

IN THE KNOW

Bulletins for Benefits & HR Professionals



September 2, 2020

Health Plans May Now Use PHI to Inform Certain Participants about Plasma Donation for Battling COVID-19

“When using PHI to provide participants with information about plasma donation, a health plan must limit its use and disclosure of a participant's PHI to the minimum amount necessary to accomplish the purpose. A health plan should disclose information about plasma donation directly to participants. It should not disclose a participant's PHI to a donation center so that the donation center can contact participants about plasma donation (unless the participant has authorized this disclosure). cash payments to the charity (or charities) by January 1, 2021.” [Full Article](#)

Miller Johnson



Temporary Premium Credits: New Rule Clarifies Risk Adjustment and Medical Loss Ratio Standards

“Current CMS regulations would require insurers to report premium credits as part of their full earned premium for purposes of the 2020 medical loss ratio (MLR) and the risk adjustment program. As expected, the new interim final rule addresses those areas with the goal of ensuring accurate reporting of premiums, including premium reductions, for 2020.” [Full Article](#)

Katie Keith, in Health Affairs Blog

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Seyfarth Shaw LLP

LGBTQ Issues for Employee Benefit Plans in Light of Bostock

“Examples of benefit program provisions that warrant review: [1] Eligibility rules that provide benefits to opposite-sex spouses, but not same-sex spouses; [2] Eligibility rules that provide coverage to same-sex domestic partners, but not opposite-sex domestic partners; [3] Medical plan provisions that exclude gender dysphoria treatments; [4] Enrollment forms that require enrollees to identify their sex, and the role that such an identifier plays in the plan's administration; [5] Benefit plans that do not cover family planning benefits for LGBTQ employees if such benefits are covered for opposite-sex employees; and [6] Short-term or long-term disability plans that do not provide benefits in connection with leaves for gender dysphoria treatment or gender affirmation surgeries.” [Full Article](#)

Warner Norcross & Judd LLP



Employer May Face Equitable Remedies for Fiduciary Breach Due to Service Provider's Error

“Two key ERISA issues are highlighted here: the possibility of monetary relief for fiduciary breach, and the importance of monitoring service providers. While an employer held liable for a service provider's gross negligence might seek recovery from the service provider, contract terms could limit the service provider's exposure. This case also illustrates the importance of fully investigating possible errors as they arise.” [Full Article](#)

Thomson Reuters / EBIA



President Trump Orders HHS to Rescind Discount Safe Harbor for PBMs, But Questions Remain

“Questions remain as to whether HHS has the legal authority to carry out the Order and, if it does, whether it can do so in a manner that will not increase costs. This article provides a background on the legal issues surrounding HHS's approach to the use of rebates by pharmaceutical manufacturers, then addresses the February 2019 proposed rule in light of the Order, and concludes with a discussion of future considerations.” [Full Article](#)

Seyfarth Shaw LLP