

PREPARED FOR WHATEVER COMES NEXT

Employee Benefits and Human Resources Law



LEGAL
COUNSEL
BENEFITING
YOU

HAYNES
BENEFITS^{PC}

2017 Year in Review Part I: Health and Welfare Plans

The legal and regulatory landscape in 2017 held the promise of both change and uncertainty as the Trump administration repeatedly vowed a full repeal of the Affordable Care Act ("ACA"). Despite the administration's inability to fulfill this promise, 2017 included several developments and changes in the health and welfare benefits arena. Here's a quick recap of some of the highlights:

- On December 31, 2016, a Texas federal trial court issued a nationwide preliminary injunction blocking enforcement of the Section 1557 regulations on **gender identity and termination of pregnancy**;
- Congress introduced but ultimately failed to pass legislation to **replace the ACA** (the American Health Care Act and the Graham-Cassidy health care bill);
- IRS issued Notice 2017-20 extending the deadline for providing **qualified small employer health reimbursement arrangement** ("QSEHRA") notices to eligible employees;
- OCR announced several significant HIPAA settlements and monetary penalties related to various **HIPAA breach notifications**;
- IRS released a Chief Counsel Advice Memorandum rejecting favorable tax treatment of **wellness plan cash payments** under self-funded health plans;
- Supreme Court decision in *Health Care Network v. Stapleton* ruled that plans established by **church-affiliated organizations** are exempt from ERISA under the church plan exemption;
- DOL, HHS, and the IRS issued FAQ 38 providing guidance on **mental health parity** with respect to treatment of eating disorders and released a draft model form for mental health parity disclosure requests;
- OCR released a **quick-response cyber attack checklist** for HIPAA covered entities and business associates;

- IRS released final regulations on availability of health insurance **premium tax credits** for married victims of domestic violence and self-employed individuals;
- IRS issued information letters reminding employers the ACA's employer **shared responsibility provisions** are still law and no provision within the ACA allows for waivers of the employer mandate;
- U.S. District Court for the District of Columbia ordered the EEOC to reconsider **definition of "voluntary"** in wellness regulations;
- IRS and DOL issued relief and guidance for employee benefit plans, employers, and individuals impacted by **Hurricane Harvey and Hurricane Irma**;
- DOL, HHS and IRS released interim final regulations expanding the availability of the **religious exemption** from the ACA's contraceptive coverage mandate and added a moral objection exemption;
- HHS announced that the Trump administration discontinued **cost-sharing reduction reimbursements** to insurers;
- Executive Order "Promoting Healthcare Choice and Competition Across the United States" regarding **association health plans** and offering insurance across state lines was issued by President Trump;
- IRS issued Notice 2017-67 which provided guidance regarding **QSEHRAs**;
- IRS issued Letter 226J and Forms 14764 and 14765 which are being used to assess employer shared responsibility payments for Section 4980H penalties and began sending out **Letter 226J** to employers for the 2015 calendar year;
- DOL delayed the applicability of final regulations amending the claims procedure requirements for plans providing **disability benefits** to April 1, 2018; and
- President Trump signed into law the **Tax Cut and Jobs Act**, which among other things, reduces the individual mandate penalty to zero in 2019, eliminates the business deduction for qualified transportation benefits (unless necessary for the safety of the employee), and adds a temporary employer credit for qualifying paid family and medical leave.

While 2017 brought changes, it bears repeating that the ACA and the 4980H pay or play rules remain in place. Employers must continue their compliance efforts with existing ACA rules and regulations. We will continue to stay abreast of the latest legal and regulatory changes impacting health and welfare benefit plans and will keep you informed on how and when these changes will impact your organization.

The content herein is provided for educational and informational purposes only and does not contain legal advice. Please contact our office if you have any questions about the health and welfare benefits compliance developments outlined above.

Stay tuned for Parts II and III of this series, which will provide a review of 2017 in the human resources and retirement and pension arenas.

The content herein is provided for educational and informational purposes only and does not contain legal advice.



A horizontal banner with a green background featuring a molecular structure graphic on the left. The graphic consists of several interconnected hexagonal rings, with one ring highlighted in red and another in yellow. To the right of the graphic are social media icons for LinkedIn and Twitter, followed by the text "@haynesbenefits". Below the graphic and icons is the contact information: "1650 NE Grand, Suite 201 • Lee's Summit, MO 64086", "816.875.1919 F: 816.875.1920 • www.haynesbenefits.com". On the right side of the banner, the text "LEGAL COUNSEL BENEFITING YOU" is stacked vertically, followed by the large, bold text "HAYNES BENEFITS PC".

1650 NE Grand, Suite 201 • Lee's Summit, MO 64086
816.875.1919 F: 816.875.1920 • www.haynesbenefits.com

LEGAL
COUNSEL
BENEFITING
YOU

**HAYNES
BENEFITS** PC