

# FYI<sup>®</sup> Roundup

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### Recent health and welfare developments 2019 – summer edition

This latest *FYI Roundup* highlights developments affecting health and welfare benefits. In this summer edition, we discuss ACA developments, 2020 Medicare Part D benefit parameters, 2020 out-of-pocket maximums, 2020 HSA/HDHP limits, wilderness therapy programs, HIPAA enforcement, Rx rebates for Medicare Part D programs, San Francisco HCSO Annual Reporting Form, and new state individual health mandates.

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### PCORI fee due by July 31, 2019

Sponsors of self-insured health plans should prepare to report and pay the fee by July 31, 2019. For calendar year plans, the 2018 plan year is the last one to which PCORI fees apply. The ACA requires sponsors of self-insured health plans and health insurers to pay a fee to help fund the Patient Outcomes Research Institute (PCORI). (See our [June 20, 2019 FYI](#).)

### DOJ to appeals court: strike down entire ACA

Last December, a district court in Texas ruled that the ACA individual mandate is unconstitutional — and that, as a result, the entire ACA is invalid. The Department of Justice, in March, took the position that the district court's judgment should be affirmed on appeal, which would result in the invalidation of the ACA as a whole. While it remains to be seen how the 5<sup>th</sup> Circuit will rule on the appeal, plan sponsors should stay the course in their ACA compliance efforts. (See our [April 3, 2019 FYI](#).)

### CMS released 2020 Medicare Part D benefit parameters

The Centers for Medicare & Medicaid Services (CMS) released the 2020 Medicare Part D standard benefit parameters and the cost thresholds and limits for qualified retiree prescription drug plans. Increases in the standard benefit parameters range from approximately 4.8% to 5.9%, with the out-of-pocket threshold increasing by 24.5%. Plan sponsors that want to remain qualified for the employer retiree drug subsidy will have to determine if their 2020 prescription drug coverage is at least actuarially equivalent to the standard Medicare Part D coverage. (See our [June 17, 2019 FYI](#).)

## HHS finalized 2020 out-of-pocket maximums

The Department of Health & Human Services finalized the 2020 out-of-pocket maximums at \$8,150 for self-only coverage and \$16,300 for other than self-only coverage. It also finalized proposed rules that change how amounts paid for brand-name drugs are applied towards those maximums. (See our [June 12, 2019 FYI](#).)

## IRS announced 2020 HSA/HDHP limits

The IRS released the health savings account and high-deductible health plan limits for 2020. The annual contribution limits, HDHP deductible, and out-of-pocket amounts for self-only and family coverage all increased over the 2019 limits. (See our [May 30, 2019 FYI](#).)

## Spotlight on litigation: wilderness therapy programs

Once considered an extreme therapeutic option, “wilderness therapy” programs are becoming more commonly recommended to treat a variety of mental and substance abuse issues. Coverage under employer group health plans, however, has not caught up with the trend, and the issue has been increasingly litigated. Employer-sponsored plans have generally excluded or limited coverage for this type of therapy, which involves a residential element as well as outdoor adventure therapy. Several federal district courts recently allowed plaintiffs to move forward with their claims for coverage. Employer group health plans should be aware of this trend and consider associated risks with any limitations imposed on coverage for these programs. (See our [April 22, 2019 FYI](#).)

## HIPAA enforcement reaches new heights

In 2018, HHS’s Office of Civil Rights (OCR) collected \$28,683,400 in HIPAA settlements and judgments. This sum includes the largest financial settlement OCR has ever reached with a covered entity — \$16,000,000. Given the aggressive nature of current enforcement trends, it is increasingly important for covered entities to assess their HIPAA compliance efforts and address any related gaps. (See our [April 17, 2019 FYI](#).)

## HHS proposed changes to Rx rebates for Medicare Part D programs

HHS issued a proposed rule that, if implemented, would significantly limit the current safe harbor protection for prescription drug rebates offered to Medicare Part D plans, including employer-sponsored EGWPs. (See our [April 15, 2019 FYI](#).) In July, HHS decided not to implement this change.

## San Francisco released 2018 HCSO Annual Reporting Form

San Francisco released the 2018 Annual Reporting Form for compliance with the Health Care Security Ordinance (HCSO). The HCSO requires covered employers to make minimum healthcare

expenditures on behalf of their San Francisco employees. Beginning in 2018, significant new requirements applied to self-insured health plans. The deadline for submission of the form was April 30, 2019. (See our [April 9, 2019 FYI](#).)

## New Jersey issues individual mandate reporting requirements

With no ACA individual mandate penalty in 2019, states are taking action to help stabilize their individual health insurance marketplaces. New Jersey and Washington D.C. have implemented individual mandates that, starting in 2019, require residents to obtain coverage or be subject to a penalty. New Jersey released guidance on the employer reporting requirements to support mandate enforcement. (See our [April 10, 2019 FYI](#).)

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