

Legal Update

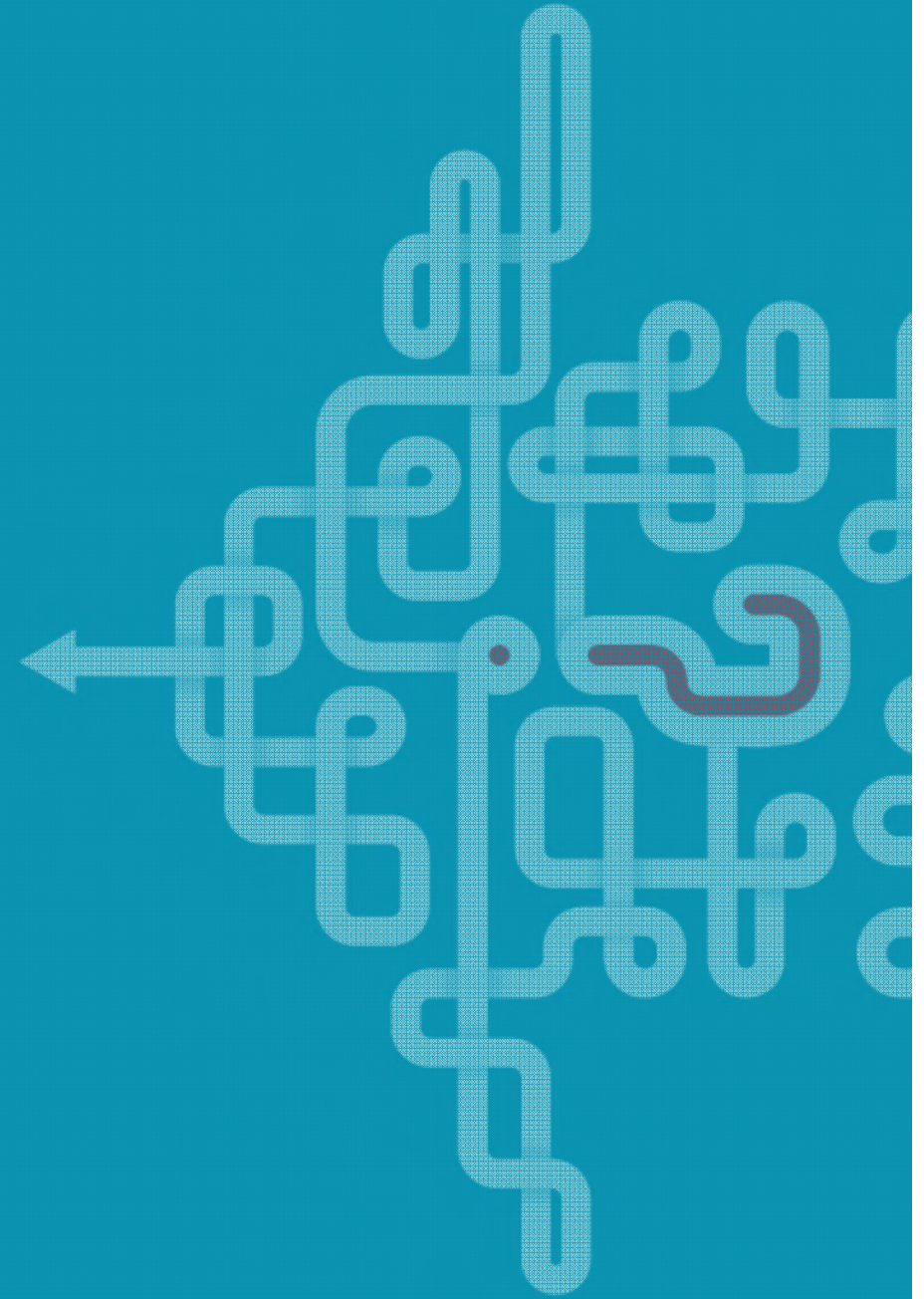
Health & Welfare Benefits

You have questions. We have answers. ←

Norbert F. Kugele
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Affordable Care Act Developments



The Future of the ACA?

- What does “repeal and replace” mean?
 - ◆ Complete repeal with entirely different program?
 - ◆ Selective repeal and replacement?
 - ◆ Fixing things that are broken?
- Expect process to take time!



ACA Employer Responsibility Reporting

- Updated Forms
 - ◆ 1095-C
 - ◆ 1094-C
 - ◆ Updated Instructions



ACA Employer Responsibility Reporting

- Offer of coverage codes (line 14):
 - ◆ 1I: no longer used
 - ◆ 1J: conditional offer to spouse (but not dependents)
 - ◆ 1K: conditional offer to spouse, offer to dependents
- Clarifications:
 - ◆ COBRA
 - ◆ No Authoritative Transmittal for ALE group.



ACA Employer Responsibility Reporting

- **Deadlines:**
 - ◆ Deliver 1095-C to employees by 1/31/17
 - ◆ File 1094-C (with 1095-Cs) with IRS by:
 - > 2/28/17 if by paper
 - > 3/31/17 if electronically



ACA Employer Responsibility Affordability

- Flex Credits

- ◆ is it a “health flex contribution”?

- › Can’t use credits for taxable benefits (including cash outs).

- › Can be used to pay for medical coverage

- › Cannot be used for non-health care coverage

- ◆ See Notice 2015-87 Q&A 8



ACA Employer Responsibility Affordability

- Opt-out payments
 - ◆ Unconditional opt outs count toward cost of coverage.
 - ◆ Conditional opt-out payments won't count.
 - › Employee attestation requirement
 - ◆ Opt out arrangements in place before 12/16/15 are grandfathered until regulations finalized.



ACA Employer Responsibility Affordability

- HRAs
 - ◆ Funds that employee can apply toward employer's health plan
 - › Must be documented.
 - ◆ HRA must be integrated with medical plan



ACA Penalty Adjustments

- ACA penalties adjusted annually for inflation:
 - ◆ 2015:
 - › Failure to offer coverage: $\$2,080 \times \# \text{ FT} - 80$
 - › Unaffordable coverage: $\$3,120 \times \# \text{ FT subsidized}$
 - ◆ 2016:
 - › Failure to offer coverage: $\$2,160 \times \# \text{ FT} - 30$
 - › Unaffordable coverage: $\$3,240 \times \# \text{ FT subsidized}$
 - ◆ 2017: ??????
- Non-retaliation rules finalized.



TIN problems

- Missing TINs for 1095-C Part III
 - ◆ Initial request at time of application
 - ◆ First annual solicitation: 75 days later
 - ◆ Second annual solicitation: by end of following year
- Name/TIN mismatches
 - ◆ Error messages do not require another solicitation.
 - ◆ But notice from IRS of incorrect TIN requires solicitations



ACA Nondiscrimination Regulations

- ACA Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities.
 - ◆ Apply to group health plan designs for plan years beginning on or after January 1, 2017



Summary of Benefits and Coverage

- New SBC template.
 - ◆ New coverage example
 - ◆ Updated “why this matters” language
 - ◆ Updated coverage example calculators
- Must be used for open enrollments beginning on or after April 1, 2017.



Other Developments



2017 Limits

- Health FSA Contributions: \$2,600
- Transitional Reinsurance Fees: \$0
 - ◆ But will pay \$27 per covered life for 2016.
- ACA out-of-pocket maximums:
 - ◆ Self-only: \$7,150
 - ◆ Other than self-only: \$14,300



2017 Limits

- High Deductible Health Plans:
 - ◆ Out-of-pocket max: \$6,550/\$13,100
 - ◆ Deductibles: \$1,300/\$2,600
 - ◆ Max. HSA contributions: \$3,400*/\$6,750
 - ◆ “Catch-up” contribution limit: \$1,000

*new limit for 2017



EEOC Wellness Regulations

- Reasonably designed
- 30% limitations on incentives.
 - ◆ Must aggregate incentives
 - ◆ Special rules for smoking programs
 - ◆ Incentives allowed for spouses
- Must be voluntary
- Confidentiality obligation
 - ◆ Notice required by start of new plan year



Mental Health Parity Guidance

DOL's areas of concern:

- Pre-authorization and pre-service notification requirements.
- Fail-first, probability of improvement and patient non-compliance provisions
- Written treatment plan requirements.
- Residential, geographical and licensure requirements



Proposed Updates to 5500 Forms

- Changes include:
 - ◆ Eliminating small employer exception
 - ◆ New Schedule J for health plans
 - ◆ Schedule C exclusion for large, unfunded/insured plans eliminated?
- Target date is 2019 plan year filings



HIPAA

- Agreements with business associates:
 - ◆ Address ransomware
 - ◆ Continuing right to access PHI
- Guidance on use of cloud services



HIPAA Enforcement

- Advocate Health Care: \$5.5 million
 - ◆ Multiple violations over years
- Feinstein Institute: \$3.9 million
 - ◆ Laptop stolen from employee's car
- North Memorial Health Care: \$1.55 million
 - ◆ Laptop stolen from car of business associate's employee; no BAA in place at time
- St. Joseph Health: \$2.14 million
 - ◆ Failed to properly configure server



HIPAA Enforcement

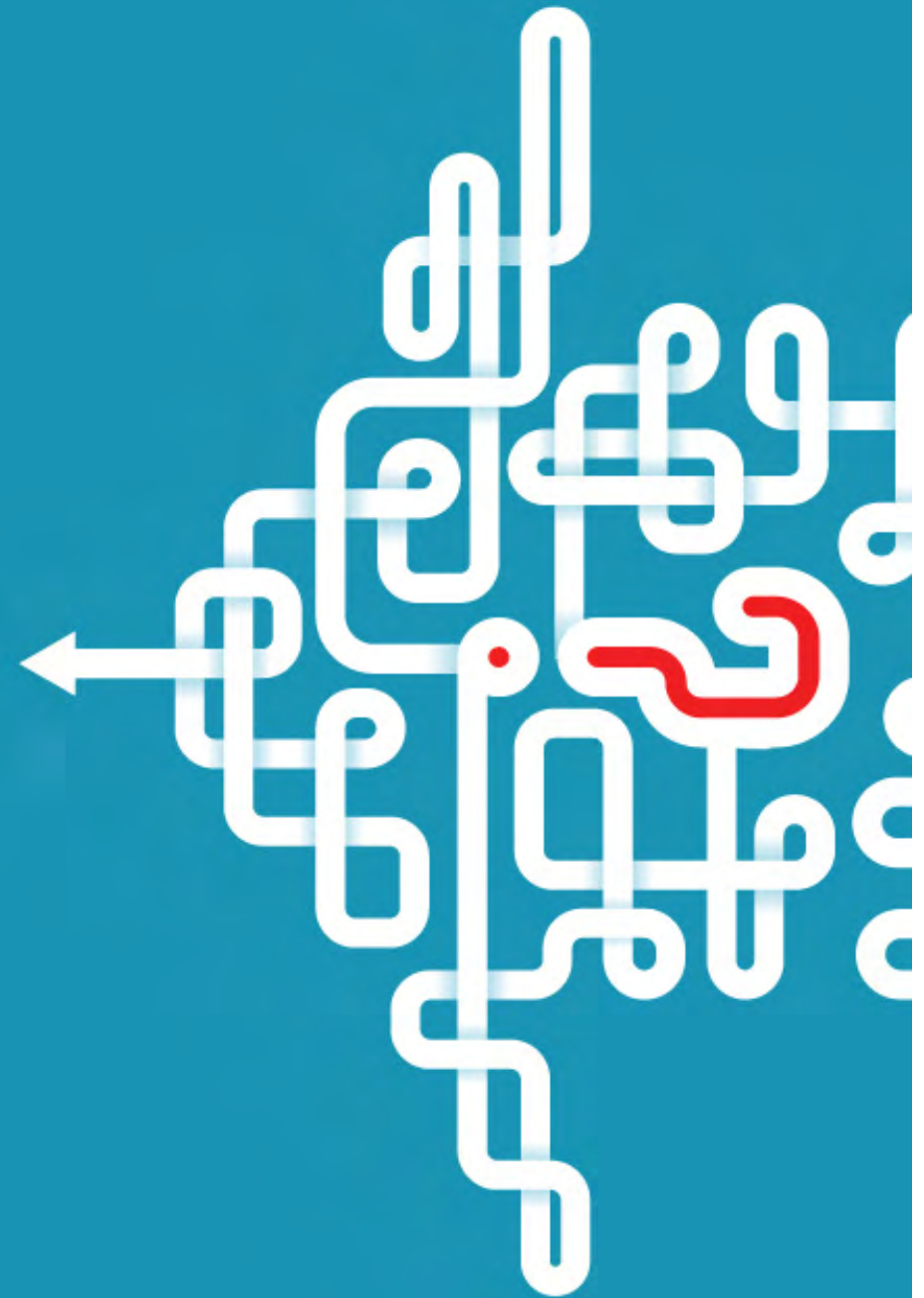
- **Recurring compliance issues**
 - ◆ Missing/outdated BAAs
 - ◆ Lack of/incomplete risk analysis
 - ◆ Failure to manage identified risks
 - ◆ Lack of transmission security
 - ◆ Lack of appropriate auditing
 - ◆ No patching of software
 - ◆ Failing to consider insider threats
 - ◆ Improper disposal
 - ◆ Insufficient data backup



Thank you!

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