



# HERE'S WHAT YOU NEED TO KNOW IN THE WORLD OF EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION March 20, 2017

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## **GOP Releases ACA Replacement**

On March 6, 2017, House Republicans released the American Health Care Act "AHCA," which is intended to replace the ACA. The AHCA was approved with remarkably little change by two House committees on March 9th. On March 13, 2017, the Congressional Budget Office issued its estimate of the impact of the AHCA. The CBO concluded that the AHCA will result in approximately 24 million more Americans uninsured by 2026. The CBO also concluded that the AHCA will reduce the deficit. With the CBO estimate, the AHCA is expected to go to the House floor for a vote soon. The fate of the AHCA in the Senate is still uncertain as Senate Republicans

offer mixed reactions and numerous powerful special interest groups continue to speak out against it.

Key provisions of the new law include:

1. Repeal of Medicaid expansion;
2. Elimination of the individual mandate;
3. Allowing insurers to charge 30% late enrollment penalty for individuals who have extended gaps in coverage;
4. Imposition of a per capita cap on federal Medicaid by 2020;
5. Elimination of premium tax credits by 2020;
6. Defunding of community health organizations that provide abortion services, such as Planned Parenthood; and
7. Elimination of the so-called "Cadillac Tax" until 2025.

Certain key provisions of the ACA will stay in place including:

1. A ban on lifetime coverage caps;
2. Allowing children to stay on parents' insurance until the age of 26; and a
3. Prohibition against denying coverage due to pre-existing conditions.

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## **PCMA v. Gerhart has stopped other similar PBM laws in the planning stages in other states . . .**

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## **The Fate of the DOL Fiduciary Rule Continues to Be Uncertain**

The Department of Labor's final "Fiduciary Rule" (formally entitled "[Definition of the Term 'Fiduciary'; Conflict of Interest Rule -- Retirement Investment Advice](#)") became effective on June 7, 2016, and has an applicability date of April 10, 2017. On February 3, 2017, the President directed the Department to examine whether the new Fiduciary Rule may adversely affect the ability of Americans to gain access to retirement information and financial advice and to prepare an updated economic and legal analysis concerning the likely impact of the rule as part of that examination. On March 2, 2017, the Department published a notice seeking public comment on the aspects of the Rule addressed by the President's order and proposing a 60-day delay on the April 10, 2017 applicability date. On March 10, 2017, the Department issued a [Field Assistance Bulletin](#) ("FAB") acknowledging that it may not have a final rule on the applicability date delay before April 10 and so there will be a reasonable period of non-enforcement following a Department determination

on the applicability date delay. This FAB still leaves financial services institutions with concerns about how and when to roll out changes mandated by the Fiduciary Rule and whether that Rule will be revised or repealed. Some believe the rule will be eliminated; others in the industry are moving forward with compliance before a final determination on the delayed applicability date because of costs already sunk into the compliance effort. We will be carefully following this issue for further developments.

## **Treasury Issues Administrative Guidelines for Identifying Compliant 401(k) Hardship Distributions**

On February 23, 2017, Treasury issued a [memorandum](#) setting out administrative guidelines for Treasury employees reviewing 401(k) distributions to identify proper hardship distributions. Although not official precedent, the guidelines are helpful for employers looking for a roadmap to Section 1.401(k)-1(d)(3)(iii)(B) compliance.

## **PCMA Wins ERISA Victory in 8th Circuit Against Iowa State Insurance Commissioner**

The Pharmaceutical Care Management Association (PCMA), which is a trade organization for PBMs, filed a lawsuit against Iowa Insurance Commissioner Gerhart seeking to have an Iowa law regulating PBMs declared preempted by ERISA. In [PCMA v. Gerhart, No. 15-3292 \(8th Cir. Jan. 12, 2017\)](#), the U.S. Court of Appeals for the Eighth Circuit agreed with PCMA that the Iowa law was preempted by ERISA. The district court had dismissed the preemption claim on the grounds that the law, which demanded that

methodologies for calculating generic drug prices be disclosed to retail pharmacies and the Iowa Insurance Commissioner, did not interfere with ERISA plan administration or mandate benefits because it did not regulate the rate itself, but only demanded rate transparency. The Eighth Circuit reversed, holding that the disclosure requirements interfered with PBMs' plan administration as TPAs for prescription benefits and interfered with ERISA's aim to have national uniformity of standards for TPAs working with ERISA plans. The decision has stopped other similar PBM laws in the planning stages in other states and may have implications for other state laws that mandate pricing transparency on TPAs.



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## The Return of Stand-Alone HSAs

For employers with fewer than 50 employees, the ability to have a stand-alone HRA (<http://bit.ly/2n2pCze>) has returned. The HRAs are referred to as QSEHRA and are limited to \$4,950 for individuals and \$10,000 for families. Even with the limits and other requirements, this marks the return of a benefit many employers and employees want to offer and use.

## When a Plan Year Ends on a Weekend

This happens on a regular basis and is not news. Yet, problems often occur. It is not too early in the year to review these suggestions and prepare for the inevitable. This Ask the Experts article from PlanSponsor (<http://bit.ly/2mfOO6d>) is about 403(b) plans, but it would apply to other plans with the same design.

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