

## Recent Health and Welfare Developments 2018 – Winter Edition

This winter edition *FYI Roundup* focuses on developments affecting health and welfare benefits. Among other things, we discuss recent ACA-related guidance, HIPAA certification, wellness programs, disability claims, disaster relief and 2018 benefit limits.

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### Affordable Care Act

Recent Affordable Care Act (ACA) guidance includes information about the PCORI fee, 2019 out-of-pocket maximums, employer mandate enforcement, contraceptive coverage and employer ACA reporting deadlines.

#### IRS Announces Updated PCORI Fee Amount

The IRS announced that the amount used to calculate the PCORI fee for plan years that end on or after October 1, 2017, and before October 1, 2018, including 2017 calendar year plans, is \$2.39 per covered life. This is an increase of \$0.13 from the previous year. The ACA imposes a fee on health insurers and plan sponsors of self-insured group health plans to help fund the Patient-Centered Outcomes Research Institute (PCORI). (See our [October 10, 2017 For Your Information.](#))

#### HHS Proposes 2019 Out-of-Pocket Maximums

The Department of Health & Human Services proposed 2019 out-of-pocket maximums for non-grandfathered plans of \$7,900 for self-only coverage and \$15,800 for other than self-only coverage and proposed rules on other issues related to the ACA marketplaces, including how states may choose their essential health benefits (EHB) benchmark plans. The factors used to adjust the out-of-pocket maximum will also apply for determining the employer shared responsibility assessment amounts for 2019. (See our [November 21, 2017 For Your Information.](#))



## IRS Starts ACA Employer Mandate Enforcement

IRS has begun notifying employers of their potential liability for an ACA employer shared responsibility payment in connection with the 2015 calendar year. It also released Forms 14764 and 14765, which employers can use to dispute the assessment. In 2015, applicable large employers were generally required to offer minimum essential coverage to substantially all full-time employees and their dependents, or pay a nondeductible assessment if at least one full-time employee enrolls in marketplace coverage and receives a premium tax credit. (See our [December 13, 2017](#) and [November 10, 2017](#) issues of *For Your Information*.)

## IRS Delays Employer ACA Reporting Deadline

The IRS has extended by 30 days — from January 31, 2018 to March 2, 2018 — the ACA reporting 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 April 2, 2018, for electronic submissions. Earlier in 2017, the IRS released final forms and instructions for the 2017 ACA reporting. The 2017 forms and instructions were largely unchanged from 2016. (See our [December 27, 2017 FYI Alert](#) and [October 12, 2017 For Your Information](#).)

## Court Halts Expansion of Contraceptive Coverage Mandate Exemption

In December, a Pennsylvania federal court blocked a new CMS rule that expanded the types of entities that could opt not to provide contraceptive coverage to their employees because of religious or moral beliefs. The ruling also blocked guidance that would permit these entities to avoid a government filing. For now, the ruling requires objecting employer plans subject to the contraceptive coverage mandate to follow the Obama-era accommodation's process. The Trump administration is expected to appeal this decision. (See issues of *For Your Information* from [December 19, 2017](#) and [October 24, 2017](#).)

## HHS Withdraws HIPAA Certification Requirements

HHS announced that, effective October 4, 2017, it was withdrawing the January 2014 proposed rule requiring controlling health plans to demonstrate compliance with certain standards and operating rules under HIPAA. It will also re-examine the issues raised in public comments and explore alternatives to comply with the statutory requirements. (See our [October 17, 2017 For Your Information](#).)



## IRS Announces Some 2018 Benefit Plan Limits

The IRS issued Revenue Procedure 2017-58, which contains the 2018 limits for health flexible spending arrangements, qualified transportation fringe benefits, adoption assistance programs, and long-term care premiums. (See our [October 20, 2017 For Your Information](#).)

## Wellness Programs Litigation

In August, the DC federal court concluded that the EEOC's final ADA and GINA regulations permitting an incentive of up to 30% of the cost of self-only coverage was arbitrary and capricious. However, concerned that nullifying the rules would have a negative impact on employers and employees, the court held that the rules would remain in place while the EEOC reconsiders them. The EEOC has until December 31, 2018, to adjust the old or issue new

regulations. The DOL also brought a lawsuit against a large retail employer, alleging that its wellness program violated the HIPAA nondiscrimination rules. (See our [October 31, 2017 For Your Information.](#))

## **CMS Releases Medicare Part A and B Values for 2018**

The Centers for Medicare & Medicaid Services announced the 2018 Medicare Part A and B premium, deductible, and coinsurance amounts. There was a small increase in Part A amounts, and while the standard Part B premium will not increase in 2018, some Part B enrollees protected by a “hold harmless” provision in 2017 will pay more. The Part B deductible will not increase for any beneficiaries. The 2018 Medicare Part D parameters were released earlier this year. (See our [December 1, 2017 For Your Information.](#))

## **DOL Delays Application of Disability Claim Regulations**

The DOL finalized its proposed delay in the application of the final disability claims procedure regulations to ERISA welfare and retirement plans providing disability benefits to April 2, 2018. In December 2016, the DOL issued final regulations that impose new requirements on the procedures ERISA welfare and pension plans must follow in adjudicating claims for disability benefits. (See our [December 8, 2017](#) and [October 11, 2017 For Your Information.](#))



## **DOL Extends Relief for Victims of Hurricane Maria and October California Wildfires**

In mid-September, Hurricane Maria devastated the U.S. Virgin Islands and Puerto Rico and in October, wildfires destroyed large swaths of California. The DOL released an announcement acknowledging health plan administrative delays that participants, beneficiaries and plan administrators may face when a disaster strikes and suggests that plan fiduciaries make reasonable accommodations to prevent the loss of benefits and minimize loss of coverage for individuals affected by the disasters. The DOL also announced an extension for Hurricane Maria of certain ERISA deadlines for plan sponsors, participants, and beneficiaries in some circumstances on a mandatory basis. (See our [December 11, 2017 For Your Information.](#))

**Authors**

Kin Chan  
Sharon Cohen, JD

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