

2018 Planning for Health and Welfare Benefit Plan Operations

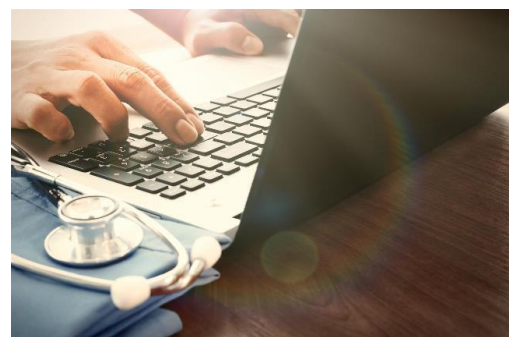
As 2017 comes to a close, it's time to consider compliance issues for 2018. We have several resources that can help you stay on top of deadlines. The calendar below presents a schedule of activities that address important upcoming deadlines and the [Complyendar](#), a customized calendar, can be used to help you track and anticipate compliance events. Additionally, our [Reporting and Disclosure Guide](#) identifies and addresses other activities that are event-based and participant-specific. Below we highlight some issues you'll want to consider in the coming year.

In this issue: [The ACA Remains Intact \(For Now\)](#) | [Health and Welfare Plan Nondiscrimination Testing](#) | [Wellness Programs](#) | [Mental Health Parity](#) | [Relaxed Agency Rules for Disaster Victims](#) | [Relaxed Agency Rules for Disaster Victims](#) | [Out-of-Pocket Maximums](#) | [2018 Benefit Limits](#) | [In Closing](#) | [Calendar of Health and Welfare Benefit Plan Compliance Tasks](#)

The ACA Remains Intact (For Now)

Following several failed attempts at repeal and replace (see our [September 25, 2017](#) and [July 31, 2017](#) *Legislate* publications), the ACA remains intact – at least for now. While lawmakers have introduced legislation that would provide funding for ACA cost-sharing reduction payments, negate the individual mandate penalty, and/or otherwise suspend the individual and employer mandates, it is not clear if any of these changes will ultimately become law. (See our [December 6, November 15, 2017](#) and [November 6, 2017](#) issues of *Legislate*). Significantly for employer-sponsored plans, none of the current proposals would further delay or repeal the 40% excise tax on “high cost” health care plans (a/k/a, the Cadillac tax) and it remains slated to go into effect in 2020. The IRS is expected to release guidance on this tax as soon as early 2018.

In the meantime, continue to comply with all rules currently in place. Below we highlight a few. You should also prepare to re-visit your employee benefits strategies in response to guidance on the Cadillac tax.



Employer Reporting and Shared Responsibility Enforcement

Beginning in 2015, employers with at least 50 full-time employees were required to offer minimum essential coverage that is “affordable” and meets minimum value standards to full-time employees and their dependents, or potentially pay certain nondeductible assessments. The IRS imposed employer reporting obligations to enforce these requirements and to administer the low-income subsidies provided to eligible individuals who purchase coverage in the ACA marketplace.

The IRS has issued forms and instructions for 2017 reporting. The deadline for furnishing the forms to employees is January 31, 2018 – and although in each of the past two years the IRS has extended the January 31 due date for furnishing the forms to individuals, no extension has been provided yet for 2017 reporting. The deadline for filing the forms with the IRS is April 2, 2018, if filing electronically. With these deadlines in mind, employers should be prepared to submit the reporting by gathering the information and coordinating service provider support needed for this filing. (See our [October 12, 2017 For Your Information.](#))

Meanwhile, the IRS recently announced plans and has begun to notify employers via [Letter 226J](#) of their potential liability for ACA employer shared responsibility payments in connection with the 2015 calendar year. Employers should be prepared to respond within 30 days of receiving this letter, and should ensure that processes are in place to make payments, if necessary. Even employers who are not expecting any assessments will need to respond to the IRS within the limited timeframe to appeal any incorrect assessments. (See our [November 10, 2017 For Your Information.](#))

PCORI Fee

Plan sponsors of self-insured group health plans will pay the Patient-Centered Outcomes Research Institute (PCORI) fee again in 2018. The fee, which helps to fund patient-centered outcomes research, applies to plan years ending after September 30, 2012, and before October 1, 2019, and is based on the average number of lives covered under the plan. The fee used to calculate the payment amount for plan years that end on or after October 1, 2017, and before October 1, 2018 (including 2017 calendar year plans), is \$2.39. (See our [October 10, 2017 For Your Information.](#)) Plan sponsors must pay the PCORI fee by July 31 of the calendar year immediately following the last day of that plan year.



Summary of Benefits and Coverage (SBC)

The ACA requires group health plans to provide a Summary of Benefits and Coverage (SBC) to participants to help them compare coverage options and understand their health benefits. Plan sponsors should ensure compliance with the updated SBC templates applicable to open enrollment periods beginning on and after April 1, 2017. (See our [February 14, 2017 For Your Information.](#))

HHS to Reconsider Prohibitions on Gender Identity, Pregnancy Termination Discrimination

A federal trial court in Texas has put a hold (i.e., stay) on provisions of the Obama-era HHS regulation that prohibits certain health programs and activities from discriminating based on gender identity and pregnancy termination while HHS reconsiders these rules. The timeframe for agency review is not clear. In the interim, employers and plans that are covered entities should work with legal counsel to discuss how HHS reconsideration may affect risks

associated with any coverage gaps for transgender health and abortion services. (See our [August 18, 2017 For Your Information.](#))

Health and Welfare Plan Nondiscrimination Testing

Certain employer-provided benefits are eligible for tax exclusions under the Internal Revenue Code. Each exclusion comes with an important condition – it generally must be for the benefit of “rank and file employees.” Thus, in order for executives and other highly paid individuals to take advantage of the exclusion, an employer must be able to demonstrate that the benefit satisfies applicable nondiscrimination tests. Although the various tests include common elements, they can differ significantly. Employers should review the various nondiscrimination tests applicable to health and welfare plans (which include provisions related to self-funded group health plans, health FSAs, dependent care assistance programs, and cafeteria plans) to ensure that their benefit plans are in compliance. Modeling nondiscrimination tests at the beginning of the plan year can provide important information for year-end compliance. (See our [November 8, 2017 FYI In-Depth.](#))

Wellness Programs

Employer-provided wellness programs continue to be the subject of attention. A federal court has concluded that the EEOC’s final ADA and GINA regulations permitting an incentive of up to 30% of the cost of self-only coverage are 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 – which the EEOC has said will take about a year.



Additionally, the DOL brought a lawsuit against a large retail employer, alleging that its wellness program violated the HIPAA nondiscrimination rules. While neither case has an immediate impact on employer wellness programs, they signal that legal action involving those programs is likely to continue. In some cases, the benefits might outweigh any legal risk, but employers should take the time to reassess their wellness program for compliance or otherwise be aware of areas of exposure. (See our [October 31, 2017 For Your Information.](#))

Additionally, the IRS has addressed an arrangement referred to as a “fixed indemnity health plan and wellness plan” that promoters claim will provide significant tax savings for employers and employees. Concluding that the tax principles necessary for the exclusion do not apply to payments received through this type of arrangement, the IRS has warned employers to steer clear. The IRS also clarified open questions about the exclusion of medical benefits paid under a fixed indemnity health plan. Employers that have implemented or are considering these kinds of arrangements should seek advice from counsel and trusted advisors. (See our [July 21, 2017 For Your Information.](#))

Mental Health Parity

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires group health plans that offer mental health and substance use disorder benefits to cover those benefits on terms that are no more restrictive than those for medical and surgical benefits. (See our [January 14, 2014 For Your Information.](#))

MHPAEA Enforcement. Earlier this year, DOL, IRS and HHS issued FAQs soliciting additional feedback on improving the content of mental health and substance use disorder (MH/SUD) disclosures – including a request for comments on a proposed model form that participants and beneficiaries could use to get information about nonquantitative treatment limits under a health plan. MHPAEA regulations set forth group health plan disclosure requirements, designed to help participants and beneficiaries evaluate MH/SUD parity. The FAQs also clarified that treatment for eating disorders is a mental health benefit. Group health plan sponsors should consider potential changes to administrative processes in order to respond to requests under the model forms as proposed, and make sure that coverage for eating disorder treatment complies with parity rules. (See our [July 5, 2017 For Your Information.](#))

Mental health parity is a bipartisan issue that appears also to have the attention of the White House. In the coming year, we may see new legislation and/or a step-up of current enforcement protocols from the DOL, which is currently auditing plans for MHPAEA compliance. Because even small changes to a group health plan can have implications under MHPAEA, it's important to do a mental health parity analysis each year.

Autism Coverage Benefits. In recent years, a wave of class action lawsuits have alleged that employer group health plans violated MHPAEA by failing to cover autism treatment benefits. While litigation is in flux, at least one federal court has concluded that Applied Behavioral Analysis (ABA) therapy to treat autism is subject to MHPAEA requirements. Employer-sponsored group health coverage for autism treatment is a complex and evolving compliance area. Plan sponsors should be attuned to potential legal risks in addition to considering the financial and clinical impact of autism-related coverage.

Relaxed Agency Rules for Disaster Victims

Recent hurricanes Harvey, Irma and Maria devastated parts of Texas, Florida, Puerto Rico and the U.S. Virgin Islands. Additionally, wildfires destroyed large swaths of structures in California. The DOL has released announcements acknowledging health plan administrative delays that participants, beneficiaries and plan administrators may face when a disaster strikes. The DOL suggested that plan fiduciaries make reasonable accommodations to prevent the loss of benefits and minimize loss of coverage for individuals affected by a hurricane or other natural disaster. It also suggested that employers may want to provide affected employees additional time for making COBRA elections and paying premiums so that they are not adversely affected.

Consider a Compliance Review

Did you know that the most common way the DOL identifies health and welfare plans for scrutiny, and possible litigation and/or referral to other agencies like the IRS, is through participant and beneficiary complaints?

A compliance review coupled with careful consideration of any risk exposure could minimize the chance of participants and beneficiaries contacting the DOL in the first place and help you address any issues that could be raised upon audit. This will ultimately save you time, money, and aggravation should the DOL come knocking.

The DOL also encourages granting additional time for filing benefit claims. (See our [November 7, 2017](#), [September 19, 2017](#), and [September 6, 2017](#), issues of *For Your Information*.)

With regard to Hurricane Maria only, the IRS has required that the time period between September 17, 2017 and March 16, 2018 (for affected employers, participants, beneficiaries, qualified beneficiaries, and claimants in Puerto Rico) and between September 16, 2017 and March 15, 2018 (for affected employers, participants, beneficiaries, qualified beneficiaries, and claimants in the US Virgin Islands) be disregarded in calculating certain special enrollment, COBRA, and benefit claims deadlines. (See our [December 11, 2017](#) *For Your Information*.)

Out-of-Pocket Maximums

The 2018 annual ACA out-of-pocket (OOP) maximums on essential health benefits for non-grandfathered group health plans are \$7,350 for self-only coverage and \$14,700 for coverage other than self-only. Plan sponsors can still allocate a plan's OOP limit among different coverage categories so long as the combined amounts don't exceed the annual OOP limit. (See our [December 20, 2016](#) *For Your Information*.)

2018 Benefit Limits

The IRS has issued the 2018 limits for qualified transportation fringe benefits, adoption assistance programs, long-term care premiums, health flexible spending arrangements, health savings accounts, and medical savings accounts. (See our [October 20, 2017](#) *FYI Alert*.) The 2018 HSA annual contribution limits and the HDHP deductible and out-of-pocket amounts for self-only and family coverage all increased over the 2017 limits. (See our [May 9, 2017](#) *For Your Information*.) Plan sponsors should review and consider whether to update their plan documents to reflect these limits.

In Closing

Planning ahead to identify tasks and set compliance goals for 2018 is an important first step for assuring smooth operations during the year. In addition to the significant items noted above, plan sponsors may want to perform an annual "checkup" (i.e., an audit/review of operational practices and fiduciary responsibilities) to address plan compliance and design considerations. Plan sponsors may conduct their own review or contract with an independent party. Regardless of who performs the review, identifying problems and initiating corrections in advance of any official governmental audit is certainly the preferred course of action.

We have published companion pieces to this *FYI In-Depth* that cover year-end planning:

[2018 Planning for ERISA Single-Employer Defined Benefit Plan Operations](#)

[2018 Planning for ERISA Single-Employer Defined Contribution Plan Operations](#)

[2018 Planning for ERISA Multiemployer Defined Benefit Plan Operations](#)

[2018 Planning for Governmental Retirement Plan Operations](#)

Calendar of Health and Welfare Benefit Plan Compliance Tasks¹

Action Item	Due Date
January	
Reporting of value of health coverage on Form W-2	January 31, 2018*
Provide ACA information reporting returns to individuals	January 31, 2018*
February	
File ACA information reporting returns with IRS (for paper filing)	February 28, 2018*
March	
DOL Form M-1 (for MEWAs)	March 1, 2018*
Disclosure of creditable/noncreditable status of prescription drug coverage to CMS	March 1, 2018
Last day for flexible spending accounts with 2½ month grace periods	March 15, 2018
April	
File ACA information reporting returns with IRS (for electronic filing)	April 2, 2018
May	
Form 990 or Form 8868 if requesting extension	May 15, 2018
July	
Summary of Material Modifications for prior year amendments	July 29, 2018
Form 720 filing and payment of PCORI fee	July 31, 2018*
Form 5500 or file Form 5558 to request an extension	July 31, 2018

¹ Assumes calendar plan and sponsor tax year. Does not account for weekends, extended due dates other than for Forms 5500 and 990, short plan years, or new plans. The “weekend rule,” which extends due dates falling on weekends to the following Monday, generally applies to filing deadlines and certain other acts under tax rules.

August	
Form 990 (if on extension) or Form 8868 if requesting additional extension	August 15, 2018
September	
Summary Annual Report (if no extension)	September 30, 2018
October	
Provide notice of creditable/noncreditable prescription drug coverage to participants	October 14, 2018*
Form 5500 filed if on extension	October 16, 2018
November	
Form 990 (if additional 3 month extension)	November 15, 2018
December	
Summary Annual Report (if on extension)	December 15, 2018
Deadline for correcting DCAP discrimination test failures	December 31, 2018

*Date does not vary regardless of plan year

Authors

Julia Zuckerman, JD

Sharon Cohen, JD

Produced by the Knowledge Resource Center of Conduent Human Resource Services

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@conduent.com.

You are welcome to distribute FYI® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.