

## Compliance Recap

September 2017

September was quiet month in the employee benefits world.

The Internal Revenue Service (IRS) issued final Forms 1094/1095, special per diem rates for 2017-18, and guidance on the tax treatment of leave-based donation programs. The Centers for Medicare and Medicaid Services (CMS) announced a Medicare special enrollment period for individuals impacted by recent hurricanes. A U.S. District Court remanded a payment rate rule to the IRS, the Department of Health and Human Services (HHS), and the Department of Labor (DOL) for further explanation of their rule.

### UBA Updates

UBA released one new advisor in September: [IRS Releases Draft Forms and Instructions for 2017 ACA Reporting](#).

### IRS Issues Forms 1094/1095

The IRS issued Forms [1094-B](#), [1095-B](#), [1094-C](#), and [1095-C](#) for the 2017 tax year. Coverage providers use Forms 1094-B and 1095-B to report health plan enrollment. Applicable large employers use Forms 1094-C and 1095-C to report information related to their employer shared responsibility provisions under the ACA.

### IRS Issues 2017-18 Special Per Diem Rates

The IRS issued [Notice 2017-54](#) to provide special per diem rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home on or after October 1, 2017.

### IRS Provides Guidance on Tax Treatment of Leave-Based Donation Programs

Some employers adopted or will adopt leave-based donation programs to provide charitable relief for victims of Hurricane and Tropical Storm Irma. These leave-based donation programs allow employees to forgo vacation, sick, or personal leave in exchange for cash payments that the employer will make to charitable organizations described under Internal Revenue Code Section 170(c).

The IRS' [Notice 2017-52](#) states that the employer's cash payments will not constitute gross income or wages of the employees if paid before January 1, 2019, to the Section 170(c) charitable organizations for the relief of victims of Hurricane or Tropical Storm Irma. Employers do not need to include these payments in Box 1, 3, or 5 of an employee's Form W-2.

### CMS Announces Special Enrollment Period for Hurricane Victims

CMS [established](#) a Medicare special enrollment period for individuals affected by Hurricanes Harvey, Irma, and Maria. The special enrollment period will allow individuals to enroll, dis-enroll, or switch Medicare health or prescription drug plans from the start of the incident period through the end of the 2017.

## Court Remands Regulations to HHS, DOL, and IRS

The United States District Court for the District of Columbia [held](#) that the Departments of Health and Human Services, Labor, and the Treasury (the Departments) acted arbitrarily and capriciously by failing to seriously respond to comments and proposed alternatives as part of the notice and comment process for the Departments' rule on how much plans are required to pay out-of-network physicians for emergency health care services.

Under the Patient Protection and Affordable Care Act (ACA), group health plans cannot impose a higher copayment or coinsurance rates for participants who receive emergency medical treatment from an out-of-network provider.

Pursuant to that ACA provision, the Departments issued an [interim final rule](#) to establish that "a plan or issuer satisfies the copayment and coinsurance limitations in the statute if it provides benefits for out-of-network emergency services in an amount equal to the greatest of three possible amounts--

- (1) The amount negotiated with in-network providers for the emergency service furnished;
- (2) The amount for the emergency service calculated using the same method the plan generally uses to determine payments for out-of-network services (such as the usual, customary, and reasonable charges) but substituting the in-network cost-sharing provisions for the out-of-network cost-sharing provisions; or
- (3) The amount that would be paid under Medicare for the emergency service."

Despite extensive public comment, the Departments issued the [final rule](#) without substantive revision. A college of emergency physicians was dissatisfied with the Departments' response to public comments and filed suit against the Departments.

Although the court determined that the Departments failed to seriously respond to public comments, the court declined to vacate the rule. The court remanded the case to the Departments for further explanation of their rule.

### Question of the Month

**Q.** How does the new child age rating structure affect employers in the small group market who are in states that adopt the new age band?

**A.** The new child age rating bands will likely result in an increase in 2018 premiums.

As background, in December 2016, the Department of Health and Human Services (HHS) issued a [final rule](#) that creates multiple child age bands rather than a single age band for individuals age 0 through 20, for plan or policy years beginning on or after January 1, 2018.

Per HHS, establishing single-year age bands starting at age 15 will result in small annual increases in premiums attributable to age for children age 15 to 20, which will help mitigate large premium increases attributable to age due to the transition from child to adult age rating at age 21.

States are not required to adopt these new age rating bands. However, for employers in states that adopt these new age rating bands, employers will see an increase in 2018 premiums at renewal if they have employees or dependents who fall within the 14-20 age range.

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