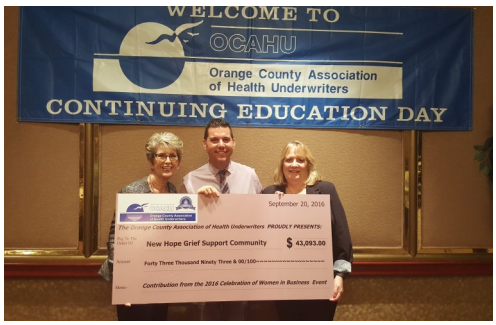
Orange County Association of Health Underwriters

Volume 11, Issue 2
November/December, 2016

C.O.I.N.

COUNTY OF ORANGE INSURANCE NEWS

OCAHU CE DAY 2016



Full Report and Photos Enclosed!

Inside this Edition:

- **Feature Article**: ***Health Plan Documentation: What You and Your Clients Need to Know!***
- **December and January Program Details**
- **Compliance Corner—*Legal Briefing;*** 54^3 8/54^3 9 Reporting; Proposed Revisions to 5500; Per Diem Rates Notice; San Francisco Healthcare Ordinance; HIPAA ***Privacy & Security Updates and Enforcement:*** The latest Enforcement; Case Settlements, Health Internet in the Digital Age; Cloud Computing Guidance
- **President's Message**
- **Legislative Report**
- **PAC report**
- **CE Day Wrap-Up & Photos**
- **Membership News**– New Members since September 1; Members Up for Renewal; Membership Promotion;
- **OCAHU Board of Directors**
- **Business Development—Hold the Date!**
- **Schedule of Events**

DON'T MISS OCAHU MONTHLY MEETING

Tuesday, December 13, 2016

Michael Brandt,

"The Social Man"

Using Social Media to Build Your Business

PLUS!!! …… Bring a Toy to be donated to the St. Joseph/Hoag children's Holiday Drives

For More Information, See Inside this Issue!

Radisson Hotel Newport Beach

See inside for more details!

ATTENTION MEMBERS: WE HEAR YOU!

To accommodate multiple agent and carrier rep requests, and to allow our members to work on their Q4 renewals, OCAHU will GO DARK for the month of November! We will have value-packed meetings in December and January!

This Issue's Feature Article:

Health Plan Documentation: What You and Your Clients Need to Know!

By Marilyn Monahan, Monahan Law Office

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Thank you for being a part of OCAHU!

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Our association is a local chapter of the National Association of Health Underwriters (NAHU). The role of OCAHU is to promote and encourage the association of professionals in the health insurance field for the purpose of educating, promoting effective legislation, sharing information and advocating fair business practices among our members, the industry and the general public.

Letter from OCAHU President, Maggie Stedt, LPRT

Fourth Quarter Challenge!

Fourth Quarter has begun in earnest with the Group Insurance and Medicare Plan enrollments and renewals and the sales with individual plans quickly following. More then ever as we work with our clients and the plan options it brings home how important our association is for the support of the agent. The agent has never been more needed for the protection of the consumer and helping them with the choices that best fits their needs.

Our role as an agent and the ability to provide a livelihood and a legacy are continually being challenged and yes, even under attack. Our commissions are shrinking while the work load and compliance requirements continue to increase! The upcoming elections will set the stage for years to come. Our Association of Health Underwriters continues to represent us well both in Washington (NAHU) and Sacramento (CAHU)!

One great step recently accomplished was the introduction of the "Medicare Protection Act". The following was announced by John Greene, NAHU's VP of Legislation: "AHU has been working to have legislation introduced that would allow seniors enrolled in COBRA coverage to transition to Medicare Part B without a penalty. Our members who work in the Medicare space have increasingly spoken to individuals who get caught in a Medicare trap and pay a penalty for the rest of their lives. This legislation would effectively treat COBRA as creditable coverage, the same as seniors who remain on similar employer-sponsored coverage and then enroll in Medicare.

--- NAHU successfully introduced legislation to fix this problem. HR 6184, The Medicare Enrollment Protection Act was introduced by Representatives Bob Dold (R-IL-10) and Kurt Schrader (D-OR-5). NAHU will raise awareness of this issue through our operation shouts and press with the hope of getting this fix included in a later legislative package.

We also reported success in Sacramento with a number of the bills we supported being passed and signed by the governor. Of special note is the passing of AB 72 that bars balance billing when the consumer sought treatment in a in-network facility. CAHU also saw a number of other bills passed that we supported such as AB 2366 on Long Term Care Insurance.

Want to **know more**? Check the NAHU.org, CAHU.org and OCAHU.org Websites and contact your Board of Directors! Want to **do more** and **make a difference**? Make sure that you contribute to our State PAC and our National PAC (HUPAC). Even a $10 a month contribution can make a difference!!! Ryan Dorigan our VP of PAC can help you in signing up for your donations! Rob Semrow, VP of Legislation, would love to assist you in "Adopting a Legislator." I'll share my experiences in meeting with my local assemblyman in up coming editions of the COIN!

Orange County Health Underwriters continues to be a strong hard working chapter that offers our members many opportunities for education, information, camaraderie and support. Plus, giving to charities is crucial part of our DNA! But we can't do it with out every member's participation and continued support! Plan to join us at all the events!

Feature Article: Health Plan Documentation: What You and Your Clients Need to Know

By: Marilyn Monahan, Monahan Law Office

Department of Labor (DOL) audit activity is increasing, and many employers are not prepared. The DOL audit process requires employers to produce an extensive list of documentation, and that documentation must be fully compliant with applicable law. Many employers, however, take their health plan documentation for granted. They assume the paperwork provided by the insurer or HMO is all they need to meet their legal responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA) and other related federal laws. This assumption is generally incorrect. The certificate booklet (CB) or evidence of coverage (EOC) provided by the insurer/HMO almost never satisfies ERISA plan documentation rules. In order for an employer to satisfy its obligations under ERISA—and be prepared in the event of an audit by the Department of Labor (DOL) or a participant lawsuit—the employer will generally have to supplement the insurer/HMO's written materials with "wrap" documents.

Plan Document

The plan documentation requirements under ERISA start with the "plan document." Section 402 of ERISA states that, "Every employee benefit plan shall be established and maintained pursuant to a written instrument." 29 U.S.C. § 1102 (a)(1). We typically refer to this as the "plan document" requirement. The plan document is the legal document which governs the plan and its administration.

Certain terms—described in section 402—must be included in the plan document. In the case of a fully insured plan, these terms are rarely included in the insurer/HMO's documentation.

The plan document does not have to be distributed to participants. It will, however, be among the first documents asked for in the event of a DOL audit, and it will be essential in the event of a lawsuit. In addition, if a participant asks for a copy of the plan document, it must be provided within 30 days or the plan administrator will face a penalty of $110 per day.

Summary Plan Description

Unlike the plan document, the "summary plan description" (SPD) must be distributed to participants. The SPD translates the legal terminology in the plan document into language that is "calculated to be understood by the average plan participant." 29 U.S.C. § 1022(a). The SPD must be "sufficiently accurate and comprehensive to reasonably apprise . . . participants and beneficiaries of their rights and obligations under the plan."

Changes to plan terms that have not been incorporated into the SPD must be described in a summary of material modifications or reductions (SMM or SMR). An SMR must be provided within 60 days of adoption of a change in eligibility or benefits.

The DOL has issued an extensive set of regulations that outlines the items that must be included in the SPD (as well as regulations governing the format, distribution, and foreign language requirements for the SPD). In the case of a fully insured plan, many of the mandatory provisions will be included in the insurer/HMO's CB or EOC. It is exceedingly rare, however, if not unheard of, for the insurer/HMO's documentation to include all the terms required by the ERISA regulations. As a result, the employer must supplement the insurer/HMO's documentation, and the most common vehicle used to do so is a "wrap" document.

Summary of Benefits and Coverage

The Affordable Care Act (ACA) added a new disclosure requirement: the "summary of benefits and coverage" (SBC). The SBC supplements, but does not replace, the SPD. The SBC has its own set of content, distribution, and foreign language regulations. New guidance and templates were issued in 2016. The new SBC templates must be used during the first open enrollment period on or after April 1, 2017.

What Is a Wrap Document?

A wrap document is a vehicle a plan may use to supplement the terms provided by the insurer/HMO. The CB/EOC provided by the insurer/HMO includes essential plan information that must be provided to participants but, as noted above, it does not include all the terms required by the ERISA plan document and SPD rules. To supplement the insurer/HMO materials, the plan administrator may draft and distribute "wrap" documents. These wrap documents include the terms required by ERISA but omitted by the insurer/HMO, as well as other terms that are helpful in the

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December 13, 2016

Radisson Hotel Newport Beach | 4545 MacArthur Bl

Registration: 11AM | OCAHU Business and Lunch: 11:30 AM

Speaker Program: 12N

Register @ ocahu.org

Michael Brandt

Michael Brandt is "The Social Man" for his love and passion for marketing social media and training social media in Los Angeles and Orange County. Michael Brandt is CEO of Drive Traffic Media, a Boutique Online Marketing Agency and LM Studio Marketing a Video Production Company and Internet Marketing, SEO, Social Media Marketing, a Video Production, Video Marketing, and website design company.

Michael is also CEO at Drive Traffic Media, an innovative Internet marketing & online advertising company, one of the leading providers of Internet marketing services in Southern California.

Health and Welfare Plan Compliance Checklist for Agents and Their Employer Clients

Scrutiny of health plans—by both the DOL and IRS—will inevitably increase in the new ACA world. Producers and employers need to be prepared. This program will take you through the essential steps every self-audit should include to ensure that employers are prepared for an audit and are satisfying their fiduciary obligations. The program will also feature a discussion of common pitfalls, practical compliance tips, and best practices.

Takeaways:

- Understand what the DOL and IRS will be looking for in an audit,
- Learn how the ACA has changed the scope of an employer's administrative responsibilities,
- Discussion of the role the insurance producer plays in compliance,
- Practical tips for bringing health plans into compliance.

January 10, 2016

Radisson Hotel Newport Beach

4545 MacArthur Boulevard

Registration: 11AM

OCAHU Business and Lunch: 11:30 AM

Speaker Program: 12N

1-HR CE Pending Approval with DOI

Register @ ocahu.org

Marilyn A. Monahan, Esq.

Monahan Law Office

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COIN COMPLIANCE CORNER

What Agents and Your Clients Need to Know!

November, 2016 Legal Briefing

From Marilyn Monahan, Monahan Law Offices

Q4 is always a busy time of year, as employers and producers prepare for the new year. This is a summary of some recent developments you might want to note:

IRS 1094/1095 Reporting: Are you ready for IRS reporting for 2016? The IRS has issued the 2016 Forms 1094-B and 1095-B, and the accompanying instructions. Draft 2016 Forms 1094-C and 1095-C, and the accompanying instructions, have also been issued; employers and producers should watch for the final 1094-C and 1095-C forms.

When do these forms have to be filed? Generally, the forms must be filed with the IRS by February 28, 2017, if filing on paper (or March 31, 2017, if filing electronically). If you are required to file 250 or more 1095-B or 1095-C forms (the requirement applies separately), you must file electronically. The 1095-B and 1095-C forms must be furnished to individuals by January 31, 2017.

Proposed Revisions to Form 5500: On July 21, 2016, the Departments of Labor and Treasury, and the Pension Benefit Guaranty Corporation, issued proposed revisions to the Form 5500 filing requirements. The proposed revisions are extensive (149 pages). Among other changes, producers and employers should be aware of the following:

- The proposed revisions would eliminate the current exemption from Form 5500 reporting for small insured and self-insured welfare benefit plans.
- Schedule C will be revised to "improve service provider fee information." According to the DOL, the "proposed updates are intended to provide a powerful tool for improved evaluation of service arrangements involving investments, recordkeeping, and other administrative services."
- A new Schedule J (Group Health Plan Information) has been proposed. Through this schedule, plans would report information about group health plan operations and ERISA and ACA compliance. According to the DOL, "These questions are intended to compel

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HIPAA Privacy & Security Updates—From Dorothy Cociu, COIN Editor and HIPAA Privacy & Security Consultant & Trainer

So what's happened with HIPAA Privacy & Security Enforcement and updates since the September issue? As usual, quite a few things.

On October 13, 2016, St. Joseph Health (SJH) agreed to settle potential privacy violations following a report that ePHI were publicly accessible through internet search engines from 2011 -2012. 14 acute care hospitals, home health care agencies, hospice care, outpatient services, SNF, community clinics and physician organizations throughout CA, parts of Texas and New Mexico. SJH agreed to pay **$2.14 million settlement** and adopt a comprehensive corrective action plan after a 2/14/12 report filed with HHS/OCR that certain files it created for its participation in the meaningful use program, which contained ePHI, were publicly accessible on the internet from February 1, 2011 through February 13, 2012, via Google and possibly other internet search engines. **The server SJH purchased to store files included a file sharing application whose default settings allowed anyone with an internet connection to access them**, resulting in unrestricted access to PDF files containing ePHi of 31,800 individuals, including patient names, health statuses, diagnosis, and demographic information.

The OCR Investigation indicated that SJH potential violations included failure to conduct an evaluation in response to operational changes presented by implementing a new server, therefore compromising ePHI; contractors hired to assess the risks and vulnerabilities were done in a patchwork fashion and did not result in an enterprise-wide risk analysis. In addition to the $2.14 million settlement, they must comply with a corrective action plan that requires the organization to conduct an enterprise-wide risk analysis, develop and implement a risk management plan, revise its policies and procedures, and train its staff on these policies and procedures.

On September 23, 2016, HHS Office of Civil Rights released information on a HIPAA settlement which illustrates, again, the importance of reviewing and updating, as necessary, Business Associates Agreements. Care New England Health System (CNE), on behalf of each of the covered entities under its

Continued on Page 14

When it comes to group health plans, now you can balance choices with savings.

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Legislation Update

By Rob Semrow, VP of Legislation

Hello Fellow OCAHU members,

This past years session has ended and there have been a few bills that have been signed by the Governor that impact our industry. Let me share a few notes about them and what you need to know.

AB72 was a tremendous victory for consumers and our industry in that it addressed an issue that has impacted most of us...Balanced Billing.

Here is a short primer from CAHU for those not familiar with it:

AB 72 was bi-partisan consumer protection legislation aimed at helping protect health care consumers from unexpected balance billing if they are treated by an out-of-network provider at an in-network facility.

"Finding a way to end surprise medical bills has been a goal of CAHU for many years. We are very pleased to see that both parties in the state Legislature and the Governor worked with stakeholders to finally solve this problem," said CAHU President Rick Coburn. "The reason we support AB 72 is that our licensed, certified health insurance agents are usually the ones the consumer calls first asking for help to investigate, and then deal with, out-of-network charges and balance billing."

AB 72 limits a patient's cost-sharing for out-of-network services to the amount the health care consumer would have paid to an in-network provider and counts the cost-sharing payment towards an individual's out-of-pocket maximum and deductible.

CAHU has worked for nearly 16 years with authors and other stakeholders to find a responsible solution that health plans, medical providers and consumer protection groups agreed to in order to solve the surprise medical bill problem. Collectively, CAHU members receive tens of thousands of calls on balance billing problems each year.

Without the tireless efforts of the Association, it's members, it's PAC and others, this bill would still be a daily threat to all consumers.

Other Bills that passed and were signed by the governor included:

AB1823 - A Law that establishes the privately funded California Cancer Clinical Trials Program overseen by the University of California system. CAHU supported this bill.

AB 1899 - This will permit license exams to be given in Spanish as well as English, ensuring a more diverse base of agents. CAHU supported this bill.

AB2366 - This Law will exempt insurers that offer a policy which combines both life and long-term care coverages from the requirement to offer the new benefits or benefit eligibility criteria to their existing long-term care insurance (LTCI) policy. CAHU supported this bill.

SB908 - CAHU was originally opposed to SB 908, which sought to add a new special enrollment period if a plan rate or premium changes and the regulator subsequently deems it unreasonable. SB 908 was subsequently amended to address CAHU concerns to ensure agents are notified at the same time when a client or employer has a policy or contract covered by the proposed law so that the agent may assist their clients in a timely fashion. CAHU was neutral on this bill.

SB923 - In the individual and small group markets, a health care service plan contract or health insurance policy that is issued, amended, or renewed on or after January 1, 2017, from changing any cost sharing requirements during the plan year or policy year, except when required by a change in state or federal law. CAHU supported this bill.

SB 1091 - part of an overall LTC reform package to add new options for new products in long term care and provide for more con-

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Public Service Report: Patricia Stiffer

William Flood Award and

National Philanthropy Day Recognition

OCAHU has a lot to be proud of in the area of Public Service. On September 21 OCAHU presented check to two charities. John Evangelista and John Simurda, our 2016 Golf Tournament Chairmen presented the Cystic Fibrosis Foundation of Orange County with a check for $ 21,503 and Suzanne Purnell, 2016 Chairperson of the Celebration of Women in Business event, presented New Hope Grief Support Community with $44,713. Both amounts were record amounts! *

On November 17 OCAHU will be recognized as an honoree at the National Philanthropy Day event at the Grove in Anaheim.

As a result of our philanthropic endeavors OCAHU was awarded the NAHU William Flood Public Service Award for the sixth consecutive year! ##

Legislative Update—Continued from Page 10

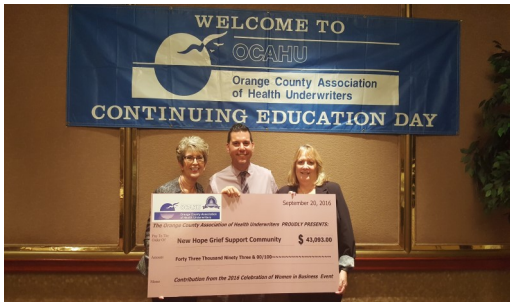
sumer choice in the future. CAHU supported this bill.

SB1234 - CAHU worked with NAIFA and the Cal Chamber ensure that licensed agents and financial advisors will have a role in helping those employees that do not have a current retirement savings select the Secure Choice or other best options in order to help that employee meet future retirement financial goals. Employer fiduciary and liability issues are also addressed in the bill as it is written on 8/16/2016. CAHU was neutral on this bill.

This year, you will be extremely busy with 4th Quarter changes, challenges and issues. You may be pushed to your limits, and you will have that moment of questioning yourself and your profession. Remember, this is still a great profession and one worth standing up for.

So don't sit on the sidelines or complain and not act upon those complaints. *Pick up the phone at least once in the next 60 days and let your legislators know you matter, your clients matter and your industry matters.* Let them know that your expertise and knowledge is available to them on any insurance matters.

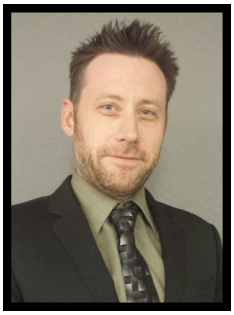
You'll be surprised at the reaction and action it can create.



Left: Presentation of the New Hope and Cystic Fibrosis checks at CE Day, September, 2016. Above: William Flood Service Award 2016.

**The checks amounts photographed are not the final amounts provided to these charities. For the final amounts, see the article above!*

Grass Roots in Action… Maggie Stedt, Rob Semrow and Ryan Dorigan : In district meeting with Assembly Member Bill Brough



Political Action in Orange County

Ryan Dorigan V.P. PAC

Hello again,

I hope that everyone can take the time to join us for a fun upcoming event after the first of the year. It promises to be one of our most fun events of the year with some light snacks, refreshments, cocktails and some fun games to help alleviate the stress. We will be raising money for PAC and taking a few hours to just re-charge the batteries. We'll let you know more about it soon. As Ferris Bueller once said "Life moves pretty fast, if you don't stop and look around once and a while, you could miss it."

I hope that you are all working hard and finding success during this crazy 4th quarter. With everything that is going on this time of year, It can be very hard to take the time that you need to focus on the joy that you get being a part of this business and helping your clients. I sincerely hope that you all take some time to get away from the phone calls and emails and chaos to enjoy your friends and family during the upcoming holidays. I know that Thanksgiving is very often THE MOST STRESSFUL time of the year for folks in our business and it can be nearly impossible to turn off the constant distractions and identify the things we are truly thankful for. However, I really think that this is the most important time of the year to think about how lucky we are to be in this industry and how hard every member of this organization works to make sure that the services we provide for our clients are truly valued.

What of the things that I am most grateful to this organization for is providing me with a voice. As this election cycle dies down and we start to look around at the new faces both in Sacramento and in Washington D.C., I continue to be thankful that I live in this Country and that I am a member of this organization. It can be very easy to tune out the politicians and become very disenfranchised by the entire process. I can imagine some of you reading this right now and thinking to yourselves… "Really Ryan you aren't sick of this whole process by now?" In fact I am more energized than ever by this election. Our system is far from perfect and I know that it seems like our individual vote doesn't count and we feel limited by the choices of the representatives that we have on the ballots. All of this may be true but we still need to count ourselves very lucky for the opportunities that we do have. We all know someone who has served in the military. Many of the members of this organization are veterans who have fought bravely to defend our right to choose who we want to best represent us. Throughout human history, there have been very few times and places in the world where the people have the right to elect their own government. We should all always try to remain very thankful for our chance to have our voice heard.

It is in keeping with the idea of being thankful for our voice and thankful for this organization and looking for a way to give back to make sure that our voice is heard louder than ever that I am asking each and every single member of this organization to make a November donation to Political Action Committee. The contributions we receive towards our PAC go to directly to supporting the legislators and the legislation that will promote and provide for the role of the health insurance broker. We are very lucky to be supportive of two PACs here in California. The first is our state PAC and we also have the national PAC. Each of these committees has their own issues to fight on and they each need your contributions.

We keep hearing that special interests have bought the election. It's true that it costs a lot of money to run for office and it's also true that politicians spend a lot of their time raising money. The State and National Pac's do not buy votes with your contributions. What we want is direct access to the politicians who are casting votes every day that change the way we do business. We want access to these politicians and we want to tell them your Story. We want to tell them your clients stories. I have been back to Sacramento and I have been back to Washington D.C. and I have had these conversations with the people on Capitol Hill and we are going to continue to have these conversations until we get the changes made that we want to see.

Now I know that this can be the most difficult time of the year to make extra donations. We aren't asking for anyone to contribute more than you feel comfortable with. This doesn't need to be a big donation maybe $5.00 or $10.00 per month into each PAC. If you feel frustrated by the election process or you feel that no one is representing you, then we need your help. If you are grateful for the strides that we have made but you understand how much more work still needs to be done then please we need your help. Make a contribution to your State and National PAC and help us continue to tell your story. ##

Editor's Note: We hope that you all support both our CAHU PAC and HUPAC. For more information, contact Ryan at (714) 783-7871, or by email at rdorigan@appliedga.com.

COIN Compliance Corner Legal Brief , Continued from page 8

> fiduciaries to evaluate plan compliance with important requirements under ERISA and the [Internal Revenue] Code and to provide the Agencies with improved tools to focus oversight and enforcement resources."

The DOL recently extended the comment period on these proposed regulations for 2 months; comments are now due by December 5, 2016.

2016-2017 Special Per Diem Rates: The IRS recently issued Notice 2016-58 which provides special per diem rates for taxpayers to use to substantiate the amount of ordinary and necessary business expenses incurred while traveling away from home. The rates include (1) the special transportation industry meal and incidental expenses (M&IE) rates, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for purposes of the high-low substantiation method.

San Francisco Health Care Security Ordinance: San Francisco recently announced the 2017 rates for employers subject to the Health Care Security Ordinance (HCSO). As of January 1, 2017, the health care expenditure rate will be $2.64 per hour for large businesses (100 or more employees total) and $1.76 per hour for medium-sized businesses (20-99 employees total). Employers with just one employee in San Francisco may be subject to the HCSO. ##

(Editor's Note: Special thanks to Marilyn Monahan for her legal brief. She promises to provide additional information in later issues of the COIN! Marilyn Monahan can be contacted at Marilyn A. Monahan**,** 4712 Admiralty Way, #349, Marina del Rey, California 90292; (310) 301-3300 (o) (310) 301-3309 (fax) marilyn@monahanlawoffice.com

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COIN Compliance Corner– HIPAA Privacy & Security Updates, Continued from page 8

common ownership and control, agreed to settle potential violations of HIPAA Privacy & Security Rules. The settlement includes a monetary penalty of $400,000 and a comprehensive corrective action plan. CNE provides centralized corporate support for its subsidiary affiliated covered entities, including but not limited to finance, HR, IT and technical support, insurance, compliance and administrative functions.

In November, 2012, HHS and OCR received notification from Woman & Infants Hospital of Rhode Island (WIH), a covered entity member of CNE, of the loss of unencrypted back-up tapes containing the ultrasound studies of approximately 14,000 individuals, including patient names, DOB, date of exam, physician names, and in some cases, social security numbers. As WIH's business associate, CNE provides centralized corporate support including IT services and support for WIH's systems. *The BA Agreement was effective March 15, 2005, and was not updated until August 28, 2015, as a result of the OCR investigation, and therefore, did not incorporate revisions required under the HIPAA Omnibus Final Rule.*

The investigation found that for almost a year, WIH disclosed PHI and allowed its business associate, CNE, to create, receive, maintain, or transmit PHI on its behalf, without obtaining satisfactory assurances as required under HIPAA. ***WIH failed to renew or modify its existing written BA Agreement with CNE to include the applicable implementation specifications required by HIPAA***. During that same time-period, WIH impermissibly disclosed PHI of at least 14,000 individuals to its business associate when WIH provided CNE with access to PHI without obtaining satisfactory assurances, in the form of a written BA agreement, that CNE would appropriately safeguard the PHI.

With respect to the underlying breach, WIH entered into a consent judgement with the Massachusetts Attorney General's Office, and reached a settlement of $150,000. OCR found the consent judgement to sufficiently cover most of the conduct in this breach, including the failure to implement appropriate safeguards related to the handling of backup tapes and the failure to provide timely notification to the affected individuals.

Note that the $150,000 penalty/settlement for WIH is in addition to the $400,000 penalty/settlement with CNE.

In other HIPAA News, On October 13, 2016, HHS/OCR released Health Information in the Digital Age; Where to Focus Enforcement Efforts. In this release, OCR restated its commitment to protecting health information in the digital world, including Social Media applications, mobile device security, and the tools needed to protect risk to privacy and security of this information. In the past 2 years, OCR has released extensive guidance on a host of HIPAA issues, as well as created a portal to provide technical assistance to those developing new technologies.

Continued on Page 21

Membership News—New!

New Members and Renewals!

OCAHU is proud to announce the list of new members

Claire L. Akey

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Brian O. Barry

Ululani L. Cook

Henry P. Figueroa

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Gabrielle Ruelas

WELCOME NEW OCAHU MEMBERS!!!!

Pending Renewals (Billed but not yet Paid)

Dena M. Allchin

Don Ariosto

Hugh John Borthwick

Kevin Carlin

Katie Ann Jaime

Jen Kuemerle

Dientre Le'on

Sandra L. Longobardy

Lanette Marie Lopez

Renee Melgoza

Diana Miller

Kyal L. Moody

Warren P. Paul

Will Santiago

Jeffrey L. Scheibner LUTCF

Susan C. Schneider

Melissa Shaw CFP

Joseph Stefano

Reyna C. Topinio

Louise Valencia

Ashlee Vanacore

Jarrod Word

Rola Ziadie

New Membership Contest!

YOU Could Be a Winner by Renewing Your Membership by Changing to Monthly Bank Draft Payments!

Any current member who changes from an Annual Payment* of their NAHU Membership Dues to a monthly Bank Draft from September 1st through December 31st will be entered in a drawing to win $250 or $500 gift card from NAHU!

Also any new members who select automatic monthly payment through Bank Draft when they join between September 1st through December 31st will be entered in a drawing to win $250 or $500 gift card!

There will be 28 winners for the $250 gift cards and 1 winner for $500 gift card on a National basis.

Any questions Contact your Membership Team of Tracy, Lynn, John or Maggie.

** Does not apply to Corporate Accounts or to Members currently paying by monthly credit card payments or currently paying on Monthly Bank Draft Payments.*

COMING SOON!

NEW MEMBER FOCUS COLUMN!

The Orange County Association of Health Underwriters would like to welcome our new members and get to know you! Each issue, we'd like to focus on one new member, and help us get to know you! Our Membership Committee will be calling new members to ask them some questions, such as your company information, why you joined OCAHU, what you hope to get out of it, etc. Most importantly, we just want to get to know you, and make you feel welcome and appreciated! So, when our membership team calls you, and they ask if you'll participate in the new member focus questionnaire, please accept the call! Then check the next issue of the COIN, as you may be featured in the New Member Focus column!!

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Health Plan Documentation—continued from page 5)

administration of the plan and that the plan administrator wants to be certain are communicated to plan participants.

The Overlap of ACA and ERISA

Most employers and producers know that the ACA requires certain changes in plan terms (such as offering coverage to dependents up to age 26), or mandates that certain notices be added (such as a statement of grandfather status, when applicable). But many employers have overlooked the impact that ACA measurement periods and offers of coverage have had on the eligibility provisions in the plan document and SPD.

Under the ACA, in order to avoid a § 4980H(a) or (b) penalty, most "applicable large employers" (ALEs) must establish measurement methodologies in order to determine which of their employees qualify as full-time employees under the ACA. ALEs must then ensure that they offer coverage to anyone who qualifies as a full-time employee under one of these measurement methodologies. Employers sometimes overlook, however, their obligation to ensure that these measurement methodologies—which are critical to a determination of who is eligible for and receives an offer of coverage—are fully described in their plan documents and SPDs. If they are not adequately described, there will be a disconnect between the ALE's goal of avoiding the 4980H penalties and the employee's right to coverage under the terms of the plan. In addition, in the event of an audit by the IRS to determine whether the ALE owes a 4980H penalty, the employer will have difficulty establishing that all full-time employees were actually eligible for and offered coverage.

Whose Responsibility Is It?

The obligation to comply with ERISA rests solely with the "plan administrator," and under ERISA the "plan administrator" is typically the employer. A "plan administrator" is a defined term under ERISA, and it is not the same thing as the "contract administrator," such as the TPA, who may provide administrative services to the plan. A well written plan document and SPD will confirm these roles. When the DOL sends an audit letter, or a suit is filed, it is the plan administrator who will be answerable and who will pay any penalties owed for failure to comply with applicable law.

Plan administrators too often assume that their insurer, broker, or TPA will provide them with fully compliant documentation. As noted earlier, for fully insured plans, the insurer/HMO's documentation rarely fulfills the plan administrator's compliance obligation. Furthermore, since producers cannot provide legal advice and most producer malpractice policies exclude ERISA compliance from the list of covered claims, producers are generally not in the best position to ensure that an employer is fully compliant with ERISA and other related employee benefit laws.

Why It Matters

DOL audit activity is increasing. In addition, now that ALEs are filing a significant amount of plan data with the IRS through the Forms 1094-C and 1095-C, it is not beyond reason to assume that the IRS will soon begin auditing plans for compliance. We are also in an environment where there is increased focus on employee rights and benefits, and employers need to have their documentation ducks in a row in the event of a lawsuit, because the rights and obligations of the both the employer and the employee are determined by the documentation. Employers need to be prepared.

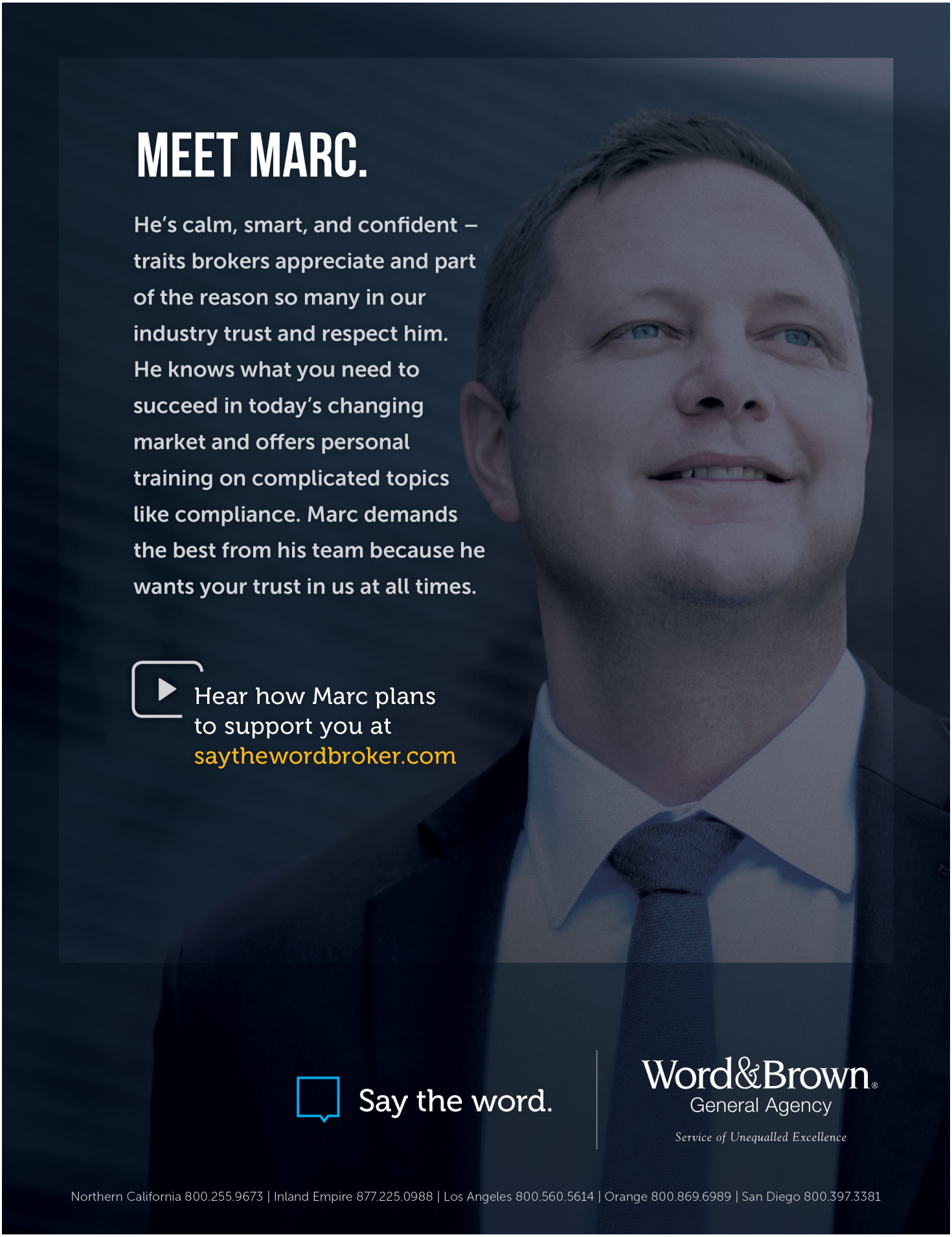
Other circumstances mandate good plan documentation. For example, if a key human resources employee leaves, are the benefit plans ready for the hand-off? If the company is contemplating a merger, will the lawyers conducting the due diligence be able to adequately assess the status of the benefit plans that will be impacted by the change?

Plan administrators should not think of the plan documentation requirements as simply a burden, however—a paperwork hurdle that needs to be overcome. A well crafted plan document and SPD can protect the plan and the plan administrator. In addition to mandatory terms, the plan document and SPD are opportunities to communicate terms that are helpful to the administration of the plan, and that clarify—for both the administrator and the employee—eligibility, benefits, rights, and obligations. For example, through the documentation the plan administrator can preserve, and communicate to the participant, important provisions such as reserving the right to amend or terminate the plan, establishing the standard of a review in the event a claim is reviewed in court, outlining a methodology to correct administrative errors, explaining the scope of possible eligibility audits, and describing the right of subrogation.

One Size Does Not Fit All

Just as every employer is different, every plan is different. The language in the plan document and SPD is legally binding, and plan administrators need to fully appreciate the consequences of the choices they make when

 Continued on Page 20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Health Plan Documentation (continued from page 18)

drafting these documents. Furthermore, each employer may have a different set of goals and mandates that need to be reflected in the plan document and SPD. A cookie cutter document may not adequately reflect the plan administrator's intent, and it may not be tailored to fit the unique needs of the employer or the expectations of the participants. Just as with an employee handbook, each plan document and SPD should fully and accurately reflect the essential terms of that employer's benefit plan, that employer's objectives, and that employer's culture.

The Impact on Small Employers

Many small employers assume that the ERISA plan documentation requirements do not apply to them, and all they have to provide to participants is the insurer/HMO's CB/EOC and SBC. That assumption is incorrect. The ERISA plan document and SPD requirements apply with equal force to all employers, regardless of size. If a small employer does not have a plan document, or does not have a plan document or SPD that is fully compliant with ERISA, the small employer has the same potential liability as a large employer. Thus, small employers generally need wrap documents to the same extent as large employers.

Don't Forget Your Cafeteria Plan

Many employers allow their employees to contribute to the group health plan pre-tax through the employer's cafeteria plan. The employer may also include, within that cafeteria plan, a health or dependent care flexible spending account. In all of these instances, the employer has created a cafeteria plan, and under governing tax law, the employer must have in place a written cafeteria plan document. *See* 26 U.S.C. § 125(d), and related proposed regulations. At the same time the employer is updating its ERISA health plan documents, the employer should also ensure that its cafeteria plan document is in place and reflects recent changes in applicable law.

Conclusion

In the new ACA universe, there is a greater focus on health plan compliance. DOL audit activity is increasing. With information reporting (the 1094/1095 forms), it is quite likely that the IRS will begin looking more closely at health plan terms and compliance. In the event of an audit, or a participant request for documentation, plan administrators have a short window of time to respond. Other circumstances—such as a change in management or a potential merger—could result in decision makers taking a closer look at benefit terms and compliance. Employers need to be prepared. Putting compliant documentation in place will take time and resources, but the effort made will benefit the employer in the long run.

More information about ERISA disclosure requirements may be found on the DOL's webpage, including in the following document: U.S. Department of Labor, Employee Benefits Security Administration (EBSA), ***Reporting and Disclosure Guide for Employee Benefit Plans*** (September 2014).

Editor's Note: Marilyn Monahan is an attorney specializing in ERISA, COBRA, ACA, and other employee benefit and insurance law. She is our featured speaker for our January Compliance Meeting, where she will be offering a 1 hour CE course on health plan compliance. This is a perfect meeting to bring your staff and your clients! Marilyn Monahan can be reached at Monahan Law Office, 4712 Admiralty Way, #349, Marina del Rey, California 90292; (310) 301-3300 (o) (310) 301-3309 (fax) marilyn@monahanlawoffice.com

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At the same time, OCR continues to maintain a robust

HIPAA Privacy & Security Updates—Continued from page 14

enforcement program to hold entities accountable when compliance issues arise. They initiated Phase II of their Audit Program, which they feel will help to "correct problems before they ripen into HIPAA violations."

OCR continues to review every complaint filed received from the public.

On October 7, 2016, HHS/OCR released Cloud Computing Guidance, which is available at http://www.hhs.gov/hipaa/for-professionals/special-tpics/cloud-computing/index.html .

HHS also released on October 17, 2016, Resources for Mobil Health Apps Developers. This includes interactive tools, a developer portal, and a platform to ask questions about HIPAA Privacy & Security.

I will update you more next issue!

##

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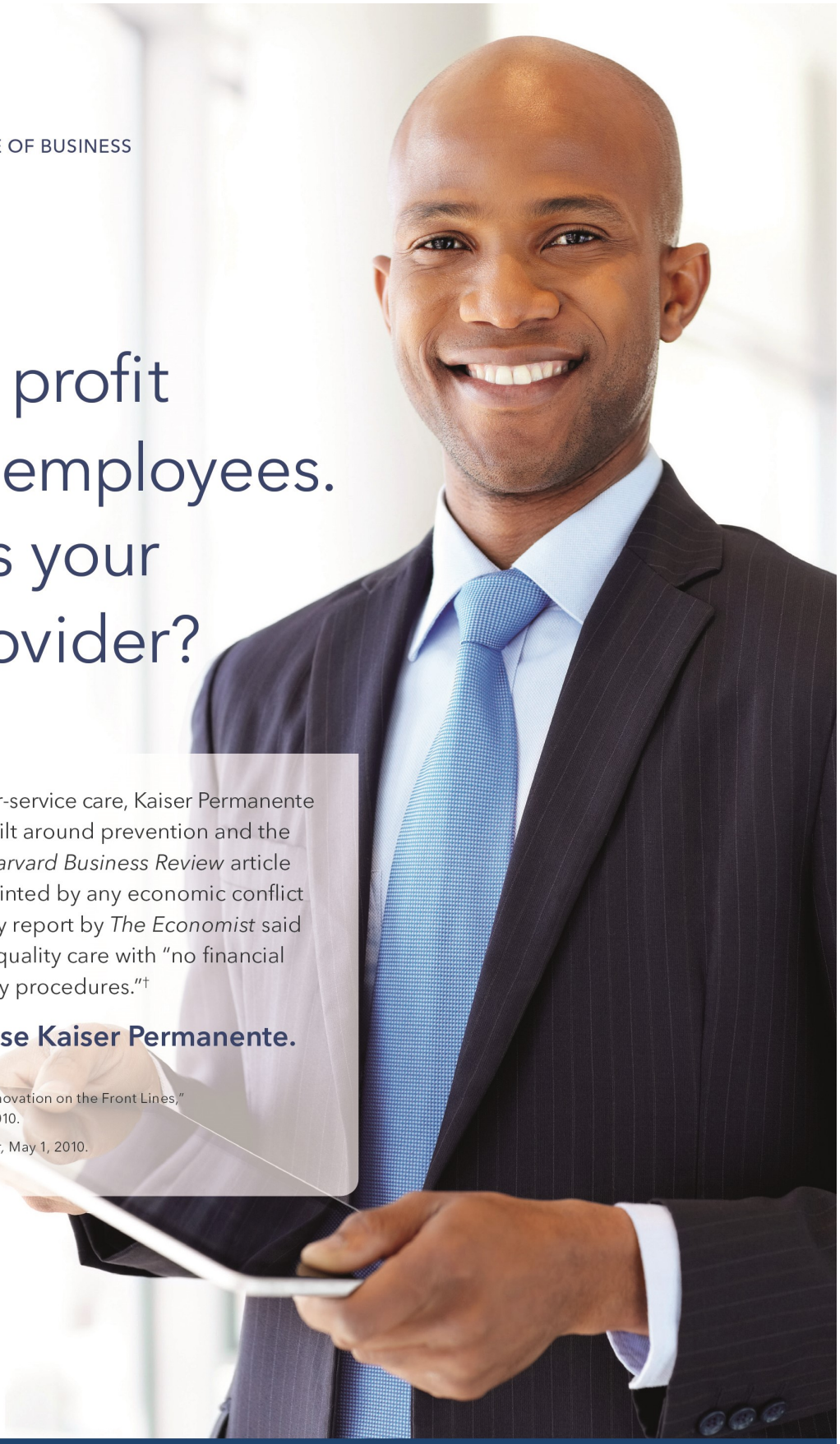

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* Lew McCreary, "Kaiser Permanente's Innovation on the Front Lines," *Harvard Business Review,* September 2010.

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December Program	**December 13, 2016**	**Michael Brandt, "The Social Man," Drive Traffic Media, plus bring a Toy or Book valued at $10 or more and receive $10 credit toward BDS on Feb. 17! Donations benefit CHOC!** **Radisson Newport Beach**
Compliance Program	**January 10, 2017**	**Marilyn Monahan, Monahan Law Office: Health and Welfare Plan Compliance Checklist For Agents and Their Employer Clients (1 Hr of CE)** **Radisson Newport Beach**
NAHU Cap Conference	**February 13-15, 2017**	**Washington, DC**
Business Development Summit		**February 21, 2017** **Hilton Costa Mesa**
OCAHU Program	**March 8, 2017**	**Radisson Newport Beach**