

## Recent Health and Welfare Developments 2017 – Winter Edition

This winter edition *FYI Roundup* focuses on developments affecting health and welfare benefits. Among other things, we discuss recent ACA-related guidance, increased penalties for HIPAA violations, wellness programs, and information about benefit limits for 2017.

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### Affordable Care Act

Recent Affordable Care Act (ACA) guidance includes information about the transitional reinsurance and PCORI fees, a delay in furnishing ACA reporting statements to individuals, enforcement relief for student premium reduction arrangements and a delay in the opt-out payment rules.

#### Transitional Reinsurance Fee

For the 2014, 2015 and 2016 calendar years, insurers and sponsors of self-insured group health plans must make contributions to the ACA's transitional reinsurance program, which was designed to help stabilize insurance premiums in the individual market. Enrollment counts for purposes of determining the 2016 fee were due by November 15, 2016. The amount owed for 2016 may be paid in one payment, due by January 17, 2017, or in two payments, the first of which is due by January 17, 2017 and the second by November 15, 2017. (See our [October 13, 2016 For Your Information.](#))

#### Enforcement Relief Extended for Student Premium Reduction Arrangements

In early 2016, the Departments of Treasury, Health & Human Services (HHS) and Labor (departments) confirmed that ACA market reforms apply to premium reduction arrangements offered by colleges or universities in connection with student health plans. However, the departments also stated that they would not enforce that position before January 1, 2017. The departments recently extended this enforcement relief indefinitely. (See our [November 1, 2016 For Your Information.](#))



## Essential Health Benefits – Why Should Employers Care?

Under the ACA, self-insured, large insured and grandfathered group health plans may not impose annual or lifetime limits on any essential health benefits (EHB) covered under their plans. The ACA also imposes annual in-network out-of-pocket maximums on the amount that an enrollee in a non-grandfathered health plan must pay for EHBs through cost-sharing. EHBs continue to evolve and employers should understand the new requirements for 2017. (See our [November 2, 2016 For Your Information.](#))

## IRS Announces New PCORI Fee

Plan sponsors of self-insured group health plans must annually pay a fee to fund the Patient-Centered Outcomes Research Institute (PCORI). The IRS announced that the PCORI fee used to calculate the payment amount for plan years that end on or after October 1, 2016, and before October 1, 2017, including 2016 calendar year plans, is \$2.26. (See our [November 8, 2016 For Your Information.](#))

## IRS Delays Employer ACA Reporting

Recognizing that employers may need extra time to comply with the ACA reporting requirements (Forms 1094-C and 1095-C), the IRS extended by 30 days (from January 31, 2017 to March 2, 2017) the deadline for furnishing the Forms 1095-C and 1095-B to employees. However, the deadline for filing the forms with the IRS has not been extended and remains March 31, 2017 for electronic submissions. (See our [November 21, 2016 FYI Alert.](#))

## HHS Finalizes the 2018 OOP Maximums

HHS released the Notice of Benefit and Payment Parameters that provides important ACA guidance. Of particular importance to employers are the 2018 out-of-pocket maximums that are set at \$7,350 for self-only coverage and \$14,700 for other than self-only coverage. (See our [December 20, 2016 For Your Information.](#))



## IRS Delays Rules on Opt-Out Payments under the ACA

The IRS has indicated it is examining issues related to employer opt-out payments and the effect such payments have on affordability of employer-provided health coverage for an individual. To that end, the IRS did not finalize the opt-out provisions that appear in the premium tax credit regulations. The IRS expects to finalize regulations on opt-out arrangements in the future. Transition relief provided in the proposed regulations for arrangements that were in effect before December 16, 2015 continues to apply into 2017. (See our [December 29, 2016 For Your Information.](#))

## IRS Announces Some 2017 Benefit Plan Limits

The IRS issued Revenue Procedure 2016-55, which contains 2017 limits for qualified transportation fringe benefits, adoption assistance programs, long-term care premiums, health flexible spending accounts, and medical savings accounts. (See our [October 25, 2016 FYI Alert.](#))

## HHS Increases Penalties for HIPAA Violations

For the first time since 2009, HHS increased civil monetary penalties for violations of the HIPAA privacy and security rules, as required by the Federal Civil Monetary Penalties Inflation Adjustment Act Improvements Act. The new penalties reflect a 10.02 percent increase over the prior amounts and include a “catch-up” inflation

adjustment. The new penalties apply to violations that occurred after November 2, 2015 and where the penalties were assessed after August 1, 2016. Inflation adjustments will now be issued on an annual basis, no later than January 15 each year. (See our [November 29, 2016 For Your Information.](#))

## **CMS Releases Medicare Part A and B Values for 2017**

The Centers for Medicare & Medicaid Services announced the 2017 Medicare Part A and B premium, deductible, and coinsurance amounts. There is a small increase in Part A premiums, deductible and coinsurance amounts. Part B premiums will not increase for most Medicare beneficiaries; however, for those beneficiaries not protected by a “hold harmless provision,” Part B premiums will increase by 10.0 percent. The Part B deductible will increase 10.2 percent for all beneficiaries. (See our [November 30, 2016 For Your Information.](#)) The 2017 Medicare Part D parameters were released earlier this year, as noted in our [March 22, 2016 For Your Information.](#)



## **Wellness Programs: Regulatory and Litigation Update**

Following the issuance of final rules for wellness programs under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA), the EEOC recently issued two letters providing guidance on how those rules apply when an employer offers multiple health coverage options or a multi-faceted program. Additionally, two pending cases and a new lawsuit brought by the AARP question the validity of wellness programs. (See our [December 1, 2016 For Your Information.](#))

## **Mental Health Parity Update**

The White House Mental Health and Substance Use Disorder Parity Task Force released its final report, recommending increased funding for MHPAEA compliance audits and identifying a need for additional guidance on what group health plans and issuers must disclose about their mental health and substance use disorder benefits. The departments also issued guidance on medication assisted treatment for opioid use disorder and other mental health parity issues. (See our [December 2, 2016 For Your Information.](#))

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