



ACA, HIPAA AND FEDERAL HEALTH BENEFIT MANDATES:

PRACTICAL

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The Affordable Care Act (ACA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other federal health benefit mandates (e.g., the Mental Health Parity Act, the Newborns and Mothers Health Protection Act, and the Women's Health and Cancer Rights Act) dramatically impact the administration of self-insured health plans. This monthly column provides practical answers to administration questions and current guidance on ACA, HIPAA and other federal benefit mandates.

Attorneys John R. Hickman, Ashley Gillihan, and Carolyn Smith provide the answers in this column. Mr. Hickman is partner in charge of the Health Benefits Practice with Alston & Bird, LLP, an Atlanta, New York, Los Angeles, Charlotte, Dallas and Washington, D.C. law firm. Ashley Gillihan and Carolyn Smith are senior members of the Health Benefits Practice. Answers are provided as *general guidance* on the subjects covered in the question and are *not provided as legal advice* to the questioner's situation. Any legal issues should be reviewed by your legal counsel to apply the law to the particular facts of your situation. Readers are encouraged to send questions by E-MAIL to Mr. Hickman at john.hickman@alston.com.

ICYMI 2019 ENDS WITH SIGNIFICANT HEALTH BENEFIT DEVELOPMENTS

By far the biggest news in the health benefits world at the end of 2019 is the repeal of the so-called “Cadillac plan” tax that was enacted as part of the Affordable Care Act (ACA). The Cadillac tax repeal and other health related provisions were included in the end-of-year spending package for fiscal year 2020, enacted on December 20, 2019 (the “FY 2020 Spending Bill”). This article provides a high-level overview of these and other significant 2019 year-end developments.

END-OF-YEAR LEGISLATION

The FY 2020 Spending Bill had some important changes impacting health benefits:

- **Repeal of the so-called Cadillac plan tax**
 - This was a 40 percent excise tax on the cost of certain employer sponsored health coverage in excess of a specified dollar threshold. Health benefits that would have been affected included major medical coverage, health FSA and HRA coverage and pre-tax funded HSAs. The tax was originally scheduled to go into effect in 2018 but was previously delayed until 2022. Even with the delayed effective date some employers had begun to modify their major medical plans to avoid triggering the tax, such as by increasing deductibles and co-pays. The push for repeal grew as many policy makers increasingly viewed the tax as impacting middle class Americans. Repeal is welcomed by employers and employees alike.
- **Repeal of the health insurance tax (HIT) Beginning in 2021**

The HIT is imposed on health insurers and certain self-funded MEWAs based on their relative market share of premiums for major medical plans and certain other health plans. Although the tax is imposed on the health insurance company, it is generally passed through to consumers as part of the premium. The tax went into effect in 2010, and under prior legislation was suspended in 2017, went back into effect in 2018, and was again suspended in 2019. The tax will apply for 2020 and is finally repealed starting in 2021.

In less welcome news, the FY 2020 Spending Bill also extended the Patient-Centered Outcomes Research Institute (PCORI) fee for 10 years.

- This fee is imposed on both self-funded and fully insured health plans as well as HRAs. The fee for a year is equal to the average number of lives covered under the plan multiplied by a dollar amount. The dollar amount was originally set at \$1.00 and is indexed for inflation. After the last inflation update, the dollar amount was \$2.45. The fee is due once each year, on July 31. This fee was originally effective for plan years ending on or after October 1, 2012, and before October 1, 2019. The FY 2020 Spending Bill moved the end date for the fee, so that it now applies to plan years ending before October 1, 2029. The dollar amount is not yet known but would be slightly higher than \$2.45 due to inflation adjustments. The IRS PCORI Fee website has further information, but as of this writing has not yet been updated to reflect the extension of the fee.

In addition to health provisions, the 2020 Spending Bill also includes the SECURE Act, which makes a variety of changes to retirement plan rules.

APPELLATE COURT RULING IN LITIGATION CHALLENGING THE CONSTITUTIONALITY OF THE ACA

In its December 2018 ruling, a federal district court concluded that, since Congress reduced the ACA individual mandate penalty to \$0 in 2017, the mandate is unconstitutional and, therefore, the entire ACA is invalid.

The decision was appealed and, in a ruling issued in December 2019, the federal court of appeals agreed that the individual mandate is now unconstitutional but did not agree with the cursory opinion that the entire ACA must necessarily fall.

The appellate court sent the case back to the district court for a thorough analysis of which, if any, parts of the ACA are now unconstitutional. In the meantime, the law continues to remain in effect. Ultimately, this issue is expected to reach the Supreme Court, but a final decision will take some time.

Note: The effective elimination of the ACA individual mandate has prompted some states to pass individual mandate laws that also require reporting by

coverage providers, including employers who sponsor group health plans.

To date, the following states have passed such laws: New Jersey, Washington D.C., Vermont, Rhode Island, and California. New Jersey and D.C.'s laws are effective in 2019, which means reporting will be due in 2020. The others become effective in 2020 with reporting to commence in 2021 (for 2020). Insurers and plan sponsors that cover residents in these states should ensure compliance with these requirements.

IRS DELAYS SOME ACA REPORTING

The IRS has issued some IRS Form 1095 reporting relief for certain ACA reporting requirements. While Form 1095 generally applies to health insurers, it may also apply to employers with self-funded plans. Notice 2019-63:

- Delays the due date for furnishing 2019 Form 1095 to *covered individual recipients* until March 2, 2020.
- Provides that no penalties will be assessed for failing to furnish a Form 1095-B or a Form 1095-C to recipients if prominent notice is placed on website that a copy may be requested and a copy of the notice is provided within 30 days of the request. NOTE: These provisions do NOT extend to forms required to be filed with the IRS.
- Extends good faith relief to all ACA 2019 forms.

LOOKING AHEAD

A lot happened in 2019, including dramatic tax changes in the end-of-year legislation. 2020 looks to be a busy year as well. The agencies may raise the limit on permissible health FSA carryovers and possible guidance on whether certain expenses, such as direct primary care arrangements and health sharing ministries, qualify as a medical expense. We might see some Congressional developments as well, such as surprise billing legislation which was under discussion for possible inclusion in the spending bill but was not quite ready. ■



Affordable Care Act

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