

HEALTH & WELFARE PLAN LUNCH GROUP

December 1, 2016

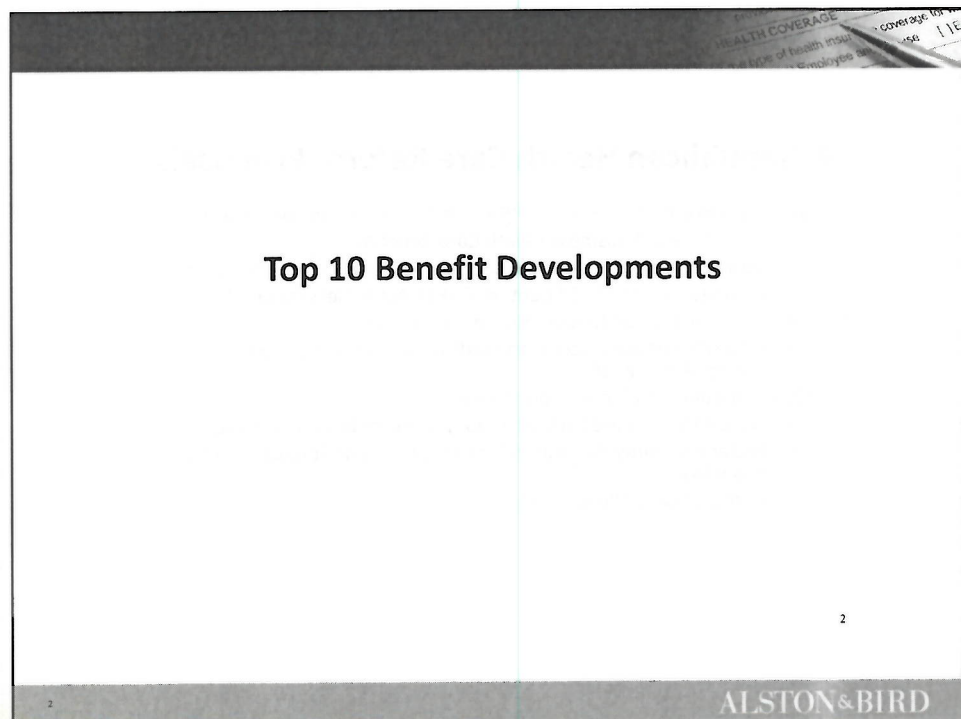
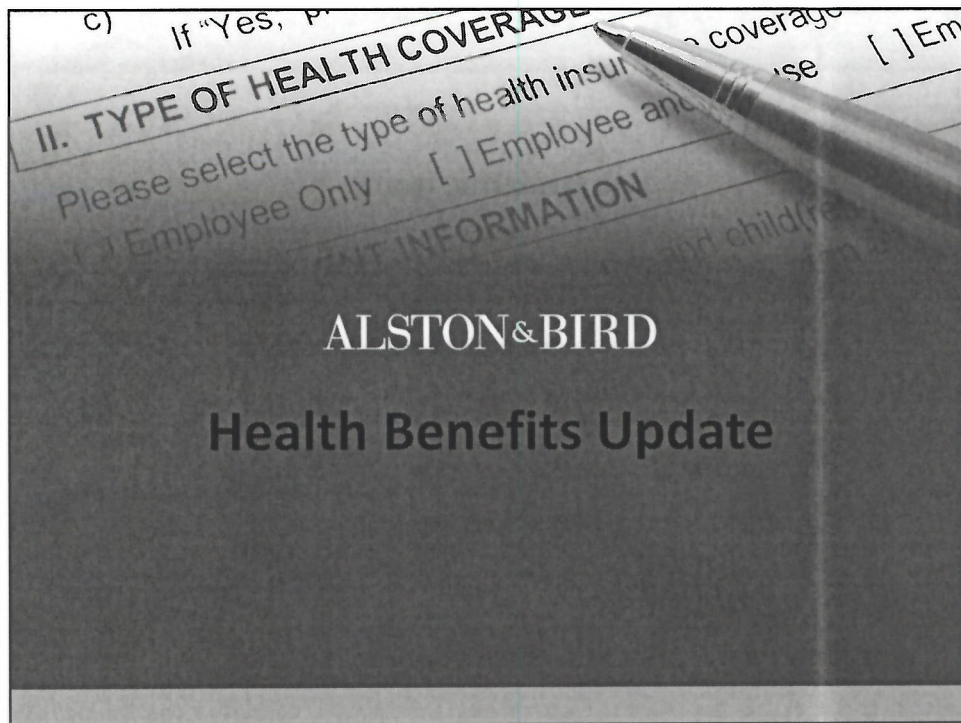
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10. Grab Bag Items

- Repealed
 - Automatic enrollment for larger employers
 - Increase in small group size from 50 to 100
- New SBC Model Effective for enrollments on/after 4/1/17
 - Minor edits and changes
 - Revising required disclosures about continuation coverage and grievance and appeal rights
 - Adding disclosures about MEC and MV
 - Adding coverage example ("foot fracture")
 - Underlining glossary terms used in SBC (may use hyperlinks in electronic SBCs)
- EHB Bench mark plan changes
 - Self funded plans may borrow from any benchmark for an exclusion
 - Excluded item could be capped as a non-EHB
 - Must find all desired exclusions in a single state benchmark plan
 - State plan "caps" not allowable
 - Updated list of EHBs (using 2014 benchmark plans) for PY 2017

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9. Republican Health Care Reform Proposals

- Small Group Employer Funded HRAs (passed House on voice vote)
 - HR 5447 Small Business Health Care Relief Act
 - No salary reduction funding, capped, no double dip with subsidy
 - Included as part of 21st Century CURES Act (unless stripped out)
- Repeal OTC limitation (passed House with 10Ds)
 - HR 1270 Restoring Access to Medication and Improving Health Savings Act of 2016
- House Republican Blueprint provisions
 - Cap on Health Care Exclusion (but HSA contributions not capped)
 - Replace tax subsidies with refundable tax credit (excess deposited into HSAs)
 - Repeal EEOC wellness rules

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8. New Preventive Care Mandates

- FAQ guidance addresses several specific issues FAQs XXVI, XXIX, XXXI, XXXIV
 - Sex specific preventive care
 - Well woman preventive care for dependents
 - Religious accommodations
 - BRCA-related services
 - FDA-approved contraceptives (must cover all 18 categories, can use medical management within categories)
 - Colonoscopies, related consultation, and prescribed preparation
 - Lactation counseling and equipment
 - Weight management services

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7. At Last, End of First Cycle 4980H Filings

- Rejection and Correction Notices
 - Duty to update 1095-C for errors (e.g., clerical)
 - IRS Pub 1586 seems to indicate solicitation required, but no duty to correct already filed returns
 - IRS (Via June 14 AIR webinar) indicates must correct if ultimately find errors or subsequently get correct SSNs
- IRS Notice 2016-70
 - Extends deadline for employee statements 30 days until March 2nd, retains deadline for IRS filings (March 31st for electronic)
 - Good faith penalty relief extended for 2016 tax year
 - For incorrect or incomplete returns (but n/a unfiled returns)
 - According to IRS AIRs session, must correct to be in good faith.
 - Need records to substantiate compliance, such as offers of coverage made to FT employees and dependents
- Be prepared to respond to exchange notices
 - Best practice is to appeal incorrect notices for FT employees

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6. MHPA and HIPAA Compliance and Phase II Audits

- MHPA Guidance and Agency Investigations
 - See A&B advisory of September 27th
 - ACA FAQs XXXIV
- HIPAA Phase II Audits
 - Questionnaire
 - HIPAA Desk Audit request (10 day response time) (200-250 total to be selected)
 - 167 auditees selected for first round
 - Auditees checked on 7 areas in privacy, security, and breach rules
 - Required to submit list of BAs
 - Check 450 page OCR audit protocol document
 - Onsite HIPAA Audits
 - Business Associate Desk Audits Start this week
 - Onsite audit pool not restricted to failed desk audits
 - See A&B advisories of August 23rd and April 8th

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5. ACA 1557 Nondiscrimination Requirements

- ACA 1557 imposes requirement on insured plans and ASO plans sponsored by employers receiving federal funding to, among other things, to cover transgender treatment and surgery.
 - ASO plan may not be subject to rule if no federal funding (change to proposed regulation) but EEOC enforcement may apply under Title VII
 - Medicare RDS funding may trigger compliance
 - Language and accessibility requirements apply sooner
- OFCCP requirement applies starting August 15th to federal contractors
- See A&B advisory of October 18

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4. Wellness Program Guidance

- New ADA Guidance
 - Impacts all wellness programs, not just standard/health based programs
 - 30% limitation whenever there is a health related inquiry
- New GINA guidance
 - No inquiries of dependents
 - Spousal inquiry allowed (capped at 30% of single rate)
- IRS evaluates a double dip wellness arrangement
 - Many market names, but approach (and outcome) still the same
- See October 10th A&B Advisory

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3. Transit and Opt-Out Developments

- Transit passes no longer reimbursable if a debit card voucher readily available
 - IRS Notice 2014-32 transition period expired 1/1/16
- Notice 2015-87 and IRS Proposed Reg Guidance related to Opt outs and Flex Credits
 - Cashable credits do not help 4980H “affordability” (impact on exchange plans)
 - Opt-out credits count against affordability
 - Conditional credits may be ok if “eligible opt-out” arrangement – employee declines employer coverage AND family unit is eligible and reasonably expected to enroll in other coverage

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2. New Fiduciary Advice Regulation

- Department of Labor ("DOL") has issued a final regulation that defines when a person or entity is a fiduciary under ERISA and the Tax Code as a result of providing "investment advice."
- This new rule applies to both employer-sponsored plans and Individual Retirement Accounts ("IRAs"). For this purpose IRA includes HSAs.
- Receipt of compensation by investment advisor as a result of investment recommendation is a prohibited transaction
- The DOL also issued a new prohibited transaction exemption and revised previous exemptions that permit the receipt of compensation that varies with different investment choices. Other statutory exemptions may apply.
- See A&B Advisories of October 26th

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1. Cadillac Tax Delayed Until 2020

- First Nail in the Coffin in 2015:
 - Appropriations Act of 2016 (Title I, Div. P)
 - Sec 101 Delayed application until 2020
 - Sec 102 made the tax deductible
 - Sec 103 directs the Comptroller General of the United States, in consultation with the National Association of Insurance Commissioners (NAIC) to report to the Congress on a more suitable manner of making the adjustments based on age and gender characteristics.
 - NBG on Health predicted 50% of Employers would have been affected in 2018
 - Likely to be Repealed as Part of ObamaCare repeal
 - How will revenue hole be filled?

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The Road Ahead

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Congressional Calendar for Remainder of 2016

...subject to change

December

				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

House days left in session:

10

Senate days left in session:

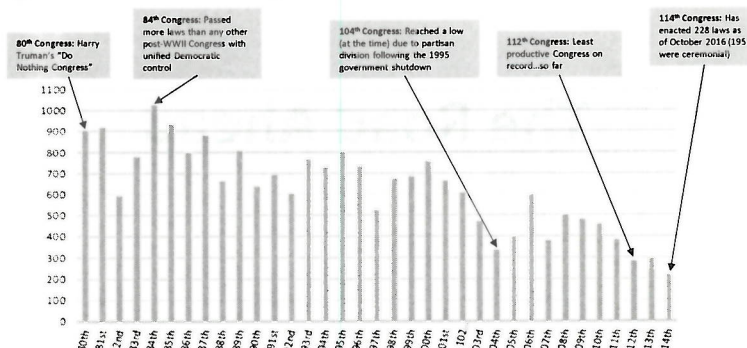
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■ Senate in session ■ Both chambers in session

Source: National Journal Research, 2016

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Congressional Activity Has Declined...



Source: Library of Congress "Resume of Congressional Activity," US Senate, 2013. GovTrack.us, "Statistics and Historical Comparison"

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Health Care Issues in the Lame Duck Congress

- **Appropriations**
 - Congress passed a short-term continuing resolution (CR) through Dec. 9
 - Of 12 annual appropriations bills, the Senate has passed 3 and the House has passed 5
 - No appropriations bills have been completed
 - Congress has little time left to complete appropriations work for FY 2017
- **Mental Health Reform**
 - The Mental Health Reform Act of 2015 has broad bipartisan support, provisions included in the CURES Act. At this point fate is uncertain.

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Health Care Issues in the Lame Duck Congress (cont'd)

- **Prescription Drug Prices**
 - Prescription drug pricing is hot politically, but substantial action most likely slides to 2017
- **Affordable Care Act Insurance Issues**
 - Decreasing participation by insurers in Exchanges, rising premiums have raised concerns
 - Most likely outcome could be a hearing or two during the lame duck but no real action

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Key Issues for 2017

- **Repeal and Replace Affordable Care Act**
 - Overhaul promised by incoming President-Elect
 - But interest in keeping pre-existing condition protections and 26 and under policy
 - Senate Majority Leader McConnell predicts swift action
 - "I would be shocked if we didn't move forward and keep our commitment to the American people"
 - Executive Orders possible
 - Likely scenario: House passes full repeal bill with broad instructions and direction about replacement policies; Senate takes up with reconciliation protections later in the year.

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Repeal Using Reconciliation

- H.R. 3762, vetoed by President Obama in 2016 is a possible model.
 - Repealed the individual and employer mandates, terminated most ACA taxes and fees, and repealed the Medicaid expansion, among other things.
 - After the House first approved H.R. 3762, the Senate parliamentarian ruled that the bill's provisions to repeal the individual and employer mandates were extraneous (and so could not be included under the Byrd rule), so the Senate version kept the mandates but eliminated the penalties for noncompliance.
 - Kept many other ACA provisions, including the major market reforms.

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ACA Replace Concepts

- Market-oriented approach, with emphasis on consumer driven model
- Specific proposals include-
 - Trump plan <https://www.donaldjtrump.com/positions/healthcare-reform>
 - House Republican blue print on health care reform
<http://abetterway.speaker.gov/assets/pdf/ABetterWay-HealthCare-PolicyPaper.pdf>
 - The bi-cameral CARE Act, co-sponsored by House Energy and Commerce Committee Chrmn. Fred Upton (R-MI) (term limited in 2017), Senate Finance Committee Chrmn. Orrin Hatch (R-UT), and Sen. Richard Burr (R-NC),
<http://www.finance.senate.gov/chairmans-news/burr-hatch-upton-unveil-obamacare-replacement-plan>

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ACA Replace Concepts

- Expand Health Savings Accounts (HSAs)
- Foster defined contribution approach to employer health plans
- Allow small employers to form association health plans
- Provide refundable tax credits for the purchase of health insurance
 - Credit amount would be a specified dollar limit; if price of insurance is less than the credit, the excess could go into an HSA
 - A deduction for the cost of health insurance is also possible
- Repeal the Cadillac plan tax, and instead -
 - Impose a cap on the amount of health coverage employees can exclude from income
 - Exception for HSA contributions

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ACA Replace Concepts

- Significantly reduce federal regulation of health insurance. Some federal level requirements may apply, such as –
 - Required coverage of dependent children until age 26
 - Prohibition on exclusions for pre-existing conditions
 - Prohibition on rescissions
 - Prohibition on lifetime limits on benefits (annual limits may be permitted)
 - Some limitation on age-rating, such as a 5:1 ratio (ACA is 3:1). States could impose a different limit.
- Persons with continuous health coverage could have protection from individual underwriting due to health status
- Allow health insurance to be sold across state lines
- Foster State high risk pools for individuals who find themselves priced out of coverage
- Transition Issues

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Congressional Review Act

- Allows Congress to “disapprove” final regulations issued by prior Administration published **60 legislative days** before adjournment.
- Requires majority vote, filibuster-proof, and does not need to go through normal committee process; President’s role is signing the “resolution of disapproval.”
 - Invalidates entire rule, not a single or select provisions of it.
- The Congressional Research Service predicted earlier this year that any regulation issued after **May 16, 2016** could be subject to resolutions of disapproval in 2017.

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- Until then

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Issues Affecting Today's Landscape

- Compliance/administrative issues—57% of employers surveyed by IFEBP said administration issues were the biggest ACA challenges
 - Employer shared responsibility—Is the excise tax really an enemy?
 - ACA Reporting—huh? What? But I thought that?
 - Federal agency audits-shades of Orwell's 1984?
 - OCR audits/HIPAA privacy/security
 - DOL health plan compliance audits
 - Constant stream of regulations/guidance
- External Costs
 - PCORI
 - Transitional Reinsurance (expires in 2017)
- Litigation
 - Increasing trends/threat of litigation

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New Plan Designs Presented to Employers

- Non-network plans
- Individual market premium payment/reimbursement
- Opt out arrangements for high risk individuals
- “Double dip” wellness arrangements
- Private (group) exchanges

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HEALTH COVERAGE

Question & Answer



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2016 Health & Welfare Compliance Calendar and Highlights

Issue	Brief Summary	Due Date
ACA Section 1557 See A&B advisory of October 18	- Any “health program or activity” that receives HHS “financial assistance”. Generally, (1) an employer’s <i>plan</i> that receives federal funds (e.g., RDS, EGWP); (2) insurers that receive HHS funds; (3) TPAs that receive HHS funds (e.g., insurers who are TPAs); and (4) <i>employers</i> that provide health services and receive funds from HHS (e.g., health care providers, like hospitals). - Prohibits discrimination based on gender (e.g., categorical exclusion of services related to gender transition). - Adds accessibility requirements for those with limited English proficiency and communications with individuals with disabilities - Requires grievance procedure - Posting notice of consumer civil rights. - Post taglines in top 15 non-English languages spoken in the state in significant publications, like claim denial letters, SBCs, and COBRA notices.	October 16, 2016 – posting required notice and including taglines (e.g., in open enrollment materials). January 1, 2017 – health plan designs must be in compliance
OFCCP gender identity rules See A&B advisory of October 18	Most federal contractors must ensure their plans do not discriminate based on gender, such as by including blanket limitations on services for transgender individuals	August 15, 2016 , but OFCCP will consider good-faith progress to update plan
PCORI Fee Payment	- Payment on covered lives due each July 31 using Form 720 - Self-insured plans/insurers	July 31, 2016 (and due again July 31, 2017)

Transitional Reinsurance Fee	• Fee to fund reinsurance payments to help stabilize ACA Marketplace premiums • 2016 is last year that it applies (with payments due in 2017)	November 15, 2016 – submit enrollment count for current calendar year, and remit second portion payment for 2015 calendar year (if paying 2015 in two installments) January 16, 2017 – remit first portion of payment (or entire payment) for 2016 calendar year. If making two payments, first payment is \$21.60 per covered life. Entire payment is \$27/covered life November 15, 2017 – if entire payment not made in full, remit second portion for 2016 calendar year (\$5.40 per covered life).
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ADA Wellness Program Disclosure See October 10th A&B Advisory	- EEOC requires notice to employees eligible for wellness program, even if not enrolled in benefits. - Notice must be provided before the employee provides any information in connection with a wellness program.	Effective for 2017 plan year . However, notice must be provided before employee provides any information that will be used for 2017 wellness program. Thus, notice might need to be sent before 2017 (e.g., during open enrollment) .
GINA Wellness Program Consent for Spouse See October 10th A&B Advisory	- EEOC requires written consent of spouse to participate in a wellness program. - Consent must be obtained before the spouse provides any information in connection with a wellness program.	Effective for 2017 plan year . However, consent must be obtained before spouse provides any information that will be used for 2017 wellness program. Thus, notice might need to be sent before 2017 (e.g., during open enrollment) .
2016 W-2	Beginning with 2016 tax year, all employers must give W-2 <i>and</i> file W-2 with SSA by January 31, 2017, regardless of whether filing electronically or on paper. Before 2016 tax year, SSA filing deadline was after employee deadline, and varied for paper vs. electronic submissions.	January 31, 2017

Calendar Year 2016 ACA reporting	• Applies to: - Employers with 50 or more full-time or full-time equivalent employees in controlled group - Self insured employers and MEC insurers regardless of number of covered lives • Forms 1095-B/1095-C must usually be provided to individuals by January 31, but IRS extended to March 2, 2017 in Notice 2016-70 • No extension to file Form 1094-B; 1094-C; 1095-B; or 1095-C with IRS	February 28, 2017 – Forms 1094-B/1095-B/1094-C/1095-C (to IRS if <i>paper filing</i>) March 2, 2017 – Forms 1095-B/1095-C (to individual) March 31, 2017 - Forms 1094-B/1095-B/1094-C/1095-C (to IRS if <i>electronic filing</i>)
2017 maximum out-of-pocket limit	• For 2017, \$7,150 self-only/\$14,300 other than self-only • New FAQ for plans that use reference based pricing	2017 plan year
Integrated HRAs and dependent/family reimbursements	• HRAs can only reimburse expenses of dependent family members enrolled in integrated medical plan • IRS provided transition period through start of 2017 plan year for HRAs that reimbursed family members as of 12/16/2015	2017 plan year
Health Flex credit contributions and Affordability	• Flex credit contributions that might be cashed out or used for non-213(d) medical benefits ignored when determining if coverage is affordable under the ACA	2017 plan year
Opt-out payments	• Unconditional opt-outs (e.g., not tied to enrollment in another employer’s medical coverage) must be added to cost when determining if coverage is affordable under ACA. [Transition rule for CB plans].	2017 plan year

Health FSA contributions and carryovers	• Update COBRA notices to describe how carryovers impacts premium and that amounts carried over will be available until used or COBRA ends. • Amend plan to limit maximum carryover period, if desired	Now – COBRA notice Before cafeteria plan year – amend to limit maximum carryover, if desired
Mental Health and Substance Use Disorder Benefits See A&B advisory of September 27th	• New FAQ • Cannot use issuer's entire book of business to determine compliance	In effect
Annual Notices	• Part D disclosure to CMS • Part D notice to participants/beneficiaries • Summary Annual Report (if applicable) • Summary of Benefits and Coverage (SBC) (New Template for enrollments after 4/1/17) • Summary of Material Modifications (SMM – not required if new SPD provided) • Notice of Right to Designate a Primary Care Provider (if applicable) • CHIPRA Notice (be sure to send to <i>all</i> employees, including employees who are not benefit eligible)	In effect

	• HIPAA Privacy Notice (notice of availability required every 3 years, but suggest providing notice of availability annually so that 3 year period doesn't need to be tracked) • Women's Health and Cancer Rights Act (WHCRA) • Notice of Right to Designate a Primary Care Provider (if applicable) • ACA grandfathered plan notice (if applicable)	
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2017 Limits

HSA Contribution Limit	\$3,400 self-only/\$6,750 other than self-only
HDHP minimum deductibles	\$1,300 self-only/\$2,600 other than self-only
HDHP maximum out-of-pocket	\$6,550 self-only/\$13,100 other than self-only
ACA maximum out-of-pocket	\$7,150 self-only/\$14,300 other than self-only
Health FSA contribution limit	\$2,600
HCE for 414(q) and cafeteria plan testing purposes	\$120,000
Key employee compensation for cafeteria plans	\$175,000
Social Security Wage Base	\$127,200