

LEG REG REVIEW GPAHU Edition 2018, 3rd Issue * January 15, 2018**

LEG REG REVIEW is a periodic newsletter produced by PHILLIPS ASSOCIATES, a professional lobbying and consultant firm located near the State Capitol. It contains news on Pennsylvania legislation and regulations impacting the Insurance and Business Communities.

DEPARTMENT ADVANCES MEDICARE SUPPLEMENT RULES

The PA Independent Regulatory Review Commission (IRRC) received a regulation from the PA Insurance Department January 9 updating minimum Medicare Supplement Insurance (Medigap) to reflect changes in the Federal law and to allow PA's compliance with National Association of Insurance Commissioners model rules. IRRC will formally vote on the proposed regulation after March 22.

According to the Insurance Department, these changes are required per the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) and per NAIC amendments to their model regulation. If adopted, these changes would be effective January 1, 2020. Among other things, it: eliminates "ladle rating" where "for each year of age attained by an enrollee, the rate decreases until the insured reaches an age at which rates begin to increase significantly." In addition:

- A standardized plan re-designated as a high deductible plan G may be offered to an individual eligible for Medicare before 1/1/2020.
- Medigap plans may NOT pay Medicare deductibles. However, the Medicare Part B deductible may be included as part of the out-of-pocket expenses in meeting the deductible of a high deductible Medigap Plan.
- Plan C is re-designated Plan D; Plan F is re-designated Plan G.
- Plans C, F, and high deductible Plan F may not be offered after 1/1/2020.

Close of public comments is February 22, 2018, to IRRC. (James M. Smith and Fiona E. Wilmarth, IRRC, 333 Market Street, Harrisburg, PA 17101, irrc@irrc.state.pa.us. Insurance Department Regulatory Coordinator Bridget Burke may be reached at 717-787-2567, bburke@pa.gov.) A link to download the text of Regulation #11-256 follows:

<http://www.irrc.state.pa.us/regulations/RegSrchRsIts.cfm?ID=3200>

ASSOCIATION HEALTH PLAN RULE PROPOSED

On January 4, 2018, the Trump Administration put forth a proposed regulation allowing for an expansion of the definition of 'employer' under ERISA to include sole proprietors. Association Health Plans (AHPs) would not be limited to same industry-based associations but could have multi-state plans separate from state regulatory authority except for reserve and capital requirements. There would still be anti-discrimination rules to prohibit AHPs from discriminating based on health factors. If adopted, the AHP rule would fulfill a major Trump campaign promise. NOTE: The National Association of Health Underwriters has been traditionally skeptical of AHPs, stating that it erodes the state insurance regulatory system. The comment period is 60 days: <https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2017-28103.pdf>

GOVERNOR WOLF DECLARES OPIOID EMERGENCY

On January 10, Governor Tom Wolf declared PA's opioid crisis to be a state health emergency. This parallels a statement by the Trump Administration to the same effect. It means that the state will be able to do some things administratively that could not be done otherwise and provides an impetus for more legislation being enacted to curb access to opioids. Among other things, it creates an opioid Operational Command Center to coordinate activities of the various state agencies working on this problem. The declaration expires in 90 days at which time it may be renewed by the Governor.

Speaker of the House Mike Turzai (R-Allegheny) issued the following after the Governor's Emergency Declaration:

The designation comes on the heels of the General Assembly's passage of at least a dozen state laws aimed at stopping abuse before it starts through prescription limits and better education outreach, as well as efforts to increase the availability of the overdose-reversing drug naloxone and improved treatment options. More than 4,600 Pennsylvanians lost their lives to opioid overdose in 2016, and the 2017 statistics are expected to increase. The opioid crisis affects all groups of Pennsylvanians – not differentiating by race, region, religion, income or any other factor. Beyond the public health toll, opioids are straining prisons, the child welfare system and hospitals, and nationwide have cost more than \$50 billion annually in treatment and lost productivity. [Click here to check out the opioid legislation enacted into law.](#)

TAX CUTS & JOBS ACT

The firm of Stinson Leonard Street listed a number of the new tax law's provisions affecting employee benefits and executive compensation. <https://www.jdsupra.com/legalnews/tax-bill-means-changes-to-employee-87084/> Some of these include:

- Employees whose plans terminate or who have a severance from employment while holding an outstanding 401(k) plan loan now have until their tax filing deadline to roll over outstanding loan balances to an IRA to avoid the loan being treated as taxable income.
- Employees lose the exemption for moving expenses and exclusion of employer moving expense reimbursements.
- Employers may no longer deduct transportation and parking fringe benefits.
- Tax-exempt organizations will be subject to a 21% excise tax on remuneration in excess of \$1 million paid to any of its top executives. *LEG REG REVIEW notes that the Affordable Care Act's restrictions on top-level compensation (no special health benefits or health insurance subsidy) is still in limbo and is not affected by this provision.*

NOTE FROM LEG REG REVIEW: The Tax Cuts & Jobs Act did NOT include an extension of the suspension of the Affordable Care Act's 2.3% tax on gross sales earnings of medical device manufacturers. This means that unless Congress acts, the tax will again impact that industry in 2018.

PENNSYLVANIA POLITICS

- Special election date of May 15, 2018, has been set for two House races to fill the vacancies created by resignations of Rep. Brandon Neuman (D-Washington) who was elected to the Washington County Court of Common Pleas in November and Rep. Scott Petri (R-Bucks) who became the new Executive Director of the Philadelphia Parking Authority this month. Whoever wins their special election will be incumbents but will still have to face voters in the General Election in order to have a full two-year term. May 15 is also the date of the Primary Election.
- On January 11, Senator John Eichelberger (R-Blair) announced his candidacy for Congress in the Republican primary to succeed retiring Rep. Bill Shuster (R-9). He joins two other announced Republican candidates. House Majority leader Dave Reed (R-Indiana) may also run.
- Rep. Will Tallman (R-Adams/Cumberland) announced that he is not seeking re-election in 2018.

REGULATORY UPDATES

- Patient Safety Authority meets January 25 in Summerdale, PA. Details: 717-346-0469
- PA Monitoring All Prescriptions Board (Department of Health) meets January 23, 2018 in Harrisburg. Details: 717-547-3309
- The PA Department of Banking and Securities released revisions to regulations affecting annuities in PA as published in the January 13 [PA Bulletin](#):
<https://www.pabulletin.com/secure/data/vol48/48-2/89.html>