

## Recent Health and Welfare Developments 2018 – Spring Edition

This latest *FYI Roundup* highlights developments affecting health and welfare benefits. In this latest edition, we discuss recent ACA-related Cadillac tax and employer mandate enforcement guidance. We also spotlight, among other things, health savings accounts, wellness and disability claims regulations, autism benefits, child tax credit, retiree health benefits, creditable coverage notices, and developments in San Francisco and Massachusetts.

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### Affordable Care Act

Recent Affordable Care Act (ACA) guidance includes information about the Cadillac tax and the employer mandate enforcement.

### Congress Delays Cadillac Tax and Extends CHIP

In January, President Trump signed a short-term spending bill that funded the government through Feb. 8, 2018. The bill, which ended the federal government “shutdown,” included a two-year delay of the “Cadillac tax” on employer-sponsored health coverage as well as a six-year extension of Children’s Health Insurance Program. The Cadillac tax will now be effective in 2022. (See our [January 23, 2018 FYI Alert](#).)

### Update on ACA Employer Mandate Enforcement

Beginning in 2015, applicable large employers are 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. The IRS released a sample notice of employer shared responsibility charge ([Notice 220J](#)), which employers will receive after they have had the opportunity to dispute an assessment for the 2015 calendar year. So far, it appears the IRS has sent



assessment notices only in connection with an employer's failure to offer minimum essential coverage to at least 70% of its full-time employees and their dependents in 2015 — and has not yet sent notices to employer who offered coverage that was “unaffordable” or failed to provide minimum value. (See our [March 21, 2018 For Your Information.](#))

## Health Savings Accounts

Recent Health Savings Accounts (HSAs) guidance includes information on 2018 contribution limits and male sterilization coverage.

### Revised 2018 HSA Contribution Limits

The IRS released guidance that reduced the previously announced 2018 HSA maximum contribution limit for family coverage from \$6,900 to \$6,850. The reduction was the result of a provision in the Tax Cuts and Jobs Act that changed the method for determining cost-of-living adjustments for various purposes under federal law, including HSA contribution limits. To avoid excise taxes, employees will need to limit their 2018 contributions to the new maximum. The guidance also reduced the maximum exclusion for employer-provided adoption assistance from \$13,840 to \$13,810. (See our [March 9, 2018 For Your Information.](#))

### HSA Eligibility Unaffected by Insured HDHP First-Dollar Male Sterilization Coverage (until 2020)

In recent years, several states have enacted laws requiring insured plans to cover male contraception, including, in some instances, male sterilization, as a preventive service without cost-sharing. Because male contraceptives are not considered preventive care under IRS rules, these laws could potentially affect the HSA eligibility of individuals covered under high-deductible health plans (HDHPs) subject to those mandates. The IRS has provided transitional relief, until 2020, for individuals enrolled in plans that would otherwise qualify as HSA-compatible HDHPs except that they provide for coverage of male sterilization or male contraceptives before the deductible is satisfied. Accordingly, plan sponsors can rest assured until 2020 that individuals enrolled in their insured HDHPs will not lose HSA eligibility solely because the plans provide first-dollar coverage for male sterilization services under state law mandates. (See our [March 23, 2018 For Your Information.](#))

## Status of ADA and GINA Wellness Regulations



After finding that the EEOC's final ADA and GINA regulations, which permit a 30% wellness incentive, were arbitrary and capricious, a federal court ordered the regulations be vacated as of January 1, 2019. It is not clear yet whether the EEOC will revise the current regulations, issue new regulations, or let the regulations be vacated without taking further action. Without regulations, employers will face uncertainty about whether a wellness program that asks for medical information (e.g., biometric screenings and health risk assessments) and/or that inquires about a spouse's medical conditions (e.g., spousal health risk assessments) would be considered

“voluntary.” (See our [February 13, 2018 For Your Information.](#))

## **San Francisco Significantly Changes 2018 Minimum Healthcare Spending Rules**

Since 2006, the San Francisco Health Care Security Ordinance has required covered employers to make minimum healthcare expenditures on behalf of their San Francisco employees for each hour paid for work performed in San Francisco (including paid time off, like vacation, holidays, sick leave and, more recently, paid parental leave). The San Francisco's Office of Labor Standards Enforcement has issued new rules for the enforcement of the city's minimum healthcare spending requirements that will require significant changes in process for employers with self-insured health plans. The 2018 minimum expenditure rates were also released. (See our [January 3, 2018 For Your Information](#).)

## **DOL Announced Disability Claim Regulations Application Date**

In December 2016, the DOL issued final regulations imposing new requirements on the procedures ERISA welfare and pension plans must follow in adjudicating claims for disability benefits. The regulations, which became effective on January 18, 2017, stated that the new rules would apply to claims for disability benefits filed on or after January 1, 2018. In October 2017, the DOL proposed postponing the application date by 90 days, to April 1, 2018. In January, 2018, the DOL confirmed the April 1, 2018 application date. (See our [January 9, 2018 FYI Alert](#).)

## **New Year Brings New Employer Healthcare Taxes in Massachusetts**

On August 1, 2017, Massachusetts Governor Charlie Baker signed into law An Act Further Regulating Employer Contributions to Health Care (Act). The objective of the Act was to improve the finances of the state's MassHealth program — the Medicaid and Children's Health Insurance Program. The Act increased the current Employer Medical Assistance Contribution (EMAC) tax and introduced a new EMAC Supplement tax. The increase in the EMAC tax and the new Supplement tax are both temporary and only apply for 2018 and 2019. The state released draft regulations and FAQs on the application of the taxes. (See our [January 10, 2018 For Your Information](#).)



## **Autism Treatment Benefits and Coverage Limitations**

Autism is a complex medical condition that impairs social communication and interaction, and causes restrictive, repetitive patterns of behavior, interests or activities. In recent years, there has been increased demand for coverage of autism treatment benefits in employer group health plans — and a corresponding uptick in litigation by participants seeking coverage for these benefits. Employer group health plans should be aware of these trends, as well as the compliance concerns with autism treatment coverage gaps. (See our [January 12, 2018 FYI In-Depth](#).)

## **Annual Reminder to Submit Creditable Coverage Disclosures**

Each year, group health plan sponsors that provide prescription drug coverage to individuals eligible for Medicare Part D must disclose to the 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 only offer prescription drug coverage to active employees, and not to retirees. The disclosure must be made no more than 60 days after the

beginning of the plan year; therefore, calendar year plans had to submit this year's disclosure to CMS by March 1, 2018. (See our [February 2, 2018 For Your Information.](#))

## Untangling Children, Childcare, and the Code

The Tax Cuts and Jobs Act, enacted in December, 2017, doubled the child tax credit under Code section 24 to \$2,000 starting in 2018 — but did not change either the section 129 dependent care assistance program (DCAP) exclusion or the section 21 dependent care tax credit. Nevertheless, depending on adjusted gross income, the newly lowered tax brackets could affect an employee's calculus in considering whether excluding income through a DCAP or claiming the dependent care tax credit is more advantageous in a given year. Any available earned income tax credit and/or additional child tax credit may also factor into this analysis. Employers should be aware of possible employee confusion about these different — but similar sounding — Code provisions. (See our [February 8, 2018 For Your Information.](#))

## High Court Once Again Refuses to Infer Lifetime Retiree Health Benefits

A unanimous Supreme Court decision provides increased flexibility for employers struggling to manage retiree health costs. The Court ruled that, absent specific language to the contrary, retiree health benefit rights expire along with the collective bargaining agreement containing them — meaning that an employer can modify those benefits after the agreement ends. This ruling follows the Court's 2015 decision to strike down the longstanding "Yard-Man inference," under which retiree health benefits were presumed to vest for life unless a collective bargaining agreement expressly provided otherwise. (See our [February 22, 2018 For Your Information.](#))

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