



**BENEFITS INSIDER**  
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WEB's *Benefits Insider* is a bi-monthly member exclusive publication providing the latest developments from Washington, DC, on matters of interest to employee benefits professionals. The content of this newsletter is being provided through a partnership with the American Benefits Council, a premier benefits advocacy organization. To inquire about membership with the Council, contact Deanna Johnson at (202) 289-6700 or [djohnson@abcstaff.org](mailto:djohnson@abcstaff.org).

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## RECENT LEGISLATIVE ACTIVITY

### House and Senate Pass 21st Century Cures Act with HRA, Mental Health Parity Provisions; Obama Signs into Law

Legislation addressing biomedical innovation, as well as mental health reform and health reimbursement arrangements (HRAs), was approved by the U.S. Senate by a vote of 94-5 on December 7. The House approved the measure on November 30 by an equally strong bipartisan vote of 392-26. President Obama signed it into law on December 14.

The [21<sup>st</sup> Century Cures Act \(H.R. 34\)](#) seeks to spur federal approval of new drugs, but also includes a myriad of other provisions encompassing a wide range of health care issues, such as [President Obama's precision medicine](#) and [Vice President Joe Biden's cancer "moonshot"](#) initiatives. Among the many provisions included in the 996-page bill, the measure contains extensive provisions on small employer HRAs and mental health parity reform.

#### *HRAs*

H.R. 34 allows qualifying small employers to sponsor a "qualified small employer health reimbursement arrangement" (QSEHRA). The provisions that outline QSEHRAs were largely borrowed from the [Small Business Health Care Relief Act \(H.R. 5447\)](#), sponsored by Representatives Charles Boustany (R-LA) and Mike Thompson (D-CA). H.R. 5447, which was approved (by voice vote) by the U.S. House of Representatives on June 22, sought to eliminate the penalty on small businesses for providing pre-tax monetary assistance to their employees (such as in an HRA) to purchase insurance on the individual market. H.R. 34 contains a handful of changes from what was introduced in H.R. 5447, including an annual cap of \$4,950 on a QSEHRA for individuals, and \$10,000 for QSEHRAs that also benefit family members. These caps will be indexed using the Consumer Price Index in years following 2016.

#### *Mental Health Parity Reform*

H.R. 34 includes several provisions from the [Mental Health Reform Act \(S. 2680\)](#) which was unanimously approved by the Senate Health, Education, Labor and Pensions (HELP) Committee on March 16. The section titled "Mental Health Parity" of the [summary for H.R. 34](#) outlines high-priority provisions for large employers, including:

- The Departments of Health and Human Services (HHS), Labor, and Treasury will be required to release compliance program guidance providing illustrative examples of past findings of compliance and noncompliance with existing mental health parity requirements, including disclosure requirements and non-quantitative treatment limitations.

- HHS will be required to seek public comment on ways to improve consumer access to documents about mental health and substance use disorder benefits which are required by law to be disclosed.
- HHS will be required to issue new guidance documents to assist health plan compliance with existing mental health parity requirements.
- Guidance documents will be subject to a comment period of no fewer than 60 days before being finalized.
- Clarification that the Secretaries' of HHS, Labor, and Treasury have authority to audit a health plan in the case that such plan has been found to have violated existing mental health parity laws five times.
- Requires HHS to convene a public meeting within six months of enactment to produce an action plan for improved federal and state coordination related to the enforcement of mental health parity and addiction equity requirements.
- Allows HHS to facilitate the identification of model programs and materials for educating and training health professionals in effective strategies to identify individuals with eating disorders, provide early intervention services, and refer patients to appropriate treatment.
- Clarifies the coverage of eating disorder benefits, including residential treatment, under existing mental health parity requirements.

## RECENT REGULATORY ACTIVITY

### Treasury/IRS Regulations Proposes Changes to Defined Benefit Plan Distributions

In [proposed regulations](#) issued on November 25, the U.S. Treasury Department and Internal Revenue Service (IRS) seek to update the existing rules governing distributions from defined benefit pension plans.

Section 417(e) of the Internal Revenue Code sets forth the rules for distributions from defined benefit plans, including the determination of present value, while Section 411 addresses minimum plan vesting standards. The proposed regulations would update the existing rules to reflect the statutory changes made by the Pension Protection Act (PPA) including the new interest rates and mortality tables set forth in Section 417(e)(3) and the exception from the valuation rules for certain applicable defined benefit plans set forth in section 411(a)(13).

Specifically, the proposed regulations clarify that “the interest rates that are published by the [IRS] Commissioner pursuant to the provisions as modified by PPA '06 are to be used without further adjustment. In addition, the proposed regulations would eliminate

obsolete provisions of the regulations relating to the transition from pre-1995 law to the interest rates and mortality assumptions provided by [the General Agreement on Tariffs and Trade (GATT)].

The proposed regulations make conforming changes to reflect the newly [final regulations](#) modifying the “partial annuity” distribution options under defined benefit pension plans. The guidance also addresses whether a plan that provides a death benefit equal in value to the participant's accrued benefit may apply a preretirement mortality discount for the probability of death when determining the amount of a single-sum distribution. Finally, the regulations address the treatment of Social Security level-income options and optional forms of benefit.

The IRS will host a hearing on the proposal on March 7 and is soliciting written comments and hearing requests through February 23, 2017.

## **RECENT JUDICIAL ACTIVITY**

### **U.S. Supreme Court to Consider Importance of IRS Private Letter Rulings in Church Plan Lawsuit**

The U.S. Supreme Court [announced on December 2](#) that it will review a series of lawsuits centering on the ability of religiously-affiliated hospitals to claim the “church plan” exemption from ERISA’s pension funding rules. Plaintiffs have argued that the hospitals’ actions constitute an inappropriate use of the church plan exemption and have led to significant plan underfunding.

One key element in the cases is that each of the three hospitals in question obtained a private letter ruling from the Internal Revenue Service (IRS) approving of each hospital’s decision to claim the church plan designation. The various Circuit courts from which the cases will be reviewed have not given deference to these letters in ruling for the plaintiffs.

The three cases will be consolidated for the high court’s consideration. Oral arguments will take place in 2017.