



## Compliance Corner

May 31, 2017

### Health Care Reform

#### **CBO Issues Cost Estimate of House-Passed Version of AHCA**

On May 24, 2017, the Congressional Budget Office and Joint Committee on Taxation (collectively the CBO) released their cost estimate regarding the most recent version of the *American Health Care Act* (AHCA). As reported in the May 16, 2017, edition of *Compliance Corner*, the U.S. House of Representatives narrowly passed the AHCA, which represents the House Republicans' attempt to repeal and replace the ACA.

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#### **CMS Releases Checklist for Section 1332 Innovation Waivers**

On May 16, 2017, CMS released a new checklist to help states pursue an innovation waiver under Section 1332 of the ACA. Specifically, this new checklist is intended to help states complete the required elements of the application that could allow them to set up high-risk pools for sicker residents and establish state-operated reinsurance programs.

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#### **CMS Proposes More Flexibility for Small Businesses Enrolling Through the SHOP**

### Announcements

#### **NFP Benefits Compliance Podcast Episode 9**

Join Suzanne and Chase as they discuss the origin of the term "essential health benefits" (EHBs) and how the AHCA may impact EHBs for employer-sponsored group health plans. The two also dive into the background of the Congressional Budget Office (CBO) and its reports, walk through the latest CBO report on the AHCA, and discuss how the Senate's deliberation may be impacted by the CBO report in its task of repealing and replacing the ACA.

[Listen Here »](#)

#### **May Webinar Series Recordings Available**

NFP Benefits Compliance has just completed the May offering of our quarterly series of compliance webinars. An archive of the webinars is now available in the [NFP Client Learning Portal](#).

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On May 15, 2017, CMS announced plans to discontinue use of Healthcare.gov to enroll small employers and employees into the federally facilitated SHOP (Small Business Health Options Program) exchange effective Jan. 1, 2018. This decision comes as a result of lower than expected broker/agent participation and enrollment numbers. According to CMS, there were only 270,000 employees enrolled nationwide as of January 2017 (including federal and state-based SHOPs), which considerably falls short of the four million estimated to be enrolled by 2017.

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## Federal Health Updates

### District Court Rules Against Company for Failure to Provide Life Insurance Conversion Information

On April 13, 2017, the U.S. District Court for the Western District of Pennsylvania (the Court) ruled in favor of the plaintiff in *Erwood v. WellStar Health Sys, Inc.*, 2017 WL 1383922 (W.D. Pa 2017). In this case, the widow of a Wellstar employee (Erwood) sued WellStar because they had failed to provide a notice of Erwood's right to convert his life insurance upon termination. As background, Erwood discovered that he had terminal brain cancer in 2012. Wellstar offered 36 weeks of FMLA coverage during which Erwood could keep his benefits. During that 36 weeks, Erwood and his wife communicated with Wellstar HR employees multiple times, and even had a meeting to discuss how they could keep all their benefits in place should Erwood be terminated.

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### IRS Office of Chief Counsel Releases Guidance Related to Wellness Programs and Fixed Indemnity Coverage

On May 12, 2017, the IRS Office of Chief Counsel released Memorandum Number 201719025, which was written April 24, 2017. The memo provides guidance related to certain wellness programs and fixed indemnity coverage.

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## State Updates

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## FAQ

When is an EAP subject to COBRA?

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## Reference

Commonly Used Acronyms

[Glossary »](#)

## **HHS Settlement for \$2.4 Million Highlights HIPAA Compliance Requirements**

On May 10, 2017, HHS issued a press release announcing a settlement with Memorial Hermann Health System (MHHS) for \$2.4 million based on the impermissible disclosure of a patient's protected health information (PHI). The announcement is significant because MHHS is a not-for-profit health system located in Texas, comprised of 16 hospitals and specialty services.

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## **Retirement Updates**

### **DOL Provides Fiduciary Rule Guidance Ahead of Effective Date**

The DOL's Conflict of Interest/Fiduciary Rule (the Rule) is set to become effective on June 9, 2017. The Best Interest Contract (BIC) Exemption and other related prohibited transaction exemptions will also become effective that day. However, as discussed in previous editions of Compliance Corner, the DOL has established a temporary enforcement policy due to President Trump's request for additional analysis of the rule and its impact on American investors. To provide additional information on the implementation of the Rule, the DOL recently provided a Field Assistance Bulletin (FAB) and a set of FAQs.

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### **IRS Releases Issue Snapshot Regarding Identification of HCEs in Short or Initial Plan Years**

On April 21, 2017, the IRS posted an Issue Snapshot containing a summary of the rules for identifying highly compensated employees (HCEs) for retirement plan purposes in a plan's initial plan year or in the case of a short plan year. The summary confirms that there are two tests for determining if an employee is a HCE: an ownership test and a compensation test. If the employee satisfies either of the two tests, then they will be an HCE. The summary contains

eight examples that apply the two tests under various scenarios.

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6500 Rock Spring Drive, Suite 410, Bethesda, MD 20817



5/17 | 245044 | 17-CB-BP-COMP-0517

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