Orange County Association of Health Underwriters

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January/February 2020

C.O.I.N.

COUNTY OF ORANGE INSURANCE NEWS

OCAHU WISHES YOU ALL A VERY HAPPY NEW YEAR!!!

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January 14, 2020

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Rippling

(Former CEO & Co-Founder of Zenefits)

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National Association of Health Underwriters Gold Certified 2019

OCAHU Orange County Association of Health Underwriters

Making a Difference in People's Lives. One Member at a Time.

Our association is a local chapter of the National Association of Health Underwriters (NAHU). The role of OCAHU is to promote and encourage the association of professionals in the health insurance field for the purpose of educating, promoting effective legislation, sharing information and advocating fair business practices among our members, the industry and the general public.

President's Message

By: MaryAnna Trutanich

Health Insurance Professionals working together. This is what OCAHU stands for. ARE YOU IN?

As we are knee deep in the football season (sorry hockey and basketball fans, I like football), teamwork is key to the success of their team. No one person is responsible. Offense, defense and special teams must work together to win. Webster tells us teamwork work done by several associates with each doing a part, but all subordinating personal prominence to the efficiency of the whole. The goal is the Super Bowl.

In OCAHU, our goal is to provide education, keep our members up to date on current Legislation, provide informative communication materials, both in print (the COIN) and by email and social media, and ultimately retain and increase membership.

As a member, will you join me in asking a non-member to join?

ARE YOU IN? ##

OCAHU would like to thank it's new sponsor partners for 2020! Special thanks to:

COVERED CALIFORNIA

Health Net

OCAHU Hosts NAHU Live Medicare-For-All CE Event

On Thursday, November 14, 2019, OCAHU hosted a NAHU Live event CE course on single-payer proposals of current Presidential Candidates in a single-payer government-run healthcare system. Janet Trautwein, CEO of NAHU, presented the course, and highlighted nuances of these proposals and how they would effect coverage for individual, employer-based and existing government-run health care.

Approximately 35 OCAHU members attended this special CE event. Only in-person attendees were eligible to receive CE credit for this webinar.

Special thanks go out to Word & Brown for hosting this NAHU Live event.

OCAHU has opted to not host a regular monthly meeting in November for the past few years, as most of our members are working hard on their fourth-quarter renewals and new business! Instead, we've opted to offer such live webinars and similar special events.

Our regular programs will return in January! ##

Feature Article:

California's Individual Mandate 2020: What You Need to Know

By: Paul Roberts, OCAHU V.P. Professional Development

California is implementing its new state individual mandate in 2020. It requires all California residents to maintain Minimum Essential Coverage (MEC) – medical health insurance coverage – for themselves and their dependents beginning January 1, 2020. Californians who do not maintain this coverage, or otherwise meet exemption requirements, will be subject to a tax penalty that somewhat resembles the former IRS penalty at the federal level.

Since 2014, the federal Affordable Care Act (ACA) has required individual taxpayers and their dependents to maintain MEC, or pay a federal tax penalty. However, Congress reduced that federal non-compliance penalty to $0.00 beginning in 2019 during a 2017 tax code overhaul.

Because of this and other factors, California saw a drop of enrollment in its individual state-run exchange (Covered California) by about 25% from 2018 to 2019. California is looking to restore the number of insured families in its state by enacting this new mandate and ensuring affordability of premiums.

California will also become the first state to provide health insurance premium assistance to middle-income individual Covered California enrollees who have household incomes between 400-600% of the Federal Poverty Level (FPL). This is in addition to the assistance the federal government provides to taxpayers who have household incomes between 138%-400% of the FPL, for those who also have individual coverage on the Covered California exchange.

California's premium subsidies are funded by revenue from the mandate's non-compliance penalty and other allotted state funds. California Governor Gavin Newsom pledged $1.45 billion over the next three years for this initiative.

While subsidies are attractive and welcomed by consumers, they will usually be less than the amount of premium funded by an employer's contribution to an employee's health plan in the group market.

Minimum Essential Coverage (MEC)

MEC is the type of coverage required to meet the Individual requirement of the ACA and the California Individual Mandate. MEC includes job-based medical coverage, individual market policies, Medicare, Medi-Cal/Medicaid, CHIP, TRICARE, etc. It does not include vision-only or dental-only plans, workers' compensation plans, plans that offer only discounts on medical services, or coverage only for a specific disease or condition.

California Individual Mandate Penalties

California taxpayers will be subject to a tax penalty if they do not carry MEC for themselves and their dependents, or otherwise have an exemption. And, unfortunately, the California Individual Mandate penalty is complex.

It resembles the former federal penalty at first glance. A Californian taxpayer who fails to secure coverage (or have an exemption) will be subject to a minimum penalty of $695 when filing a 2020 state income tax return in 2021. The penalty for a dependent child is half of what it would be for an adult, or $347.50. However, the penalty fluctuates based on state income and the number of people in the person's household. At a maximum, a person could be subject to a penalty that equals 2.5% of household income.

If you'd like to take a closer look at this penalty to see how it works in detail, please contact me. I've got an awesome reference I'd love to share with you.

Premium Assistance

Both federal and state premium assistance are available to Californians who enroll in individual coverage on the state exchange, *unless those employees have been made an offer of affordable coverage by their employer (of any size).*

Taxpayers can learn more about credits available to

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Feature Article, (continued from page 5)

them at CoveredCA.com. Options for low- and no-cost coverage are still available to those who qualify through the Medi-Cal program.

Exemptions

Californians will not be subject to the California Individual Mandate penalty if they meet certain exemptions. Californians can claim most exemptions from the state mandate directly on their state tax returns, but some must be processed by Covered California.

- Exemptions claimed on State Tax Return
  - Income is below the tax filing threshold (e.g., person is not a taxpayer)
  - Health coverage is considered unaffordable (exceeded 8.24% of household income for the 2020 taxable year)
  - Families' self-only coverage combined cost is unaffordable
  - **Short coverage gap of three consecutive months or less – common exemption**
  - Certain non-citizens who are not lawfully present
  - Certain citizens living abroad/residents of another state or U.S. territory
  - Members of health care sharing ministry
  - Members of federally recognized Indian tribes including Alaskan Natives
  - Incarceration
  - Enrolled in limited or restricted-scope Medi-Cal or other coverage from California Department of Health Care Services
- Exemptions processed by Covered California
  - Religious conscience exemption
  - Affordability hardship
  - General hardships

Reporting of coverage

California's Franchise Tax Board is developing reporting requirements to demonstrate possession of MEC. It will be especially important for employers with self-funded plans to pay attention to this because they will have to report this to California. Although final reporting documents have not been released, they are expected to mirror current IRS 1095 forms, which demonstrate possession of MEC at the federal level (among other items). Entities that provide IRS Forms 1095-B or 1095-C will not have to provide duplicate state notices, unless the IRS significantly changes its 1095 form.

Carrier Special Enrollment

Some Small Group Health Insurance carriers are allowing individuals to enroll for coverage effective 1/1/2020 outside of their group's traditional Open Enrollment window because of the new state mandate. At the time of this article's posting, the following carriers have created Special Enrolment opportunities in response to the California mandate: Aetna, Anthem Blue Cross, CaliforniaChoice, Kaiser Permanente, MediExcel Health Plan, Oscar Health, Sharp Health Plan, and United Healthcare. If you'd like more information on how to take advantage of these carriers' special enrollment windows, I've got a one-page reference with all the information laid out for you.

Other resources

Contact me if you'd like a copy of an FAQ reference piece related to the California mandate to help you answer your clients' and employees' questions about the mandate. I'd love to send that to you!

Stay tuned to OCAHU/CAHU and me throughout 2020 for more help with this mandate, ACA employer reporting responsibilities, and more.

##

Editor's Note: Paul Roberts is the V.P. of Professional Development for OCAHU. His contact information can be found on page 20.

OCAHU Holiday Party Photos

Benefiting Orangewood Foundation

Top left: Juan Lopez, Cathy Daugherty, Dave Benson; Top Right: Lauren Carmadella & daughter Jolie; Bottom: Maggie Stedt, Juan Lopez, Dorothy Cociu & Cathy Daugherty

Register Now for

OCAHU's

Business Development Summit

Friday, February 28, 2020

See page 10 for details!

More Holiday Party Photos

OCAHU members enjoy networking, cocktails and helping a good cause on December 10th at JT Schmid's Tustin! Bottom: Glen McDonald and Paul Finchamp enjoying the event..

Above: President MaryAnna Trutanich, Jo Ann Vernon and Phil Calhoun.

January 14, 2020

Luncheon Meeting

OCAHU
Orange County Association of Health Underwriters

Hyatt Regency John Wayne Airport

11 AM to 1:30 PM

Member or First Time Guest: $35 | Non-Member: $50

Kick off the new year and join us at our monthly luncheon featuring dynamic speaker Parker Conrad, former Co-Founder & CEO at Zenefits, who now calls Rippling his home.

COIN COMPLIANCE CORNER

What Agents and Your Clients Need to Know!

COIN LEGAL BRIEFS

By: Marilyn Monahan

Monahan Law Office

This is a summary of some recent developments of interest to consultants and employers:

Federal: Highlights

Benefit and Contribution Limits: This is the season when the IRS issues adjusted limits for various benefit plans. Some key limits include (with a comparison to prior years):

Type of Plan/ Limit		2020	2019	2018
HSA Cont. Limits	Self-Only	$3,550	$3,500	$3,450
	Family	$7,100	$7,000	$6,900
HSA Catchup Contriution	Age 55 or Older	$1,000	$1,000	$1,000
HDHP Min. Deductibles	Self-Only	$1,400	$1,350	$1,350
	Family	$2,800	$2,700	$2,700
HDHP Max OOP Expense Limits	Self-Only	$1,400	$1,350	$1,350
	Family	$13,800	$13,500	$13,300
ACA Max OOP Expense	Self-Only	$8,150	$7,900	$7.350
	Family	$16,300	$15,800	$14,700

Some additional plan limits of importance to employers and producers are:

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HIPAA Privacy & Security Updates

From: Dorothy Cociu

COIN Editor and HIPAA Privacy & Security Consultant & Trainer

There have been several OCR enforcement activities since the last issue of the COIN., and some helpful information was released from the Fall, 2019 Cybersecurity Newsletter that are helpful that I will share.

Enforcement Activities

On the enforcement side, the first settlement was regarding a failure to encrypt mobile devices, which led to a $3 Million HIPAA settlement.

1) Reported on November 5, 2019, **The University of Rochester Medical Center (URMC) has agreed to pay $3 million to the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS), and take substantial corrective action to settle potential violations of the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules.** URMC includes healthcare components such as the School of Medicine and Dentistry and Strong Memorial Hospital. URMC is one of the largest health systems in New York State with over 26,000 employees.

URMC filed breach reports with OCR in 2013 and 2017 following its discovery that protected health information (PHI) had been impermissibly disclosed through the loss of an unencrypted flash drive and theft of an unencrypted laptop, respectively. OCR's investigation revealed that URMC failed to conduct an enterprise-wide risk analysis; implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level; utilize device and media controls; and employ a mechanism to encrypt and decrypt electronic protected health infor-

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COIN Legal Briefs, continued from page 8

Type of Plan/Limit	2020	2019	2018
Health FSA	$2,750	$2,700	$2,650
Transportation Fringe	$270	$265	$260
Adoption Assistance	$14,300	$14,080	$13,840
Qualified Small EER HRA	$5,250 ($10,600 Fam)	$5,150 ($10,450 Fam)	$5,050 ($10,250 Fam)

IRS 2019 Forms 1094/1095: As of the date this summary was written, the IRS had issued draft—but not final—Forms 1094-C, 1095-C, 1094-B, and 1095-B for tax year 2019, along with draft instructions for the forms. Final forms are usually issued a little earlier in the year.

Based on some comments made by the IRS last year in Notice 2018-94, there was some speculation that the IRS might significantly modify or eliminate the Form 1094-B and Form 1095-B reporting requirement for insurers and HMOs, as well as the data self-funded employers have to provide in Part III of the Form 1095-C. Why? Because with the reduction of the individual shared responsibility penalty to zero, there is arguably less need for the information provided in these forms. However, for 2019, the IRS did not eliminate the requirement to produce the forms, and did not substantially modify them. (The IRS is still considering whether it will change course in the future.)

When are the 2019 forms due? *IRS Notice 2019-63 extends the time employers have to distribute the Forms 1095-C; the deadlines for filing the forms with the IRS remain unchanged:*

Employer Obligation	Due Date
Furnishing 1095-C's to Employees **(Deadline Extended—IRS Notice 2019-63)**	January 31, 2020 **March 2, 2020**
Filing 1094-C and 1095-Cs with the IRS (on paper)	February 28, 2020
Filing 1094-C and 1095 Cs with the IRS (electronically) (required if filing 250 or more 1095-Cs)	March 31, 2020

In light of the automatic extension announced in Notice 2019-63, no additional extensions of time will be granted to furnish the Forms 1095-C to employees. Employers may file a Form 8809 to obtain a 30-day extension of time to file the forms with the IRS (the instructions to the forms provide more information on this process).

Although the IRS did not substantially modify the content of the Forms 1094-B and 1095-B insurers and HMOs have to distribute to employees and file with the IRS, Notice 2019-63 did announce a significant change in the distribution process for the Form 1095-B. Insurers and HMOs do not have to mail the forms to

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employees if they meet two conditions: (1) the insurer or HMO must post a notice prominently on its website stating that a copy of the form may be obtained upon request, and also post an email address, mailing address, and phone number employees can use to request the form; and (2) the insurer or HMO must furnish the form within 30 days of receipt of a request.

The IRS can impose penalties if employers fail to file and furnish the forms on time, and can also impose penalties if the forms contain incomplete or inaccurate data. These penalties, for 2019, are $270 per form (with a maximum of $3,339,000 for each type of failure). If the employer acts with intentional disregard, the penalties are higher and there is no maximum limit.

As it has done in prior years, through Notice 2019-63 the IRS is extending to employers relief from penalties if their Forms 1094-C and 1095-C contain incomplete or incorrect data. Penalty relief is available if the employer can show it made a good-faith effort to comply with the rules when it prepared the forms, and if the forms are filed and furnished on time.

Medicare Secondary Payer Reporting: Pursuant to section 111 of the Medicare, Medicaid, and SCHIP Extension Act (MMSEA) of 2007, within 60 days of the beginning of the plan year, insurers and self-funded employers (referred to as Responsible Reporting Entities (RREs)) must report certain information each year to CMS to help CMS administer the Medicare Secondary Payer (MSP) rules. As a result of a more recent law—the SUPPORT Act, which Congress passed in 2018—starting in 2020 RREs will have more information to report to CMS each year. Under the new mandate, RREs will have to report primary prescription drug coverage information (it was optional in the past). CMS has issued FAQs and posted webinars to help RREs implement this process.

Health Reimbursement Arrangements (HRAs): Last summer, a final rule was issued that, effective for plan years beginning on or after January 1, 2020, expands the use of HRAs in two ways: (a) it allows employers to set up "individual coverage HRAs" (ICHRAs), and (b) it allows employers to set up "excepted benefit HRAs." On September 30th, the IRS issued a proposed rule that addresses, for employers that set up these ICHRAs, (a) affordability determinations for purposes of section 4980H(b), and (b) application of non-discrimination rules for self-funded plans (§105(h)). The comment period for the

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mation (ePHI) when it was reasonable and appropriate to do so. Of note, in 2010, OCR investigated URMC concerning a similar breach involving a lost unencrypted flash drive and provided technical assistance to URMC. Despite the previous OCR investigation, and URMC's own identification of a lack of encryption as a high risk to ePHI, URMC permitted the continued use of unencrypted mobile devices.

"Because theft and loss are constant threats, failing to encrypt mobile devices needlessly puts patient health information at risk," said Roger Severino, OCR Director. "When covered entities are warned of their deficiencies, but fail to fix the problem, they will be held fully responsible for their neglect."

In addition to the monetary settlement, URMC will undertake a corrective action plan that includes two years of monitoring their compliance with the HIPAA Rules.

2) On November 7, 2019, OCR reported that The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) has imposed a **$1,600,000 civil money penalty against the Texas Health and Human Services Commission** (TX HHSC), for violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules between 2013 and 2017. TX HHSC is part of the Texas HHS system, which operates state supported living centers; provides mental health and substance use services; regulates child care and nursing facilities; and administers hundreds of programs for people who need assistance, including supplemental nutrition benefits and Medicaid. The Department of Aging and Disability Services (DADS), a state agency that administered long-term care services for people who are aging, and for people with intellectual and physical disabilities, was reorganized into TX HHSC in September 2017.

On June 11, 2015, DADS filed a breach report with OCR stating that the electronic protected health information (ePHI) of 6,617 individuals was viewable over the internet, including names, addresses, social security numbers, and treatment information. The breach occurred when an internal application was moved from a private, secure server to a public server and a flaw in the software code allowed access to ePHI without access credentials. OCR's investigation determined that, in addition to the impermissible disclosure, DADS failed

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Federal Legislative/Regulatory Updates:

IRS Extends Deadline for Certain ACA Filings for 2019 (Including 1095-C for Employees); Trump Administration Releases Transparency in Coverage Rules

By: Dorothy M. Cociu, RHU, REBC, GBA, RPA,

OCAHU V.P. Communications & Public Affairs

IRS Extends Deadlines for Certain ACA Reporting

On December 2, 2019, the IRS issued Notice 2019-63, which provides transition relief for 2019 ACA reporting for applicable large employers.

The transitional relief provides an extension for the due date for furnishing forms under Sections 6055 and 6056 for 2019 from January 31, 2020, to March 2, 2020. It also extends good-faith transition relief from penalties related to 2019 information reporting under Sections 6055 and 6056, and provides an additional penalty relief related to furnishing 2019 forms to individuals under Section 6055.

It's important to note that the due date for filing forms with the IRS for 2019 is unchanged; February 28, 2020 for paper forms, or March 31, 2020 if filing electronically.

Notice 2019-63 provides an additional 31 days for furnishing the 2019 (individual) Form 1095-B and Forms 1095-C, extending this deadline from January 31, 2020 to March 2, 2020. The IRS will not grant additional extensions of time up to 30 days to furnish Forms 1095-B and 1095-C because this extended deadline applies automatically to all reporting entities. As a result, the IRS will not formally respond to any requests that have already been submitted for 30-day extensions of time for statements for 2019.

Despite the extension, the IRS is encouraging employers and other coverage providers to furnish 2019 statements to individuals as soon as they are able.

Notice 2019-63 also extends transition relief from penalties for providing incorrect or incomplete information to reporting entities that can show that they have made good-faith efforts to comply with Sections 6055 and 6056 reporting requirements for 2019; this includes furnishing forms to individuals as well as filing with the IRS. Basically, the relief applies to forms that have missing or inaccurate taxpayer ID numbers and dates of birth, as well as other information required on the return or statement. No relief is provided for reporting entities that do not make a good-faith effort to comply or fail to file an information return or furnish a statement by the due dates (as extended).

In determining good faith, the IRS takes into account whether a reporting entity made reasonable efforts to prepare for reporting the required information to the IRS and furnishing information to individuals. The IRS also takes into account the extent to which the reporting entity made reasonable efforts to prepare for this reporting requirement.

As I'm sure you're aware, the individual mandate penalty has been reduced to zero beginning 2019[1]. Because of this, the IRS is studying whether and how Section 6055 reporting requirements will change, if at all, in future reporting years. Because there is no penalty, the individual does not need the information on the Form 1095-B for his or her individual tax return. However, reporting entities must continue to provide the Form 1095-B to individuals.

Notice 2019-63 provides relief from the penalty for failing to furnish a statement to individuals as required under Section 6055 in certain cases for 2019. The IRS will not impose a penalty under Section 6722 against reporting entities for failing to furnish a Form 1095-B to responsible individuals in cases where two conditions are met:

- The reporting entity prominently posts a notice on its website stating that responsible individuals may receive a copy of the 2019 Form 1095-B upon request, accompanied by an email address and a physical address to which a request may be sent, as well as a telephone number that responsible individuals can use to contact the reporting entity with any questions, and
- The reporting entity furnishes a 2019 Form 1095-B to any responsible individual upon request within 30 days of the date the request is

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Footnotes: 1) Note that California is somewhat mirroring the federal penalty for all residents beginning 2020; that will be a state mandate, not a federal mandate. See Feature Article, page 5.

HIPAA Privacy & Security Updates, cont. from page 12

to conduct an enterprise-wide risk analysis, and implement access and audit controls on its information systems and applications as required by the HIPAA Security Rule. Because of inadequate audit controls, DADS was unable to determine how many unauthorized persons accessed individuals' ePHI.

3)On November 27, 2019, the Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS), reported that they and **Sentara Hospitals (Sentara) have agreed to take corrective actions and pay $2.175 million to settle potential violations of the Health Insurance Portability and Accountability Act (HIPAA) Breach Notification and Privacy Rules.** Sentara is comprised of 12 acute care hospitals with more than 300 sites of care throughout Virginia and North Carolina.

In April of 2017, HHS received a complaint alleging that Sentara had sent a bill to an individual containing another patient's protected health information (PHI). OCR's investigation determined that Sentara mailed 577 patients' PHI to wrong addresses that included patient names, account numbers, and dates of services. Sentara reported this incident as a breach affecting 8 individuals, because Sentara concluded, incorrectly, that unless the disclosure included patient diagnosis, treatment information or other medical information, no reportable breach of PHI had occurred. Sentara persisted in its refusal to properly report the breach even after being explicitly advised of their duty to do so by OCR. OCR also determined that Sentara failed to have a business associate agreement in place with Sentara Healthcare, an entity that performed business associate services for Sentara.

"HIPAA compliance depends on accurate and timely self-reporting of breaches because patients and the public have a right to know when sensitive information has been exposed." said Roger Severino, OCR Director. "When health care providers blatantly fail to report breaches as required by law, they should expect vigorous enforcement action by OCR."

In addition to the monetary settlement, Sentara will undertake a corrective action plan that includes two years of monitoring.

Cybersecurity Update

On December 2, 2019, OCR released it's Cybersecurity Newsletter, which is designed to help prevent, mitigate and recover from ransomware attacks by providing insight into new developments and trends and how organizations can improve their security posture in response to this threat. I will summarize some of the information provided:

Ransomware attacks have involved mass, indiscriminate infection of as many devices across as many systems as possible. They often spread automatically through dedicated connections between networks and spam phishing emails.

The FBI reports that ransomware infects more than 100,000 computers a day around the world and ransomware payments approach $1 Billion annually, and those numbers are expected to rise. The ransom payments, however, do not account for all of the costs associated with a ransomware attack. Unrecoverable data, lost productivity, damage to reputation, damaged equipment, forensic investigations, remediation expenses, and legal bills are some of the additional costs that can be expected when responding to a ransomware attack.

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HIPAA Privacy & Security Updates, continued from page 14

In response to this new cyberthreat, organizations and governments began adapting. Anti-malware vendors updated their products to help customers identify, prevent and contain infections. Cybersecurity researchers and scientists studied ransomware code and, in some cases, were able to reverse-engineer decryption keys to help ransomware victims recover data without paying the ransom. Organizations prioritized incident response and data backups in order to mitigate the damage caused. However, as organizations adapt, so do ransomware developers…

Stay tuned for more HIPAA Privacy & Security updates in the next issue of the COIN! ##

More OCAHU Holiday Party Photos!

OCAHU members Dave Benson, D'Vorah Mariscal, Jane Smith-Bowen and Barbara Salvi

OCAHU Board Members Grant Moulden and John Evangelista enjoying their evening!

received.

Special Considerations for Self-Funded Health Plans

Self-funded employers are generally required to use Form 1095-C, Part III to meet the reporting requirements, instead of Form 1095-B. However, according to the notice, because of the combined reporting under sections 6056 and 6055 on the Form 1095-C for full-time employees of ALE members enrolled in a self-funded plan, the 2019 section 6055 furnishing relief *does not* extend to the requirement to furnish Forms 1095-C to full-time employees. Accordingly, per the Notice, for full-time employees enrolled in self-funded health plans, penalties will continue to be assessed consistent with prior enforcement policies for any failure by ALE members to furnish Form 1095-C, including Part III, according to the instructions. However, the 2019 section 6055 furnishing relief does extend to penalty assessments in connection with the requirement to furnish the Form 1095-C to any employee enrolled in an ALE member's self-funded health plan who is not a full-time employee for any month in 2019.

Because these situations vary and can be complicated, we always recommend that you and/or your employer clients seek the advice of legal and/or tax professionals to see how these extensions apply to them.

Trump Administration Releases Transparency in Coverage Proposed & Final Rules (CMS-9915-P)

On November 15, 2019, the Transparency in Coverage Proposed Rule was released by the Departments of Health & Human Services, Department of Labor, and Department of the Treasury, in response to President Trump's executive order on Improving Price and Quality Transparency.

Two rules were issued to take steps toward price transparency. The first is the Calendar Year 2020 Outpatient Prospective Payment System (OPPS) & Ambulatory Surgical Center (ASC) Price Transparency Requirements for Hospitals to Make Standard Charges Public (final rule). The second rule is the Transparency in Coverage Proposed Rule, that requires that pricing information be made publicly available.

As Marilyn Monahan stated in her January-February Legal Brief, these rules are highly controversial and there has already been a lawsuit filed to stop the final rule.

In general, seven main cost-sharing information disclosure requirements are outlined, which must be made available to participants through and online, self-service tool.

According to HHS Secretary Alex Azar, "President Trump has promised American patients 'A+' healthcare transparency, but right now our system probably deserves an 'F' on transparency. President Trump is going to change that, with what will be revolutionary changes for our healthcare system. Today's transparency announcement may be a more significant change to American healthcare markets than any other single thing we've done, by shining light on the costs of our shadowy system and finally putting the American patient in control."

According to HHS, the Trump Administration is taking action toward making sure that insured and uninsured Americans alike have the information necessary to get an accurate estimate of cost of the healthcare services they are seeking before they receive care.

In response to the Executive Order, HHS, DOL and Department of Treasury (collectively, the Departments) are issuing a proposed rule, "Transparency in Coverage" that would require most employer-based group health plans and health insurance issuers offering group and individual coverage to disclose price and cost-sharing information to plan participants, beneficiaries, and enrollees up fron. With this information, according to HHS, patients will have accurate estimates of any out-of-pocket costs they must pay to meet their plan's deductible, co-pay, or co-insurance requirements. This will make previously unavailable price information accessible to patients and other stakeholders in a standardized way, allowing for easy comparisons.

The seven main disclosures are:

- Estimated cost-sharing liability
- Accumulated amounts of responsibility, including deductible or OOP limits
- Negotiated rate, in dollars, for an in-network provider for a requested covered item or service
- Out-of-Network allowed amount for a requested item or service
- Itemized list of covered items and services for which cost-sharing information is disclosed
- Notice of prerequisites to coverage
- Disclosure notice including various costs, balance bills, actual charges, and cost-sharing liability

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More OCAHU Holiday Party Photos!

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proposed rule ends December 30, 2019.

Summary of Benefits and Coverage (SBC) and Glossary: New templates for the SBC and glossary have been issued. The new templates must be in use for plan years starting on or after January 1, 2021.

Transparency in Coverage Final & Proposed Rules: Regulators recently issued two sets of rules—one final and one proposed—designed to increase transparency in the cost of health care services. The idea is that if healthcare consumers have more data available to them, they can make better choices about the cost of services offered by different providers. Both rules are proving to be controversial, however, and a lawsuit has already been filed to halt the final rule.

The first rule issued—which is a final rule—requires hospitals, effective January 1, 2021, to publish "standard charges" for at least 300 "shoppable services." A "shoppable service" is a "service that can be scheduled by a healthcare consumer in advance." A "standard charge"—the information that must be posted—"means the regular rate established by the hospital for an item or service provided to a specific group of paying patients," including all of the following: (1) gross charge, (2) payer-specific negotiated charge, (3) de-identified minimum negotiated charge, (4) de-identified maximum negotiated charge, and (5) discounted cash price.

The proposed rule applies to insurers, HMOs, and, significantly, self-funded health plans. Compliance with this rule will probably be costly. What does the proposed rule require? Under the rule, non-grandfathered health plans would have to create an on-line self-service tool to provide personalized out-of-pocket cost information for covered services. Plans would also have to publicly disclose in-network negotiated rates, as well as historical payments of allowed amounts to out-of-network providers. The DOL has issued three model notices in conjunction with the proposed rule. Comments on the proposal are due by January 14, 2020.

California and Municipalities: Highlights

A.B. 5 & A.B. 170 – Common Law Employees & Independent Contractors (Ch. 296 & 415): The California Supreme Court's *Dynamex* decision established a new test (the ABC test) for determining whether an individual is a common law employee or an independent contractor. Governor Newsom signed A.B.

Continued on page 22

Visit our Facebook Page for hundreds of photos from our various events held throughout the years! Don't forget to Like & Follow for up-to-date notifications.

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Membership News

We'd like to welcome the newest members of OCAHU!

Dena Allchin, Word & Brown
Emily Crognale, Word & Brown
John Hansbrough, The LBL Group
Christine Lisk, TASC

GREAT NEWS! CAHU PODCAST SERIES RELEASED!

Designed to allow CAHU members to share with their office staffs, employer clients and consumers!

Check out CAHU's new Podcast Series at ***http://anchor.fm/cahu*** and ***cahu.org/our-issues, or on Spotify! (search CAHU)***

The first two podcasts were released at the time of this printing: 1) **California State Legislative Update- A Discussion on Health Plan, Health Insurance and Related State Legislation for Employers & Consumers** (Dorothy Cociu interviews Faith Borges & Jim Morrison), and 2) **Federal Legislative Update: Medicare-for-All, Single Payer Options, Health Plan Terminology and Presidential Candidate Health Plan Comparisons for Employers & Consumers** (Dorothy Cociu interviews Janet Trautwein, CEO of NAHU).

HHS/Office of Civil Rights Names New Deputy Director for Health Information Privacy

The HHS Office for Civil Rights (OCR) is pleased to announce that Timothy Noonan has been named the Deputy Director for Health Information Privacy. The Health Information Privacy Division administers and enforces the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security, Breach Notification, and Enforcement Rules, and the confidentiality provisions of the Patient Safety Rule, through investigations, rule-making, guidance, and outreach. Mr. Noonan had been the Acting Deputy Director for Health Information Privacy since January 2018. Some OCR highlights during his tenure include: securing over $37 million in HIPAA settlements, judgments, and penalties for non-compliance, including the largest settlement in OCR history; creating the Right of Access Enforcement Initiative to reinforce individuals' right to access their medical records; publishing a Request for Information seeking public input on modifying the HIPAA Privacy Rule to promote coordinated, value-based health care; and issuing guidance on Health Apps and the Right of Access to improve the public's understanding of HIPAA's role in this rapidly evolving area.

Previously, Mr. Noonan served in OCR headquarters as the Acting Associate Deputy Director for Operations and the Acting Director for Centralized Case Management Operations. Mr. Noonan joined OCR as the Southeast Regional Manager in November 2013. Prior to joining OCR, he was a Supervisory General Attorney for the U.S. Department of Education, Office for Civil Rights, and a shareholder in a Michigan law firm.

As OCR's Deputy Director for Health Information Privacy, Mr. Noonan will continue to lead OCR's national health information privacy policy, enforcement, and outreach activities. ###

Thank You OCAHU Sponsors!!!

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Note to all CAHU-PAC Contributors!

CAHU has recently changed administrators for our PAC, and in order to better streamline our processes, we need EVERYONE to update their PAC information.

Please go online at CAHU.org to update your PAC account online, or update the ACH form. You can also make a copy of the paper form, which can be found on page 25 of this issue, complete and mail to CAHU today!

With the 2020 elections coming up, CAHU PAC wants to keep you as informed and connected as possible to the issues around healthcare. Your PAC contributions means that we are able to reach out and educate as many people in the Capitol as possible, and stay on top of critical, relevant issues!

To support CAHU-PAC or HUPAC, visit OCAHU.org, CAHU.org or NAHU.org, download a one-time or monthly contribution form, or contact OCAHU's Vice President, Political Action, Grant Moulden at 714 425-7277, or email him at gmoulden@lisibroker.com

Please Support CAHU PAC and HUPAC today!

Medicare Spotlight

By: Maggie Stedt, CSA, LPRT, Medicare Chair

Senior Summit: Mark your calendars! The Seventh Annual Senior Summit is scheduled for September 1st to 3rd, returning to the Pechanga Resort and Casino in Temecula. The event promises to offer more trainings and information, plus the return of our golf tournament! Sponsorship and exhibitor packets will be released soon. You won't want to miss this premier event!

CMS Plan Finder and Website Changes: The changes to the Medicare website continues to be a challenge to both the Medicare beneficiaries and to the agents. There are still problems with accuracies and usability. It is not as rosy a picture as the recent CMS information release paints. NAHU's John Greene and the Medicare Advisory Group are continuing to work with CMS and HHS to help resolve the issues with independent testing, feed back and meetings with the CMS teams. CMS plans to continue to update and improve the website.

Fortunately, many of our Field Marketing Organizations (FMO's) are able to offer other plan finders to assist the agents during Annual Open Enrollment and beyond.

Open Enrollment Period: Reminder to our agents that you cannot actively market to seniors during the January 1st to March 31st Open Enrollment Period. You certainly may, however, work with your clients and any beneficiary who requests your help!

Charging Consulting Fees: Recently through CAHU, our FMO partners and carriers we were able to report a couple of agents that were charging a policy handling fee and a consultation fee for the sales and servicing of Medicare Advantage Plans and stand-alone Prescription Drug Plans. *This is not permitted under our agent's license and our contracts with the carriers here in CA.* Please contact your FMO and carriers for further information and guidance.

In the next issue of the COIN our column will address the changes for seniors in H.S. A's as the subject has been burning up the emails and Broker to Broker communications!

##

COIN Legal Updates, Continued from page 22

5, which codifies D*ynamex* and expands its scope. Under the ABC test, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

> The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
>
> The person performs work that is outside the usual course of the hiring entity's business.
>
> The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

In many instances, the (B) factor is the one that will result in more individuals being treated as employees, and not independent contractors, than in the past.

A.B. 5 is a complex bill and it contains a number of exceptions to

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Federal Legislative Update, Continued from Page 16

If finalized, the proposed Transparency in Coverage rule would require health plans to:

- Give consumers real-time, personalized access to cost-sharing information, including an estimate of their cost-sharing liability for all covered healthcare items and services, through an online tool that most group health plans and health insurance issuers would be required to make available to all of their members, an in paper form, at the consumer's request. This requirement would empower consumers, according to HHS, to compare costs between specific providers before receiving care.
- Disclose on a public website their negotiated rates for in-network providers and allowed amounts paid for out-of-network providers. This is intended to promote competition in pricing, as well as assist the consumer.

The rule (being finalized) will require hospitals to provide patients with clear, accessible information about their "standard charge" for the items and services they provide, including through the use of standardized data elements, making it easier to shop and compare across hospitals, as well as mitigate surprises. The final rule will require hospitals to make their standard charges public in two ways beginning in 2021:

- Comprehensive Machine-Readable File: Hospitals will be required to make public all hospital standard charges (including the gross charges, payer-specific negotiated charges, the amount the hospital is willing to accept in cash from a patient, and the minimum and maximum negotiated charges) for all items and services on the Internet in a single data file that can be read by other computer systems. The file must include additional information such as common billing or accounting codes used by the hospital and a description of the item or service to provide common elements for consumers to compare standard charges from hospital to hospital.
- Display of Shoppable Services in a Consumer-Friendly Manner: Hospitals will be required to make public payer-specific negotiated charges, the amount the hospital is willing to accept in cash from a patient for an item or service, and the minimum and maximum negotiated charges for 300 common shoppable ser-

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Federal Legislative & Regulatory Updates, continued from page 23

vices in a manner than is consumer-friendly and update the information at least annually.

- In order to ensure that hospitals comply with the requirements, the final rule provides CMS with new enforcement tools including monitoring, auditing, corrective action plans, and the ability to impose civil monetary penalties of $300 per day. In response to public comments, CMS is finalizing that the effective date of the final rule will be January 1, 2021 to ensure that hospitals have the time to be compliant with these policies.

According to Kaiser Health News (Julie Appleby, November 15, 2019), this rule is controversial and likely to face court challenges. Four major hospital organizations said they would challenge it in court shortly after the rule was proposed in July.

Insurers also pushed back. "The rules the administration released...will not help consumers better understand what health services will cost them and may not advance the broader goal of lowering health costs," said Scott Serota, president and CEO of Blue Cross Blue Shield Association, in a statement. Requiring disclosure of negotiated rates, he said, could lead to price increases "as clinicians and medical facilities could see in the negotiated payments a roadmap to bidding up prices rather than lowering rates." The rule, he added, could confuse consumers.

The author of the KHS article states "Although consumer advocates say price information can help patients shop for lower-cost services, they also note that *few consumers do*, even when provided such information.

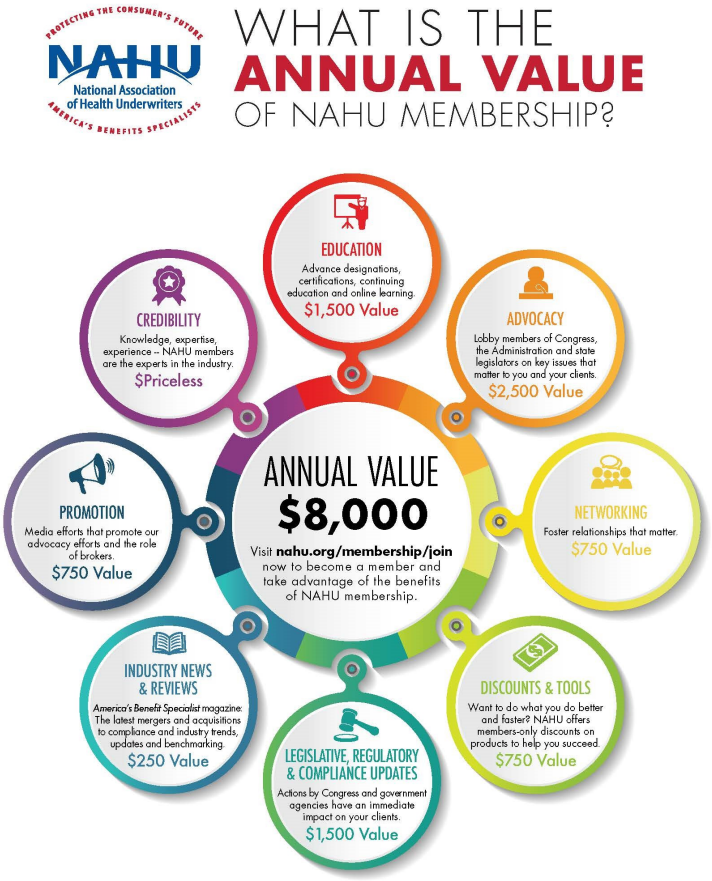
KHN states that nonetheless, HHS Secretary Alex Azar said the administration is confident. "We may face litigation, but we feel we are on sound legal footing for what we are asking. We hope hospitals respect patients' right to know the prices of services and we'd hate to see them take a page out of Big Pharma's playbook and oppose transparency."

According to the Self-Insurance Institute of America (SIIA), a self-insured plan must create its own on-line tool that is made available to participants to request the cost-sharing information" that is required. This could effectively cause substantial burdens for self-funded plans and their network/RBP or TPA partners. ##

Editor's Note: See also COIN Legal Briefs for more information on this topic.

Have you updated your PAC Contribution Form yet? If not, make a copy of the form on page 25 and mail it to CAHU PAC today!

CAHU has a new PAC Administrator— New Forms Are Required!!!



Not a member? Please join now!

Contact John Evangelista at (949) 452-92019, or by email at john.evangelista@coloniallifesales.com.

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CAHU PAC CONTRIBUTOR COMMITMENT FORM

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Revised: 10/2019

COIN Legal Briefs, Continued from Page 22

the ABC test. The implications of A.B. 5 are significant. Employers with independent contractors should consult an employment lawyer to determine if the status of these individuals needs to change.

A.B. 5 can also impact the employer's benefit plans. If an employer changes an individual's employment classification, that could impact benefit eligibility, the ALE determination, and related matters. Employers should discuss these scenarios with their counsel, and review benefit eligibility language to ensure it reflects the employer's intent and the law.

Minimum Wage: California: On **January 1, 2020**, the minimum wage in California will increase to **$12/hour** for employers with 25 employees or less, and to **$13/hour** for employers with 26 or more employees (such as ALEs).

New minimum wage rates—higher than those set by the state—will go into effect **January 1, 2020**, in various California cities, including Belmont, Cupertino, Daly City, El Cerrito, Los Altos, Menlo Park, Mountain View, Novato, Oakland, Palo Alto, Petaluma, Redwood City, Richmond, San Diego, San Jose, San Mateo, Santa Clara, Sonoma, and Sunnyvale.

Among other compliance issues these increases may create, employers should also remember to (a) update their workplace posters; and (b) adjust, as necessary, their ACA §4980H affordability calculations (e.g., the amount they can charge employees when using the rate of pay safe harbor). ##

Editor's Note: See Federal Legislative & Regulatory Updates on page 13 for related information. Marilyn Monahan can be contacted at Marilyn A. Monahan Law Office, 4712 Admiralty Way, #349, Marina del Rey, California 90292; (310) 989-0993 or email her at marlyn@monahanlawoffice.com .

More OCAHU Holiday Party Photos

Left: Hangin' out with the guys!

Right: Many holiday gifts were donated for the youths at Orangewood Foundation.

Have you updated your CAHU-PAC contribution form yet?

If not, see page 20 for information, or copy the form on page 25 of this issue and mail to CAHU today!

All current CAHU-PAC members are required to update their enrollment and payment information now!

Thanks for your participation!

Would you like to be more involved with OCAHU?

Contact a board member today! See page 20 for a complete list!

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- THE C.O.I.N. -

Please join us at our events!

SCHEDULE OF EVENTS:

OCAHU Monthly Luncheon, Tuesday, January 14, 2019, Parker Conrad, Rippling (former Co-Founder & CEO of Zenefits), Hyatt Regency, Newport Beach, 11 am-1 pm

OCAHU Business Development Summit, Doubletree Hotel, Orange, February 28, 2020, 7:30 am - 4 pm

OCAHU Monthly Luncheon, Tuesday, March 10, 2020, Hyatt Regency, Newport Beach, 11 am-1 pm