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WHAT YOU NEED TO KNOW



COMPLIANCE RECAP

October was a busy month in the employee benefits world. President Trump announced a new Acting Secretary for the U.S. Department of Health and Human Services (HHS). Eric Hargan fills the position vacated by Tom Price, who resigned in late September 2017.

The Internal Revenue Service (IRS) issued the instructions for Forms 1094/1095 for the 2017 tax year, announced PCORI fees for 2017-18, and announced cost-of-living adjustments for 2018. President Trump issued an Executive Order on healthcare and announced an end to the Patient Protection and Affordable Care Act's cost sharing reductions.

The IRS, Employee Benefits Security Administration (EBSA), and Centers for Medicare and Medicaid Services (CMS) issued two interim final rules to allow a greater number of employers to opt out of providing contraception to employees at no



cost through their employer-sponsored health plan.

The U.S. Department of Labor (DOL) issued a proposed rule to delay a disability claims procedure regulation's applicability date. The IRS provided additional guidance on leave-based donation programs' tax treatment and released an information letter on COBRA and Medicare. HHS released its proposed rule on benefits and payment parameters for 2019. The U.S. Department of the Treasury (Treasury) issued its Priority Guidance Plan for projects it intends to complete during the first half of 2018.

UBA Updates

UBA released seven new advisors in October:

- [Contraception Mandate Rolled Back for Employers](#)
- [IRS Releases Final Forms and Instructions for 2017 ACA Reporting](#)
- [Executive Order on Healthcare](#)
- [President Trump Ends ACA Cost Sharing Reductions](#)
- [Benefit Plan Design: Charging Employees Different Premiums](#)
- [2018 Annual Benefit Plan Amounts](#)
- [2019 Proposed Benefit Payment and Parameters Rule](#)

UBA updated existing guidance:

- [Sample Open Enrollment Notices Packet](#)
- [FAQ About the PCORI Fee](#)
- [Highlights of the PCORI Fee](#)
- [Overview of the PCORI Fee, Transitional Reinsurance Fee \(TRF\) and Health Insurance Providers \(HIP\) Fee](#)
- [Controlled Groups and Affiliated Service Groups: How They Apply to the ACA](#)

IRS Issues 2017 Instructions for Forms 1094/1095

The IRS issued the [instructions](#) for Forms [1094-C](#) and [1095-C](#) for the 2017 tax year. Applicable large employers use Forms 1094-C and 1095-C to report information related to their employer shared responsibility provisions under the Patient Protection and Affordable Care Act (ACA).

[Read more about the instructions and forms.](#)

IRS Announces PCORI Fee for 2017-18

The IRS [announced](#) the Patient-Centered Outcomes Research Institute (PCORI) fee for 2017-18. The fee is \$1.00 per covered life in the first year the fee is in effect. The fee is \$2.00 per covered life in the second year. In the third through seventh years, the fee is \$2.00, adjusted for medical inflation, per covered life.

For plan years that end on or after October 1, 2016, and before October 1, 2017, the indexed fee is \$2.26. For plan years that end on or after October 1, 2017, and before October 1, 2018, the indexed fee is \$2.39.

[Read more about the PCORI fee.](#)

IRS Announces Cost-of-Living Adjustments for 2018

The IRS released [Revenue Procedures 2017-58](#) and [Notice 2017-64](#) to announce cost-of-living adjustments for 2018. For example, the dollar limit on voluntary employee salary reductions for contributions to health flexible spending accounts (FSAs) is \$2,650, for taxable years beginning with 2018.

Download the chart of [2018 annual benefit plan amounts](#).

Executive Order on Healthcare

On October 12, 2017, the White House released the [Executive Order](#) "Promoting Healthcare Choice and Competition Across the United States," signed by President Trump, that directs various federal agencies to explore options relating to association health plans, short-term, limited-duration insurance, and health reimbursement arrangements in the next 60-120 days.

Employers should not make any changes to their group health plans based on the Executive Order until regulations are issued.

[Read more about the Executive Order.](#)

President Trump Ends ACA Cost Sharing Reductions

President Trump announced that the ACA's cost sharing reductions for low income Americans would be stopped. The Department of Health and Human Services (HHS) [confirmed](#) that the payments would stop immediately.

Because the cost sharing reductions are different than the advance premium tax credit, this payment termination will not have a direct impact on employers at this time. However, employers with fully insured health plans might see group health plan rate increases in the future as insurance companies work to make up for revenue loss.

[Read more about the payment termination.](#)

Agencies Roll Back Contraceptive Mandate

The Internal Revenue Service, Employee Benefits Security Administration, and Centers for Medicare and Medicaid Services issued two interim final rules that were effective on October 6, 2017. These rules will allow a greater number of employers to opt out of providing contraception to employees at no cost through their employer-sponsored health plan.

The expanded exemption encompasses all non-governmental plan sponsors that object based on [sincerely held religious beliefs](#), and higher education institutions' student health plan arrangements. The exemption also now encompasses employers who object to providing contraception coverage based on [sincerely held moral objections](#) and higher education institutions' student health plan arrangements. Further, if an insurance company has sincere religious beliefs or moral objections, it would be exempt from having to sell coverage that provides contraception. The exemptions apply to both non-profit and for-profit entities.

[Read more about the contraceptive mandate rollback.](#)

DOL Proposes Delay to Final Disability Claims Procedures Regulations' Applicability Date

The DOL issued a [proposed rule](#) to delay the applicability date of its [final rule](#) that amends the claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits. The DOL's [Fact Sheet](#) contains a summary of the final rule's requirements.

The DOL is delaying the applicability date from January 1, 2018, to April 1, 2018, to consider whether to rescind, modify, or retain the regulations and to give the public an additional opportunity to submit comments and data concerning the final rule's potential impact.

IRS Provides Additional Guidance on Leave-Based Donation Programs' Tax Treatment

Last month, the IRS provided guidance for employers who adopt leave-based donation programs to provide charitable relief for victims of Hurricane and Tropical Storm Irma. This month, the IRS issued [Notice 2017-62](#) which extends the guidance to employers' programs adopted for the relief of victims of Hurricane and Tropical Storm Maria.

These leave-based donation programs allow employees to forgo vacation, sick, or personal leave in exchange for cash payments that the employer will make to charitable organizations described under Internal Revenue Code Section 170(c).

The employer's cash payments will not constitute gross income or wages of the employees if paid before January 1, 2019, to the Section 170(c) charitable organizations for the relief of victims of Hurricane or Tropical Storm Maria. Employers do not need to include these payments in Box 1, 3, or 5 of an employee's Form W-2.

IRS Releases Information Letter on COBRA and Medicare

The IRS released [Information Letter 2017-0022](#) that explains that a covered employee's spouse can receive COBRA continuation coverage for up to 36 months if the employee became entitled to Medicare benefits before employment termination. In this case, the spouse's maximum COBRA continuation period ends the later of: 36 months after the employee's Medicare entitlement, or 18 months (or 29 months if there is a disability extension) after the employment termination.

CMS Releases 2019 Benefits Payment and Parameters Proposed Rule

The Centers for Medicare & Medicaid Services (CMS) released a [proposed rule](#) and [fact sheet](#) for the 2019 Benefit Payment and Parameters. The proposed rule is intended to increase individual market flexibility, improve program integrity, and reduce regulatory burdens associated with the Patient Protection and Affordable Care Act (ACA) in many ways, including updates and annual provisions to:

- Essential health benefits
- Small Business Health Options Program (SHOP)
- Special enrollment periods (SEPs)
- Exemptions
- Termination effective dates
- Medical loss ratio (MLR)

CMS usually finalizes the Benefit Payment and Parameters rule in the first quarter of the year following the proposed rule's release. November 27, 2017, is the due date for public comments on the proposed rule.

Almost all the topics addressed in the proposed rule would affect the individual market and the Exchanges, particularly the Small Business Health Options Program (SHOP) Exchanges.

Of interest to small group health plans, CMS proposes to change how states will select essential health benefits benchmark plans. If CMS keeps this change in its final rule, then it will affect non-grandfathered small group health plans for benefit years 2019 and beyond.

[Read more about the proposed rule.](#)

Treasury Issues its Priority Guidance Plan

The Treasury issued its [2017-2018 Priority Guidance Plan](#) that lists projects that it intends to complete by June 30, 2018, including:

- Guidance on issues related to the employer shared responsibility provisions
- Regulations regarding the excise tax on high cost employer-provided coverage ("Cadillac tax")
- Guidance on Qualified Small Employer Health Reimbursement Arrangements (QSE HRAs)

Question of the Month

Q: Although the transitional reinsurance fee (TRF) expired, why might an employer have one TRF remittance due in November?

A: The TRF premium stabilization program was in place from 2014 to 2016. Calendar year 2016 was the last year for which the TRF was required. HHS offered employers with self-insured plans with an option to pay the TRF in one or two payments. If an employer chose to pay in two installments for the 2016 benefit year, then the employer's first payment was due by January 17, 2017, and its second payment is due by November 15, 2017.

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