

Recent Health and Welfare Developments 2017 – Spring Edition

This latest *FYI Roundup* highlights developments affecting health and welfare benefits. In this spring edition, we discuss recent ACA-related guidance including contraceptive coverage, special enrollment periods, Summary of Benefits and Coverage templates and women’s preventive services. We also spotlight, among other things, regulations for disability claims procedures, court decisions on transgender discrimination and wellness programs and the San Francisco employer annual reporting deadline.

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Affordable Care Act

Recent Affordable Care Act (ACA) guidance includes the contraceptive mandate, women’s preventive care, Summary of Benefits and Coverage (SBC) templates, and proposed changes to enrollment and special enrollment periods for the ACA marketplaces.

Status Quo for Contraceptive Coverage Mandate Accommodation

After the departments reviewed the comments from a request for information, the Obama administration retained the current ACA contraceptive coverage mandate accommodation process for nonprofit religious objectors – but it is unclear how the Trump administration will handle it going forward. While this issue has garnered significant media attention, it does not affect many employer plans subject to the contraceptive coverage mandate. (See our [January 19, 2017 For Your Information](#))

Departments Issue FAQs on Special Enrollment, Women’s Preventive Care Services

The departments issued FAQs clarifying that someone who loses eligibility for individual coverage, including marketplace coverage, is entitled to a special enrollment period in a group health plan for which that individual is otherwise eligible. They also specified that updated guidelines on women’s preventive care apply for plan years



beginning on or after December 20, 2017. Employers should update procedures and guidelines to ensure they provide appropriate special enrollment opportunities to eligible individuals. Non-grandfathered group health plans should prepare to offer coverage without cost-sharing under the updated HRSA guidelines for plan years beginning on or after December 20, 2017. (See our [January 26, 2017 For Your Information.](#))

Reminder – Prepare to Update SBCs

Plan sponsors must use updated Summary of Benefits and Coverage (SBC) templates for open enrollment periods beginning on and after April 1, 2017. Depending on when their 2017 open enrollment period begins, non-calendar year plans may have to update their SBCs for their upcoming 2017 plan year. Calendar year plans should prepare the updated template for fall 2017 open enrollment. (See our [February 14, 2017 For Your Information.](#))

CMS Proposes Enrollment Changes Aimed at Propping Up ACA Marketplaces, for Now

While working on ACA repeal and replace efforts, the Trump administration sought to stabilize the ACA



marketplaces. Specifically, CMS proposed shortening the marketplace open enrollment period and tightening special enrollment rules in order to improve risk pools and thereby encourage insurers to stay in the marketplaces in 2018. Employers that provide marketplace-related information to qualified COBRA beneficiaries, early retirees, employees on leave, and others who are about to lose, or have already lost, employer-sponsored coverage may need to make adjustments to communications and should continue to watch for further guidance. (See our [February 28, 2017 For Your Information.](#))

DOL Finalizes Disability Claims Procedure Rules

The DOL finalized regulations that will change the procedures ERISA plans must follow in adjudicating claims for benefits conditioned on a determination of disability, including claims for disability retirement benefits. For the most part these final regulations follow the proposed regulations, but they also provide some new requirements.

The changes in the final regulations generally apply to claims filed on or after January 1, 2018. Claims for disability benefits filed from January 18, 2017 through December 31, 2017 are subject to the ERISA claims procedure requirements in effect immediately prior to the final regulation effective date. (See our [January 11, 2017 For Your Information.](#))

Court Blocks HHS from Enforcing Prohibition on Transgender Discrimination

Just before the effective date, a Texas district court temporarily blocked provisions of a new HHS regulation prohibiting certain health programs and activities from discriminating on the basis of gender identity and termination of pregnancy. It is not clear if HHS will appeal the ruling or defend legal challenges involving similar issues going forward, given the change in administration. For now, employers and plans that are covered entities under ACA Section 1557 should work with legal counsel to assess risks associated with coverage gaps for transgender health and abortion services. (See our [January 13, 2017 For Your Information.](#))

Court Denies Motion to Block EEOC Wellness Program Regulations

In late December, the federal district court for the District of Columbia denied AARP's request for a preliminary injunction, thus allowing the EEOC's wellness program regulations to take effect January 1, 2017. The litigation continues, but in the meantime, the notice and incentive provisions of the final ADA regulations and the incentive provision of the final GINA regulations apply for the first day of the first plan year beginning on or after January 1, 2017. (See our [January 17, 2017 For Your Information](#).)

It's That Time of Year – Creditable Coverage Disclosures to CMS Due by March 1

Each year, group health plan sponsors that provide prescription drug coverage to individuals eligible for Medicare Part D must disclose to CMS whether that coverage is "creditable" or "non-creditable." The disclosure obligation applies to all plan sponsors that provide prescription drug coverage, even those that do not offer prescription drug coverage to retirees. Calendar year plans had to submit this year's disclosure to CMS by March 1, 2017. (See our [February 10, 2017 For Your Information](#).)

DOL, PBGC and HHS Increase Penalties for Violations

The DOL, PBGC, and HHS announced annual inflation-adjusted civil penalties. Employers should pay careful attention to compliance deadlines to minimize potential liability for violations. (See our [February 10, 2017 For Your Information](#).)

San Francisco Employer Annual Reporting Form Due May 1

Under the Health Care Security Ordinance, San Francisco employers are required to pay a certain amount toward the health care costs of their employees who work in the city. Covered employers must submit to the city an Annual Reporting Form summarizing compliance with this requirement for 2016 by May 1. (See our [March 30, 2017 For Your Information](#).)

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