

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

Volume 7 | Issue 49 | December 12, 2016

## Government Funding Secured with Support for Coal Miners; Comprehensive Health Care Bill Passed

Last week, President Obama signed legislation to provide continued short-term funding for government operations, protect certain retired coal miners' health benefits, improve mental health parity compliance, and expand opportunities for health reimbursement arrangements.

**In this issue:** [Government Funding](#) | [Multiemployer Plan Benefits: Coal Miners and Composite Plans](#) | [21st Century Cures Act: Mental Health Parity and HRAs](#) | [Health Care: Looking Ahead to 2017](#)

### Government Funding

Just in the nick of time, lawmakers released and approved legislation, known as a continuing resolution or CR, to provide funding for government operations after December 9 through April 28, 2017. As noted in the [summary](#) issued by the House Appropriations Committee, the CR does not include any controversial riders, or significant changes in existing federal policy.

**Comment.** A prior CR included a limited stop-gap funding measure for the first 10 weeks of the 2017 fiscal year (beginning on October 1, 2016). The newly elected Congress will need to address funding for the remainder of the 2017 fiscal year that will end on September 30, 2017.



### Multiemployer Plan Benefits: Coal Miners and Composite Plans

The CR enacted last week to avert a government shutdown also included \$45 million for retired coal miners' multiemployer health benefits. These benefits were in jeopardy of being discontinued after December 31, 2016. Specifically, the CR incorporated key provisions from the Miners Protection Act of 2016 ([S. 3470](#)) to preserve the health benefits of many retired coal miners with United Mine Workers of America. However, the CR is not a complete fix for these retirees. Indeed, both their health and retiree benefits remain in jeopardy because funding for health benefits is provided only through April 28 (consistent with the duration of the CR) and no funding has been provided for pension benefits. (For additional information and background on these benefits, please see our [September 26 Legislate](#).)

**Comment.** Though widely anticipated, there doesn't seem to be any appetite during this lame-duck session to advance multiemployer pension plan legislation. Not only does the CR fail to include any provisions to save the retired coal miners' retirement benefits, legislation for so-called "composite plans" seems to have fallen off the radar. Specifically, lawmakers appear to have dropped, at least for now, efforts to pursue the legislative proposal put forth by soon-to-be retired House Education and the Workforce Committee Chairman John Kline (R-MN). His proposal would authorize a new multiemployer plan structure, combining features from defined benefit and defined contribution plans. (Please see our [September 12 Legislate](#) for additional information on composite plans and efforts to address the looming insolvency of the PBGC's multiemployer pension plan insurance program.)

## 21<sup>st</sup> Century Cures Act: Mental Health Parity and HRAs

Later this week, President Obama will sign into law a comprehensive bill known as the [21<sup>st</sup> Century Cures Act](#) (Cures Act). Together with funding from the CR, the Cures Act is designed to encourage innovation and support research to discover new cures and treatments for conditions like cancer and opioid addiction. Specifically, Congress has appropriated hundreds of millions of dollars for the Cures Act, including those necessary to support state grants that address the opioid abuse crisis, to boost biomedical research at the National Institutes of Health, and to fund and modernize the FDA and its drug approval process.

Two sections of the Cures Act may directly affect plan sponsors:

### Mental Health Parity

The Cures Act seeks to ensure that health plans are operated in compliance with the current mental health parity laws. To support this effort, the Act requires:

- The Departments of HHS, Labor, and Treasury (the departments) to release compliance program guidance providing illustrative examples of audit findings (both compliant and non-compliant) with existing mental health parity requirements, including those related to disclosure requirements and treatment limitations
- HHS to issue guidance to assist health plan compliance with existing mental health parity requirements

For background on the Mental Health Parity and Addiction Equity Act of 2008, please see our [December 2 For Your Information](#).

Importantly, the Act makes clear that the departments have the authority to audit health plans that have repeated violations of the mental parity laws.

**Comment.** Given the heightened risk of a government audit, employers are encouraged to review vendor agreements, as well as all practices, policies and procedures relating to mental health parity requirements to assess compliance with the existing law and determine if changes are warranted. Likewise, employers that undertake such a review will want to document steps taken.

### Health Reimbursement Arrangements

The Cures Act contains a provision affecting small employers (generally those with less than 50 full-time employees) that don't sponsor a group health plan. Specifically, the Act incorporates the relief sought by the Small Business Health Care Relief Act of 2016 ([H.R. 5447](#)). It permits small employers to offer a health reimbursement arrangement (HRA) that pays or reimburses qualified medical expenses (including health insurance premiums) incurred by certain

employees (i.e., those who have minimum essential coverage) and their family members. The law provides that the maximum reimbursement available under the HRA is \$4,950 for single coverage and \$10,000 for family coverage.

**Comment.** Note that this provision is applicable only to small employers and is a departure from the position the departments have taken regarding stand-alone HRAs. The HRA-related provisions in this law do not provide relief for large employers subject to the Affordable Care Act (ACA). Stand-alone HRAs for large employers violate the ACA's market mandates and are prohibited for active employees. (Please see our [March 31 For Your Information](#) for additional details.)

Additional information on the Cures Act, including a [Two-Page Fact Sheet](#) and a [Section-by-Section Summary](#) of the Cures Act is available on the House Energy and Commerce Committee's [website](#).

## Health Care: Looking Ahead to 2017

Later this week, the House Ways and Means Committee Republicans are expected to meet to discuss tax reform and health care — including the tax issues related to a replacement bill for the ACA. Among other things, employers may reasonably anticipate that House Republicans will discuss providing states with more choice, flexibility and control over the provision of health care for its citizens. Indeed, that would be consistent with [President-elect Trump's policy statements](#), as well as those outlined by Speaker Paul Ryan's (R-WI) [health care task force](#) in the GOP House Report (A Better Way), and the [December 2 letter](#) sent by six House Republican leaders to state governors and insurance commissioners.

**Comment.** Notwithstanding the House GOP's intentions to dismantle the ACA, they have repeatedly made clear their intention not to disrupt the voluntary employer sponsored benefit system. Indeed, even the letter reference above reflects the House GOP leaders' intent to preserve the employer-sponsored health care for the millions of Americans who receive their coverage through such system.

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