for Civil Rights (OCR) has begun Phase 2 of the HIPAA audit program. Covered entities (health care providers, health plans and healthcare clearing houses) must comply with privacy, security and breach notification rules with respect to individual's protected health information. The audits are intended to improve compliance with

these rules. All covered entities (including group health plans) and business associates could be selected for a desk or onsite audit. Entities should watch for emails from OCR soliciting contact information and, in the coming months, notification of selection for audit. (See our [April 8, 2016 For Your Information](#).)

IRS Announces 2017 HSA/HDHP Limits

The IRS released the 2017 health savings account (HSA) and high-deductible health plan (HDHP) limits. The HSA annual contribution limit for self-only coverage increased over the 2016 limit, but the limits are otherwise unchanged. (See our [May 2, 2016 For Your Information](#).)

More Guidance on Mental Health Parity and Women's Health and Cancer Rights

The departments issued FAQs addressing mental health parity and women's health and cancer rights. The FAQs provide guidance on the financial requirements and quantitative treatment limitations and the disclosure requirements under the Mental Health Parity and Addiction Equity Act. With respect to women's health, the FAQs clarify coverage requirements for breast reconstruction. (See our [May 19, 2016 For Your Information](#).)



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