

# FYI<sup>®</sup> Roundup

## For Your Information<sup>®</sup>

Volume 39 | Issue 131 | November 3, 2016

## Recent Health and Welfare Developments 2016 – Fall Edition

This *FYI Roundup* highlights developments affecting health and welfare benefits. Among other things, we discuss recent ACA-related guidance, increased penalties for ERISA violations, transgender health coverage and DOL plan compliance relief for those affected by the Louisiana floods.

**In this issue:** [Affordable Care Act](#) | [DOL Increases Penalties for ERISA Compliance Violations](#) | [FSA Contribution Limit Likely to Increase](#) | [Medicare Part D Creditable/ Non-Creditable Coverage Notices](#) | [Transgender Health Coverage](#) | [Expanded Compliance Relief for LA Floods](#)

### Affordable Care Act

Recent Affordable Care Act (ACA) guidance affects plan sponsors and participants alike.

#### Proposed Regulations: Permanent Relief for Expatriate Health Plans?

The Expatriate Health Coverage Clarification Act of 2014 (EHCCA) provides that, with certain exceptions, the ACA generally does not apply to expatriate health plans, insurance issuers for coverage under expatriate health plans, or employers in their capacity as plan sponsors of expatriate health plans. The Departments of Labor, Treasury and Health & Human Services issued proposed regulations under the EHCCA that define expatriate health plan and explain which ACA provisions apply to those plans. (See our [July 21, 2016 For Your Information.](#))



#### IRS Increases Shared Responsibility Affordability Percentages and Assessment Amounts

The ACA created a premium tax credit to help middle- and lower-income individuals pay for health coverage in the public marketplaces. Individuals who are not offered employer-sponsored minimum essential coverage (MEC) that is affordable and provides minimum value may be eligible for a premium tax credit. Further, an employer may be subject to a “shared responsibility assessment” if it fails to offer affordable, minimum value MEC to its full-time employees and their dependent children (commonly referred to as the \$2,000 and \$3,000 penalty). For 2016, the affordability limit is adjusted to 9.66% (an increase from 9.56% of household income for 2015) and for 2017, the affordability limit is adjusted to 9.69%. IRS guidance also clarifies that the same applicable percentage applies for

both premium tax credit eligibility and the shared responsibility affordability safe harbors. Shared responsibility assessment amounts have also increased: \$2,080 (for 2015) and \$2,160 (for 2016) for the \$2,000 penalty and \$3,120 (for 2015) and \$3,240 (for 2016) for the \$3,000 penalty. (See our [August 29, 2016 For Your Information.](#))

### HHS Proposes 2018 OOP Maximums

The ACA caps the amount that an enrollee in a non-grandfathered, self-insured or large group plan must pay for essential health benefits through cost-sharing. The 2017 out-of-pocket maximums are \$7,150 for self-only coverage and \$14,300 for other than self-only coverage. The Department of Health & Human Services (HHS) has proposed 2018 out-of-pocket maximums of \$7,350 for self-only coverage and \$14,700 for other than self-only coverage. (See our [September 8, 2016 For Your Information.](#))

### OK to Include More ACA Marketplace Information with COBRA Election Notices



The model COBRA general notice and election notice include information about the availability of marketplace coverage as a result of a COBRA-qualifying event. The DOL clarified in an [FAQ](#) that plans may also provide more information on ACA marketplace coverage in the COBRA election notice. For example, plans can explain how to get help with marketplace enrollment, the availability of financial assistance, or any other aspect of marketplace coverage that could help qualified beneficiaries choose between COBRA and marketplace alternatives. (See our [September 9, 2016 For Your Information.](#))

### Flex Contributions and Opt-Out Payments

Flex contributions are employer contributions offered through a cafeteria plan that an employee can apply towards the cost of qualified benefits (i.e., group health plan coverage) or, in some cases, take as cash. Opt-out payments allow an employer to provide a taxable benefit to employees who don't take the employer's "core" benefits like group health plan coverage. Recent IRS guidance explains how flex contributions and opt-out payments might affect the determination of whether the health coverage offered to employees is affordable for premium tax credit eligibility purposes and under the ACA's shared responsibility rules. (See our [September 14, 2016 FYI In-Depth.](#))

### DOL Increases Penalties for ERISA Compliance Violations

In July, the DOL published the inflation catch-up amounts for ERISA compliance violation penalties, as required by the Federal Civil Monetary Penalties Inflation Adjustment Act Improvements Act of 2015. The new penalty amounts apply to violations that occur after November 2, 2015, and that are assessed after August 1, 2016. Annual inflation adjustments to these penalties will be announced no later than January 15 of each year. (See [July 18, 2016 For Your Information.](#))

### FSA Contribution Limit Likely to Increase

The ACA amended the Internal Revenue Code to impose an annual limit on salary reduction contributions made to health flexible spending accounts. The annual limit is subject to indexing each year based on CPI-U. Although all data is not yet available, based on current information, we are projecting that the limit will increase to \$2,600 for 2017. (See our [August 17, 2016 For Your Information.](#))

## 2016 Deadline for Medicare Part D Creditable/Non-Creditable Coverage Notices

Before each year's Medicare Part D annual enrollment period, group health plan sponsors that offer prescription drug coverage must provide notice to Medicare-eligible individuals about whether the plan's prescription drug coverage is "creditable" or "non-creditable." The required notice, which was due by October 14, 2016, may be provided in annual enrollment materials, separate mailings, or electronically. Plan sponsors may use the CMS model notices or other notices that meet prescribed standards. (See our [August 24, 2016 For Your Information.](#))

## Spotlight on Transgender Health Coverage

ACA Section 1557 prohibits "covered entities" from discriminating in health programs or activities on the basis of sex (among other things), including discrimination based on sex stereotyping and gender identity. Although many employers do not meet the definition of covered entity, HHS has stated that where a non-covered entity employer is responsible for alleged discrimination, it will refer the matter to the Equal Employment Opportunity Commission (EEOC). The EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employers with at least 15 employees from discriminating in terms, conditions or privileges of employment on the basis of sex. The EEOC broadly interprets sex discrimination to include discrimination based on sexual orientation, transgender status and gender stereotyping. Federal courts nationwide are considering challenges to denials of coverage for transgender health services brought under both Section 1557 and Title VII. With this in mind, employers with group health plans that either limit coverage of or don't cover such services should work with legal counsel to assess their potential exposure under these laws and to otherwise consider plan terms and exclusions. (See our [September 7, 2016 For Your Information.](#))

## Expanded Compliance Relief for LA Floods

The DOL provided relief from certain ERISA deadlines in light of the severe flooding in Louisiana. The relief applies to employee benefit plans, plan sponsors, employers and employees who were located in the affected areas and makes allowances for, among other things, delays in processing health plan benefit claims and COBRA elections. (See our [September 15, 2016 For Your Information.](#))



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