

Monthly Benefit News & Developments

CDC GUIDANCE FOR EMPLOYERS REGARDING THE CORONAVIRUS

The Centers for Disease Control and Prevention has issued [*Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)*](#) – to be updated as needed – to help prevent workplace exposures to acute respiratory illnesses, including COVID-19 (formerly referred to as the “2019 novel coronavirus” or nCoV) in non-healthcare settings. The CDC also provides planning considerations if there are more widespread, community outbreaks of COVID-19.

UPCOMING KEY DATES

4/27/20 – Effective date of the NLRB’s final rule defining a “joint employer” for bargaining with, or being responsible for unfair labor practices against, the same group of workers

4/30/20 – Deadline to apply for an IRS individual determination letter under the second six-year remedial amendment cycle for defined benefit preapproved plans.

7/31/20 – Reporting and payment of the PCORI fee by affected self-insured group health plans and insurers for plan/policy years ending on/after 10/1/19 and on/before 10/1/20.

10/1/20 (policy years beginning on or before) – Extended deadline for transitional health insurance policies for small group plans that do not comply with ACA standards, provided that the policies expire by 12/31/20.

12/15/20 (fiscal years ending after) – Application of FASB amended Subtopic 715-20, disclosure rules for public companies that sponsor defined benefit or other postemployment benefit plans.

12/31/20 – Expiration of “MAP-21” pension funding stabilization provisions for single-employer and multiple-employer defined benefit retirement plans.

12/31/20 – Expiration of the Work Opportunity and the paid family/medical leave tax credits.

12/31/20 (plan years beginning after) – Qualified cash-or-deferred arrangements must allow long-term, part-time employees to participate; and first availability of open multiple employer/pooled retirement plans.

Legislative Activity on the Benefits Front

Two House committees advanced legislation aimed at curbing “surprise” medical bills and their chairmen expressed hope for a compromise to enable a floor vote in May. The Education and Labor and the Ways and Means Committees join the Energy and Commerce panel in approving competing measures – all applicable to employer-sponsored group health plans – to prevent patients from incurring bills for out-of-network services or care, even though the treatment was provided in an in-network setting (e.g., in a hospital) or from an ancillary provider they did not choose.

Although all three bills would cap the amount patients have to pay for services provided by out-of-network physicians at what is owed for in-network care, they diverge in how insurers and hospitals would settle the unpaid balances. H.R.3636 (approved by the Energy and Commerce Committee in July 2019), H.R.5800 (from the Education and Labor Committee on Feb. 11, 2020), and H.R.5826 (from the Ways and Means Committee on Feb. 12, 2020) all call for resolution by arbitration, taking into account median in-network rates. But H.R.5826 would permit arbitration for all billing disputes, while H.R.5800 and H.R.3636 would set minimum thresholds for arbitration. In addition, both H.R.5800 and H.R.3636 would stipulate that out-of-network services under \$750 would be paid at median in-network rates for similar services in the same geographic area.

Employers and insurers generally prefer the Education and Labor and the Energy and Commerce Committees’ bills, in part due to greater certainty about the price of services; physicians and hospitals are inclined to support the Ways and Means Committee’s proposal, as it does not set minimum thresholds or benchmarks for out-of-network services.

WHITE HOUSE RELEASES PRESIDENT’S BUDGET PROPOSAL

The White House released the President’s budget proposal for fiscal year 2021 (which begins Oct. 1, 2020), calling for \$740.5 billion in funding for defense and \$590 billion in cuts to discretionary spending. The budget forecasts the 10-year Treasury yield will average 2% in 2020 and grow more slowly than previously projected over the next decade, reducing the costs of interest payments. The budget also assumes that Congress will extend the 2018 individual tax cuts that are set to expire at the end of 2025, and does not include any new significant tax cuts that the Administration indicated it would propose before the November election.

The President’s proposal requests:

- \$11.1 billion for the Labor Department, a \$1.3 billion or 10.5% decrease from the FY2020 enacted level;
- raising about \$26 billion (over 10 years) in premiums for the Pension Benefit Guaranty Corporation’s multiemployer program;
- increased funding for the Employee Benefits Security Administration “to develop policy, regulations, and enforcement capacity to enable more employers to adopt the Multiple Employer Welfare Arrangement model and expand access to health insurance for American workers in ways that better fit the modern American workplace”; and
- allowing states to establish paid parental leave programs for new parents.

U.S. LIFE EXPECTANCY

The U.S. Census Bureau released [Living Longer: Historical and Projected Life Expectancy in the United States, 1960 to 2060](#), which projects that Americans will have longer life expectancies in coming decades. By 2060, life expectancy for the total population is projected to increase by about six years, from 79.7 in 2017 to 85.6 in 2060. Increases in life expectancy are projected to be larger for men than women, although women are still projected to live longer than men do, on average, in 2060.

BLS REPORT ON FLEXIBLE BENEFITS

The Bureau of Labor Statistics released [Flexible Benefits in the Workplace](#), a fact sheet summarizing coverage and features of flexible benefits, dependent care flexible spending accounts, and healthcare flexible spending accounts.

GAO ON PRIVATE PENSION OVERSIGHT

The Government Accountability Office's [Private Pensions: IRS and DOL Should Strengthen Oversight of Executive Retirement Plans](#) examines: the prevalence, key advantages, and revenue effects of executive retirement plans; and how federal oversight protects benefits and prevents ineligible participation.

CRS REPORTS

The Congressional Research Service's [Social Security's Funding Shortfall](#) provides an overview of the trust fund, discussing financing and projected outlook, as well as policymakers' proposals to restore the trust fund's balance. The CRS also published [Social Security: The Trust Fund](#), covering how the Social Security program is financed and how the Social Security trust funds work.

Separately, the CRS released [Paid Family and Medical Leave in the United States](#), which provides an overview, summarizes state-level family and medical leave insurance programs, reviews policies in other advanced economy countries, and economy countries, and describes recent federal legislative action to increase access to paid family leave.

FROM GASB

The Government Accounting Standards Board issued [GASB Statement No. 92, Omnibus 2020](#), covering: reporting of intra-entity transfers of assets between a primary government employer and a component unit defined benefit pension plan or defined benefit other postemployment benefit (OPEB) plan; the applicability of Statements No. 73 and 74; and the applicability of certain requirements of Statement No. 84 to pension and OPEB arrangements.

Regulatory Roundup

JOINTLY FROM TREASURY/LABOR/HEALTH AND HUMAN SERVICES:

- Revised (to correct minor errors) [Summary of Benefits and Coverage](#) (SBC) documents for group health plan sponsors to use in plan years beginning in 2021, along with ACA [Frequently Asked Questions Part 41](#) summarizing the changes and discussing the timing of the use of the updated SBC.

MULTIPLE AGENCIES' GUIDANCE PORTALS:

In accordance with [Executive Order 13891](#), federal departments/agencies have announced their single, searchable, indexed database that contains, or links to, all of their "guidance" documents. For the PBGC: see [notice](#) and [webpage](#); for the Social Security Administration, see [webpage](#); and for the EEOC, see [notice](#) and [webpage](#).

FROM THE DEPARTMENT OF TREASURY/IRS:

- A [final rule](#) providing special valuation rules in determining the amount to include in an employee's gross income for personal use of an employer-provided vehicle.
- A [proposed rule](#) updating the federal income tax withholding rules and to accommodate the redesigned Form W-4 (Employee's Withholding Certificate).
- A [proposed rule](#) clarifying the business expense deduction for meals during business entertainment events, following changes made by the 2017 tax law.
- [General Instructions for Forms W-2 and W-3](#) for 2020.

FROM THE DEPARTMENT OF LABOR:

- An [announcement](#) about a new [Contractor Compliance Institute](#), to help federal contractors/subcontractors comply with equal employment rules.

FROM THE PENSION BENEFIT GUARANTY CORPORATION:

- A [final rule](#) making miscellaneous technical corrections, clarifications, and improvements to its regulations on: reportable events and certain other notification requirements; annual financial and actuarial information reporting; termination of single-employer plans; and premium rates.
- A [final rule](#) making all agency coverage determinations subject to appeal and clarifying the procedures for requesting administrative review.

FROM THE DEPARTMENT OF HEALTH AND HUMAN SERVICES:

- A [proposed rule](#) that specifies the conditions under which the agency will calculate and impose civil money penalties when responsible reporting entities for group and nongroup health plans fail to meet their Medicare Secondary Payer reporting obligations.
- A [proposed rule](#) making policy, technical changes to the Medicare Advantage and the Medicare prescription drug programs, including those affecting special enrollment periods by individuals into and out of group health plans.

FROM THE NATIONAL LABOR RELATIONS BOARD:

- A [final rule](#) (and related [Fact Sheet](#)) defining "joint employer" status under the National Labor Relations Act, specifying the essential terms and conditions of employment for an entity to be treated as a joint employer of a separate affiliate.

High Court on "Actual Knowledge" of Breach

In a unanimous ruling, the U.S. Supreme Court held that ERISA's three-year period for retirement plan participants to file a suit begins when they have "actual knowledge" of a fiduciary breach, and not when they receive (but do not read or cannot recall reading) the relevant information in disclosures to participants before the start of the three-year suit-filing period ([Intel Corp. Investment Policy Committee v. Sulyma](#) (No. 18-1116, 2/26/2020)). When Congress enacted ERISA, "the word 'actual' meant what it means today: 'existing in fact or reality,' the Court said, adding that "Congress has repeatedly drawn a 'linguistic distinction' between what an ERISA plaintiff actually knows and what he should actually know."

Other Recent Milliman Publications You May Be Interested in:

- ***SECURE Act 2019: A world of opportunity for annuity carriers*** Offering annuities in retirement plans may now be more attractive for consumers, plan sponsors, and annuity writers. What are some key changes and opportunities?
- ***Implement a 401(k) component to offset healthcare costs in retirement*** With rising healthcare costs and people living longer, trustees of multiemployer plans may want to ask themselves: How can we better support our members in retirement when addressing healthcare costs?
- ***The impact of short-term limited-duration policy expansion on patients and the ACA individual market*** This report (commissioned by The Leukemia & Lymphoma Society) provides insights into the impact of short-term limited-duration (STLD) policies and other recent regulatory actions on patient spending, premiums, and enrollment in the Affordable Care Act (ACA)-compliant individual marketplace.
- ***SECURE Act surprises for plan sponsors and TPAs*** The Setting Every Community Up for Retirement Enhancement (SECURE) Act affects federal laws for employer-sponsored retirement benefit programs and contains a few features that may surprise employers and their third-party administrator (TPA) business partners.
- ***Pension Funding Index, February 2020***
- ***Multiemployer Pension Funding Study: December 2019***
- ***Milliman Pension Buyout Index*** Newly launched, the MPBI uses the financial disclosures of the 100 largest U.S. corporate defined benefit pension plans, along with annuity purchase composite interest rates from insurers, to estimate the average cost of a pension risk transfer annuity de-risking strategy.



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