

Orange  
County Association of  
Health  
Underwriters

Volume 11, Issue 1  
September/October, 2016



**C.O.I.N.**

COUNTY OF ORANGE INSURANCE NEWS



## NAHU Convention Wrap-Up Report 2016



Full Report and Photos Enclosed!

### Inside this Edition:

- Feature Article: ACA Nondiscrimination Rules & Employer Requirements
- CE Day Details
- Compliance Corner—Legal Briefing; ACA Affordability Safe Harbor Increase Effective 12/31/16; Wellness Programs Final Rule Effective 12/1/16; Overtime Rule Effective 12/1/16; HIPAA Privacy & Security Updates and Enforcement: The latest Case Settlements
- President's Message
- Legislative Report
- NAHU Convention Wrap-Up, Award Winners & Photos
- Membership News— New Members since June 1, Members Up for Renewal; Membership Promotion; Introduction of New Member Focus Column
- Schedule of Events

## DON'T MISS OCAHU CE DAY

**SEPTEMBER 20, 2016**

Top-notch industry speakers, jam-packed day from which you'll walk away with valuable information for your business, and 4 Hours of CE Credit!

**7:30 am to 3:00 pm**

**Radisson Hotel Newport  
Beach**

*See inside for more details!*

***Check out our new,  
larger and content-  
filled COIN!***

**New Regular Columns,**

**Including:**

- ◇ Compliance Corner
- ◇ Membership: New Members & Renewals List, Plus New Member Focus
- ◇ At least one Feature Article per issue
- ◇ Schedule of Events

**This Issue's Feature Article:**

***ACA Nondiscrimination  
Rules—What Our Clients/  
Employers Need to  
Know.... And Do!***

***October 17, 2016 Deadlines  
for To-Do Items!***

# Helping your clients choose the right health plan starts with asking the right questions.

Will their employees have access to the most trusted hospitals and doctors in our community?



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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.

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## Letter from OCAHU President, Maggie Stedt, LPRT

On Your Marks! Get Set, Ready and GO! It is the beginning of the new year for Orange County Association of Health Underwriters (OCAHU). Many of us are working on preparing for Fourth Quarter Sales and Renewals. It will be challenging for those in Large and Small Group, Individual, Medicare and Ancillary products disciplines!

It is important for you to keep connected with your association at this busy time! Make sure you access the NAHU website at [www.nahu.org](http://www.nahu.org) for the most update information, certifications and events. Plan to attend our monthly meetings and webinars. Don't forget to renew your membership if due. And, as you are attending training meetings and gatherings, share information about OCAHU, CAHU and NAHU with others! Our members are more highly educated in our respective fields and dedicated to the protection of our clients. We want to work with other professionals who are knowledgeable and dedicated to their clients!

It has been a busy summer! Your OCAHU Board met in June for a successful Leadership Summit and Planning Retreat. The year ahead promises to be full of opportunities for learning, making strides on the legislative front both in Sacramento and Washington and for increasing contacts by networking at our meetings and events.

We just completed a great Senior Product and Marketing Summit conducted jointly with OCAHU, Inland Empire, and San Diego and with the Desert Cities chapters of Health Underwriters joining in. Over 500 attended with 125 attendees who were not members of NAHU. They heard first hand how our association represents the agent and that they need to be a part of their association. Much thanks to John Greene and Rusty Rice from NAHU and all the others who presented. And a big thanks to all our sponsors and exhibitors who made it possible!

Orange County also hosted The Region 8 Conference in Garden Grove at the end of August. Kudos to Pat Stiffler, Suzanne Purnell and Gail James Clarke for all their hard work!

Casey Meserve, our VP of Professional Development is hard at work with her team for our Annual CE Day coming up September 20th. This is a day you won't want to miss as an attendee or an exhibitor! They are also hard at work planning out our meetings for the fall and spring.

We also have some special events coming up in the promotion of PAC/HUPAC. And watch for announcements of our Vanguard and Mentoring programs under David Ethington.

We are grateful for our many sponsors and their continue support. Peter Cabot and his tem will be touching base with all our sponsors this fall.

So this year promises to be a great year for OCAHU and our members! We are looking forward to seeing you at the meetings and special events! And, if you want to find out how you can be more involved, just give me or John Evangelista, our Membership Engagement Chair, or any of the Board a call or e-mail (see Board of Directors listing on our [www.ocahu.org](http://www.ocahu.org) website. There are so many opportunities –come join us!

## Feature Article: ACA Nondiscrimination Rules—What Our Clients/Employers Need to Know—And Do!

By: Dorothy M. Cociu, RHU, REBC, GBA, RPA

OCAHU VP Communications, COIN Editor 2016-17

### HHS Finalizes Rule to Improve Health Equity Under the Affordable Care Act

The Final Rule, issued May 2016, prohibits discrimination based on race, color, national origin, sex, age or disability; enhances language assistance for individuals with limited English proficiency; and protects individuals with disabilities. Covered entities, which include many employers offering group benefit programs, must comply with the rules effective July 18, 2016, with [many requirements due no later than October 17, 2016](#), including required notices and taglines, which will be described below. Plan design changes, however, if needed, are required with plan year renewals on or after January 1, 2017.

#### Summary of Final Rule

The Department of Health and Human Services (HHS) issued a final rule to advance health equity and reduce health care disparities on May 13, 2016. Under the rule, individuals are protected from discrimination in health care on the basis of race, color, national origin, age, disability and sex, including discrimination based on pregnancy, gender identity and sex stereotyping. In addition to implementing Section 1557's prohibition on sex discrimination, the final rule also enhances language assistance for people with limited English proficiency and helps to ensure effective communication for individuals with disabilities. The protections in the final rule and Section 1557 regarding individuals' rights and the responsibilities of many health insurers, hospitals, and health plans administered by or receiving federal funds from HHS build on existing federal civil rights laws to advance protections for underserved, underinsured, and often excluded populations.

Section 1557 is the first Federal civil rights law to prohibit discrimination on the basis of sex in all health programs and activities receiving Federal financial assistance. It has been in effect since enactment of the ACA in 2010 and the HHS Office of Civil Rights (OCR) has been enforcing the provision since it was enacted.

The rule covers:

- Any health program or activity, any part of which receives funding from HHS (such as hospitals that accept Medicare or doctors who accept Medicaid);
- Any health program that HHS itself administers;
- Health insurance Marketplaces and issuers that participate in those Marketplaces.

This rule is effective July 18, 2016. However, to allow health plans time to prepare, health plans that require changes in benefits design are required to comply on the first day of the plan or

policy year beginning on or after January 1, 2017.

The broad application of this final rule will affect the federal and state Marketplaces, all health care providers and health insurance issuers and employers that receive federal financial assistance. Financial assistance from HHS includes Medicare Part A, student health plans, advanced premium tax credits and many other programs.

**The final rule is broad in scope. Any entity that is subject to the nondiscrimination requirements must also ensure that its own employer-sponsored plans are compliant.** I will provide additional information below.

The *Nondiscrimination in Health Programs and Activities* final rule implements Section 1557 of the Affordable Care Act, which is the first federal civil rights law to broadly prohibit discrimination on the basis of sex in federally funded health programs. Previously, civil rights laws enforced by HHS's Office for Civil Rights (OCR) broadly barred discrimination based only on race, color, national origin, disability, or age.

"A central goal of the Affordable Care Act is to help all Americans access quality, affordable health care. Today's announcement is a key step toward realizing equity within our health care system and reaffirms this Administration's commitment to giving every American access to the health care they deserve," said HHS Secretary Sylvia M. Burwell on May 13, 2016 in the first press release related to the release of the Final Rule.

According to HHS, the final rule helps consumers who are seeking to understand their rights and clarifies the responsibilities of health care providers and insurers that receive federal funds. The final rule also addresses the responsibilities of issuers that offer plans in the Health Insurance Marketplaces. Among other things, the final rule prohibits marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, age, or disability. The final rule also prohibits discriminatory practices by health care providers, such as hospitals that accept Medicare or doctors who participate in the Medicaid program.

The final rule prohibits the sex discrimination in health care including by:

- Requiring that women must be treated equally with men in the health care they receive. Other provi-

**Continued on page 18**



# CE Day

## Confirmed Speaker & CE's!

### 9 to 9:50 AM

Self-Funded Employee Benefits

(1-hour CE | Course: 296392)

Instructor: David Fear, Sr. | Shepler & Fear

### 9:50 to 10:40 AM

Health Reimbursement

Arrangements

(1-hour CE | Course: 321350)

Instructor: David Fear, Sr. | Shepler & Fear

### 11 to 11:50 AM

To Be Announced

(1-hour CE | Course: Pending Approval)

Chris Della Sala | Colonial Life

### 1:30 to 2:30 PM

Understanding Medicare for the  
Group Insurance Broker

(1-hour CE | Course: 210663)

Margaret "Maggie" Stedt, CSA, LPRT

OCAHU President | Stedt Insurance Services

CE Day is an annual event hosted by the **Orange County Association of Health Underwriters'** providing up to 4 hours of continuing education credit to members and guests. Join us as we bring you top-notch industry speakers, chapter sponsors (presenting their most up-to-date products), continental breakfast and lunch. A jam-packed day it is, but you'll walk away with information you'll use in your business!

**September 20th, 2016, 7:30 a.m. to 3 p.m.**

**Radisson Hotel Newport Beach**

**4545 MacArthur Boulevard, Newport Beach 92660**

#### Cost to Attend:

Member or First-Time Guest: \$50

Non-Member: \$75

Sponsorship info available at [orangecountyahu@yahoo.com](mailto:orangecountyahu@yahoo.com)

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# COIN COMPLIANCE CORNER

What Agents and Your Clients Need to Know!

## *September, 2016 Legal Briefing*

### **From Marilyn Monahan, Monahan Law Offices**

As open enrollment season approaches for calendar year health plans, employers and consultants need to be aware of some important new guidance from the DOL and the IRS. This guidance includes:

**Affordability Safe Harbor:** In Revenue Procedure 2016-24, the IRS announced that the affordability safe harbor percentage for 2017 is increasing to 9.69%. Applicable large employers (ALEs) structuring their health plans to avoid the \$4980H shared responsibility penalties under the ACA may use this percentage to calculate whether the coverage they offer to full-time employees in 2017 is “affordable.” This percentage is effective for taxable and plan years beginning after **December 31, 2016**.

**Wellness Programs:** The Equal Employment Opportunity Commission (EEOC) has issued final regulations on the application of the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) to wellness programs. The EEOC regulations apply as of the 1<sup>st</sup> day of the 1<sup>st</sup> plan year that begins on or after **January 1, 2017**. As they prepare for open enrollment, employers offering wellness programs in 2017 should update their programs to ensure they are compliant with these new rules, in addition to the HIPAA regulations already in place.

Other laws may impact wellness programs as well. For example, if the wellness program provides health care, the plan may be subject to ERISA, COBRA, and the HIPAA Privacy and Security Rules. Certain tax laws may also apply. Employers implementing wellness programs should be aware of the various governing laws and regulations and design their programs to be in compliance with them.

**Overtime Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees Final Rule:** On May 18, 2016, the Wage and Hour Division of the Department of Labor (DOL) issued final regulations updating the federal overtime regulations. The effective date of this final rule is **December 1, 2016**. In some states, advance notice of wage changes must be provided.

(continued on page 14)

## *HIPAA Privacy & Security Updates—Phase Two of HIPAA Audits & Recent Enforcement Settlements*

### **From Dorothy Cociu, COIN Editor and HIPAA Privacy & Security Consultant & Trainer**

As usual, the Department of Health & Human Services (HHS) and the Office of Civil Rights (OCR) has been very busy with HIPAA Privacy & Security Enforcement. As stated in Privacy & Security CE courses earlier in 2016, HHS announced a series of desk audits, which began earlier this year. Phase Two of those audits began in July, when the first 167 emails were sent to 167 covered entities. As you’ll recall, I previously reported that HHS also announced in September, 2015 that they would begin auditing Business Associates, due to the large number of enforcement actions and settlement agreements with Business Associates. As Agents are Business Associates to the employer clients, they can expect to be included in the Desk Audit Process.

The desk audits are an interesting way to perform exponentially more audits than field audits... It’s fairly easy to press a button and send emails to hundreds of covered entities at once and sit back and wait for the items to be selected, then review for the highest offenders.... According to OCR, the desk audits focus examinations on documentation of entity compliance with certain requirements of the HIPAA Rules. They selected these provisions for focus “because our pilot audits, as well as our enforcement activities, have surfaced these provisions as frequent areas of noncompliance.”

Upon receipt of the email request for information, the selected covered entities must respond to their request through a unique link for each organization to submit documents via OCR’s secure online portal. Entities have 10 days to respond to the document requests. **According to OCR’s July 14, 2016 Email Update, desk audits of business associates will follow this fall**, which may include agents.

Requirements selected for desk audits include (Privacy Rule) notices of privacy practices, provision of notice— electronic notice, right to access, (Breach Notification Rule) timeliness of notification, content of notification, (Continued on page 14)



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## Legislation Update

By Rob Semrow, VP of Legislation

Fellow OCAHU members:

Another legislative year is nearly finished and we find ourselves looking back at a number of bills that would have impacted us, positively or negatively, failing to pass. I know many would say that we can now breathe easy. However, I would say that we need to be as vigilant and involved as ever.

I would also say that it is time for us as a consumer advocate association and industry to increase our efforts and raise our voices. It is not only what we want to defeat that we must be active on, but also what we believe in and are willing to fight for.

A great example of this is AB533 that has been replaced by AB72. This bill address something that most, if not all of us, have experienced or had a client experience...Balanced Billing.

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

**CAHU supports AB 72, bi-partisan consumer protection legislation that statutorily bars insured policy-holders from being balanced billed by out-of-network providers when the consumer sought treatment at an in-network facility. AB 72 also sets out a reasonable dispute resolution process and reimbursement policy for out-of-network service providers**

This seems very reasonable and makes common sense. It is not the insureds' intention to utilize out-of-network providers and physicians in most cases, yet all too often they find out after the services have been rendered, that it is indeed, what has occurred and now they will need to pay more out of pocket. When this happens, you and your clients are frustrated and angry that this can be done, often times without their knowledge.

Well, you have a chance to change this. Instead of days of arguing with providers, carriers and sometimes your clients, pick up the phone and CALL YOUR LEGISLATORS. They work for you, when you tell them what you want them to do. If you are not telling them what you want, others are. More times than not, they are hearing the opposite side of the argument.

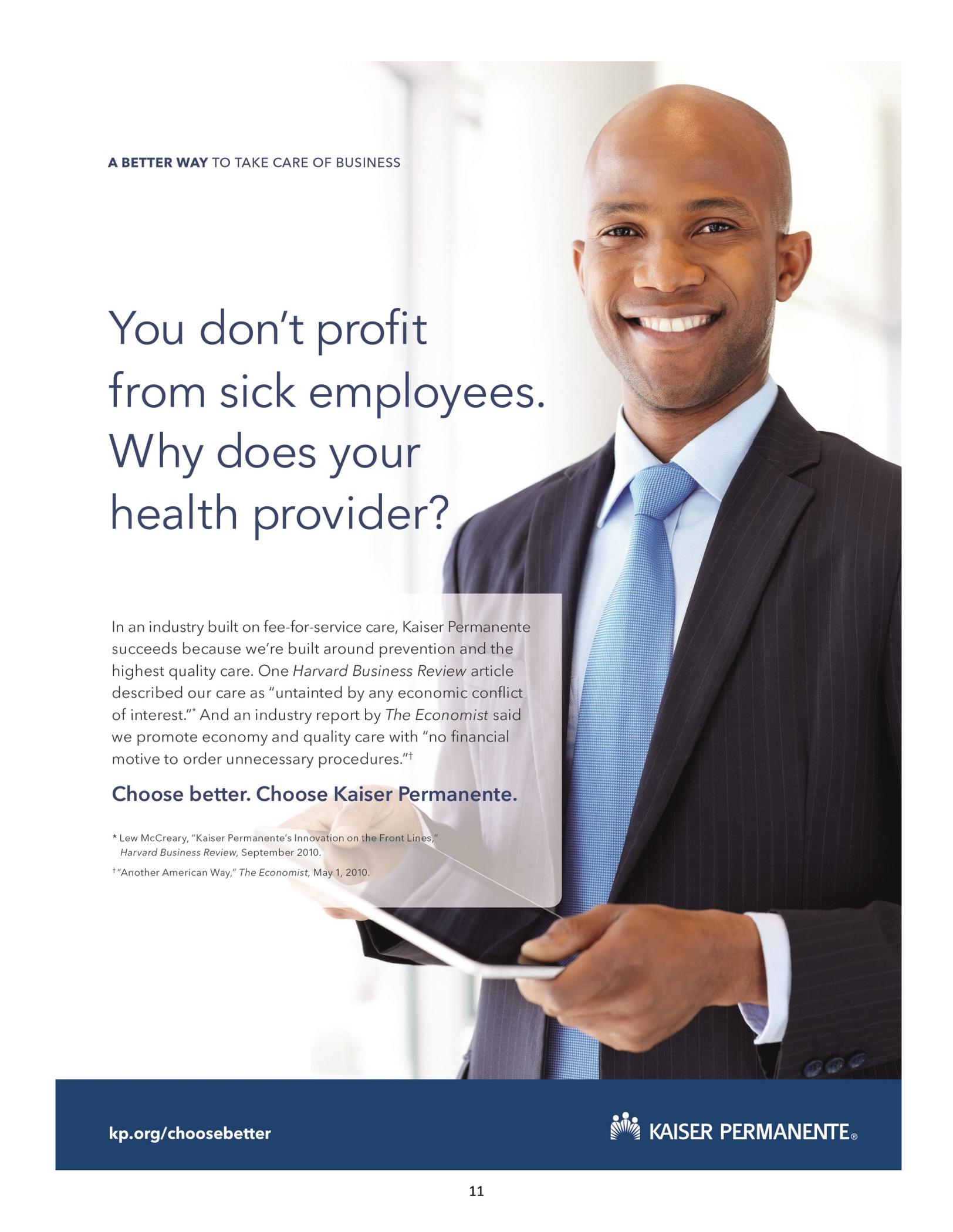
So I urge all of you to become more involved. The amount of times I hear that legislators don't know what they are doing and this isn't fair and so on...Makes me want to scream even louder....How can they know, if we aren't educating and informing them. We are the experts and we need to mobilize and utilize that expertise.

This year, you will be extremely busy with 4<sup>th</sup> 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.

I'll close by saying to all of you, thank you for all that you do for our industry and the clients you serve!

A smiling man in a dark pinstriped suit, light blue shirt, and blue tie, holding a white tablet. He is standing in a bright, modern office environment with large windows in the background.

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In an industry built on fee-for-service care, Kaiser Permanente succeeds because we're built around prevention and the highest quality care. One *Harvard Business Review* article described our care as "untainted by any economic conflict of interest."\* And an industry report by *The Economist* said we promote economy and quality care with "no financial motive to order unnecessary procedures."†

**Choose better. Choose Kaiser Permanente.**

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

† "Another American Way," *The Economist*, May 1, 2010.

[kp.org/choosebetter](http://kp.org/choosebetter)

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# NAHU Annual Convention— Photo Spread



The NAHU convention brought proud OCAHU attendees, award winners and friends together!



## NAHU Annual Convention— Award Winners!

### **Orange County Association of Health Underwriters Receives Pacesetter Award & Most New Members Award**

Albuquerque, NM (June 29, 2016) — The Orange County Association of Health Underwriters recently received the Pacesetter Award at the National Association of Health Underwriters' (NAHU) 86th Annual Convention and Exhibition in Albuquerque, NM.

The criteria for receiving this award includes attendance at national and regional meetings, chapter management, hosting local meetings and events, communications, membership activities and growth, public service projects, media relations efforts, and continuing education.

"The leadership of NAHU members has a far-reaching impact on providing for the healthcare needs of individuals, families and business in their communities. We are grateful for OCAHU's hard work and recognize them with this well-deserved award," said NAHU CEO Janet Trautwein.

"OCAHU exemplifies the dedication to providing the best opportunities for our members," said Maggie Stedt, president of OCAHU. "This year, our chapter organized two charity events in our local community, worked with state and local elected officials as part of our communications efforts and hosted continuing education courses to further our members' educational efforts. These projects and many others have set a standard of excellence in the health insurance industry that we are proud to represent."

OCAHU was also the recipient of the Most New Members Award in Region 8.

### **Maggie Stedt Receives Distinguished Service Award**

Albuquerque, NM (June 29, 2016) — Maggie Stedt recently received the Distinguished Service Award at the National Association of Health Underwriters' (NAHU) 86th Annual Convention and Exhibition in Albuquerque, NM.

Stedt was recognized for the Distinguished Service Award, which honors NAHU members who have made significant contributions to volunteer service at the local, state and national level. Her efforts have greatly improved the health insurance industry through an extraordinary commitment of time, talents and professional experience.

"The leadership of NAHU members has a far-reaching impact on providing for the healthcare needs of individuals, families and business in their communities. We are grateful for Maggie's dedication to association volunteer service and recognize her for those efforts with this well-deserved

award," said NAHU CEO Janet Trautwein.

Maggie has been a member of the Orange County Association of Health Underwriters for over 10 years and is the current President. Maggie is a Medicare specialist and was instrumental in bringing awareness of Medicare industry and its agents. Maggie lives in San Clemente with her husband, Jim.

"Maggie Stedt exemplifies the dedication to providing the best opportunities for our members through service to the association," said Don Goldmann, President of NAHU. "This year, in addition to helping raise money for charities in our local community, she also hosted the annual Medicare Summit to further our members' educational efforts. These projects and many others have set a standard of excellence in the health insurance industry that we are proud to represent."

### **Don Goldmann Receives Michael D. Gray Award**

Albuquerque, NM (June 29, 2016) — Don Goldmann recently received the Michael D. Gray Award at the National Association of Health Underwriters' (NAHU) 86th Annual Convention and Exhibition in Albuquerque, NM.

Don was recognized for this award for giving an unparalleled amount of time, effort and talents to building HUPAC into a powerful political action committee. He is the top personal monetary contributor to HUPAC, both in terms of the candidate fund and the administrative fund.

"The leadership of NAHU members has a far-reaching impact on providing for the healthcare needs of individuals, families and business in their communities. We are grateful for Don's hard work involving HUPAC and recognize him for those efforts with this well-deserved award," said NAHU CEO Janet Trautwein.

Don Goldmann was the 2015-2016 NAHU President and former CAHU and OCAHU President. He is currently Vice President of Word & Brown University. Mr. Goldmann is a highly sought after speaker and frequently published contributor to national, state and local journals. He is nationally recognized for his in depth analysis of the health care insurance market. Don lives in Orange, CA with his wife, Terry.

"Don Goldmann exemplifies the dedication to providing the best opportunities for our members through supporting HUPAC," said Maggie Stedt, president of the Orange County Association of Health Underwriters. "He has set a standard of excellence in the health insurance industry that we are proud to represent."

## **COIN Compliance Corner Legal Brief , Continued from page 8**

Employers should consult their employment lawyer about the impact of these regulations.

In addition, as employers make changes to implement the new overtime rules, they should consider whether revised job classifications and time keeping procedures could impact ACA eligibility, tracking, and affordability calculations. ##

*(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](mailto:marilyn@monahanlawoffice.com)*

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

and (Security Rule) security management process—risk analysis and security management process, risk management.

So what does all this mean? Agents and their clients should have all of their HIPAA Privacy & Security protocols in place, as well as their forms, notices, policies and procedures, and a complete risk analysis and risk management written plan in place. Remember, they can go back 6 years for federal rules, and 7 years for state rules.

### **Penalties, Enforcement & Case Settlement Updates**

Every month, I receive several email updates from HHS/OCR on their enforcement and settlement results. This summer has been no exception.

June 30, 2016, HHS/OCR announced Business Associate's Failure to Safeguard Nursing Homes Residents' PHI Leads to **\$650,000 HIPAA Settlement**. Catholic Health Care Services of the Archdiocese of Philadelphia agreed to settle potential violations of the HIPAA Security Rule after a theft of a CHCS mobile device compromised the PHI of hundreds (412) of nursing home residents. The settlement includes a monetary penalty to \$650,000 plus a corrective action plan. "Business Associates must implement the protections of the HIPAA Security Rule for the electronic protected health information they create, receive, maintain, or transmit from covered entities" said OCR Director Jocelyn Samuels. "This includes an enterprise-wide risk analysis and corresponding risk management plan, which are the cornerstones of the HIPAA Security Rule." An investigation found that a theft of an iPhone occurred, which was not encrypted and not password protected. At the time of the incident, SHCS had no policies addressing the removal of mobile devices containing PHI

from its facility or what to do in the event of a security incident, as they had no risk analysis or risk management plan.

On July 18, 2016, Oregon Health & Science University (OHSU) agreed to settle potential violations when OCR found widespread and diverse problems at OHSU, which resulted in a **\$2,700,000 settlement** and corrective action plan. *Two unencrypted laptops and an unencrypted thumb drive thefts with over 3,000 individuals at risk of harm, as well as a cloud-service storage without a business associates agreement.*

Another settlement on August 4, 2016 resulted in a **\$5.55 Million settlement** and corrective actions plan with Advocate Health Care Network for ePHI violations which affected over 4 million individuals. *PHI, credit card information, DOB's and other information were on an unencrypted laptop.*

*On August 18, 2016, OCR announced an initiative to investigate breaches with fewer than 500 individuals.##*

## **Need Privacy Training?**

### **Full-day Privacy Officer and Privacy Work Group Training Provided by the Area's Best!**

Trainer: Dorothy Cociu, RHU, REBC, GBA, RPA, HIPAA Privacy & Security Trainer and Consultant

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**Tuesday, October 25, Los Angeles**

**Thursday, October 27, Orange County**

Details provided at

**[www.advancedbenefitconsulting.com](http://www.advancedbenefitconsulting.com)**

Use discount code "COIN0916" when you register for a discount rate of \$119 for the first attendee, \$99 for each additional attendee (discount code good through Oct. 14, 2016).

For more information, contact Advanced Benefit Consulting (714) 693-9754 x 2

## Membership News—New!

### New Members and Renewals!

*OCAHU is proud to announce the list of new members since June 1st!*

|                       |                      |
|-----------------------|----------------------|
| Claire L. Akey        | Bonnie J. Johnson    |
| Abner Aponte          | Matthew Heath        |
| Brian O Barry         | Barbara A. Hogan     |
| Ululani L. Cook       | Tyler Mahon          |
| Helene S. Dooling     | Dzung. N. Pham, CFP, |
| Jean M. Francois      | CLU, ChFC            |
| Amit R. Gandhi        | Michael Seth Roberts |
| Daniel E. Griset, CLU | Paul Roberts         |

**WELCOME NEW OCAHU MEMBERS!!!!**

#### ***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 1<sup>st</sup> through December 31<sup>st</sup> 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 1<sup>st</sup> through December 31<sup>st</sup> 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.

**June, July , August & September Renewals**

|                   |                  |
|-------------------|------------------|
| Ryan Bunch        | David Miller     |
| Jose Casillas     | Jeff Miller      |
| Steven Course     | David Milligan   |
| Rebecca Dolan     | Kyal Moody       |
| Edwin Hilden      | Jane Murata      |
| Junko Horii       | Allen Patrick    |
| Sheri Huff        | Dawn Quinn       |
| Katie Jamie       | Gabriella Ruelas |
| Dientre Le'on     | Will Santiago    |
| Bianca Lee        | Susan Schneider  |
| Gregory Levin     | Joseph Stephano  |
| Sandra Longobardy | Paul Strain      |
| Lanette Lopez     | Michael Tye      |
| Julie Mangrello   | Ashlee Vanacore  |
| Renee Melgoza     | Rola Ziadie      |

**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, beginning November, 2016, 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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## ACA Nondiscrimination (continued from page 5)

sions of the ACA bar certain types of sex discrimination in insurance, for example by prohibiting women from being charged more than men for coverage. Under Section 1557, women are protected from discrimination not only in the health coverage they obtain but in the health services they seek from providers.

Prohibiting denial of health care or health coverage based on an individual's sex, including discrimination based on pregnancy, gender identity, and sex stereotyping.

It also includes important protections for individuals with disabilities and enhances language assistance for people with limited English proficiency including by:

Requiring covered entities to make electronic information and newly constructed or altered facilities accessible to individuals with disabilities and to provide appropriate auxiliary aids and services for individuals with disabilities.

Requiring covered entities to take reasonable steps to provide meaningful access to individuals with limited English proficiency. Covered entities are also encouraged to develop language access plans.

While the final rule does not resolve whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination under Section 1557, the rule makes clear that OCR will evaluate complaints that allege sex discrimination related to an individual's sexual orientation to determine if they involve the sorts of stereotyping that can be addressed under 1557. HHS stated that it supports prohibiting sexual orientation discrimination as a matter of policy and will continue to monitor legal developments on this issue.

The final rule states that where application of any requirement of the rule would violate applicable Federal statutes protecting religious freedom and conscience, that application will not be required.

The final rule on Section 1557 does not include a religious exemption; however, the final rule does not displace existing protections for religious freedom and conscience.

### [Defining Covered Entities Under the ACA Nondiscrimination Rules](#)

Are Employers sponsoring health plans a covered entity under the ACA nondiscrimination rules? According to the Preamble of the regulations, as well as the FAQ's put out by HHS, covered entities (those that have to comply with the law) are entities receiving HHS funding, Medicare Part D, Marketplaces, and all plans offered by issuers that partici-

pate in marketplaces, plus TPA's, providers, such as hospitals, health clinics, health insurance issuers, Medicaid agencies, community health centers, physician practices, and home health care agencies. The inclusion of health insurance "issuers" makes the application interesting, to say the least. **For the most part, fully insured employers with plans that purchase coverage through a carrier that participates in federal or state exchanges are considered covered entities, and are required to comply. Self-funded employers, however, usually will not be considered covered entities, although their TPA's may be.** According to Marilyn Monahan, attorney from Monahan Law Offices, an employer with a self-funded health plan is subject to the prohibitions of the ACA nondiscrimination rules only if it receives federal funds from HHS. **If the employer does not receive federal funds from HHS, and therefore does not qualify as a covered entity under the rules, the employer's self-funded health plan is NOT subject to the rules.** What happens if an employer uses as their TPA an issuer that is a covered entity? That alone does not turn the self-funded plan into a covered entity, according to Marilyn Monahan.

"If the employer uses a TPA that is a TPA that is an issuer/covered entity", questioned Marilyn Monahan, "could that TPA ever be liable for violating the nondiscrimination regulations?" Marilyn's answer to her own question was "Yes. But, the potential liability is limited. Since the TPA does not control plan terms, the TPA would not be liable if it administered the plan according to its terms and the terms were discriminatory. However, if in administering the plan the TPA made a discriminatory decision (denied a claim based on someone's ethnicity, for example), then the TPA could be liable." This analysis came from pages 31431 -31433 of the Federal Register (the preamble).

Some self-funded health plans have decided to voluntarily comply with the law, since their practices are already non-discriminatory, and they do not want to be at a hiring disadvantage by not posting the required taglines (discussed below) that potential applicants may be looking for.

### [Procedural Requirements – What Covered Entities Must Provide](#)

*The final rule implementing Section 1557 requires covered entities with 15 or more employees to have a grievance procedure and a compliance coordinator.* The final rule includes an Appendix that provides a model grievance procedure for covered entities. Entities with fewer than 15 employees are not required to have a grievance procedure or compliance coordinator.

The final rule requires that covered entities post notices of nondiscrimination and taglines that alert individuals with limited English proficiency to the availability of language assistance services. **To reduce burden and costs, OCR has translated a sample notice and taglines for use by covered entities into 64 languages. For translated materials, visit**

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## **ACA Nondiscrimination (continued from page 18)**

[www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html](http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html).

The final rule requires each covered entity to post taglines in at least the top 15 non-English languages spoken in the State in which the entity is located or does business. Those requirements are modified for small sized significant communications such as postcards: for these, the final rule requires entities to post a nondiscrimination statement and taglines in at least the top two non-English languages spoken by individuals with limited English proficiency in the State.

### **When do the notices have to go out?**

The rule is effective 60 days after publishing in the Federal Register, or July 18, 2016, and it allows additional time for posting notices of consumer rights and taglines, as well as making plan design changes, if necessary. In general, plan design changes are due with plan years on or after January 1, 2017.

According to Section 92.8, Notice Requirement, within 90 days of the effective date of this part, each covered entity shall post taglines in at least the top 15 languages spoken by individuals with limited English proficiency of the relevant State or States; and , post taglines in at least the top two languages spoken by individuals with limited English proficiency of the relevant State or States. In general, they must be prepared and posted in a conspicuously-visible font size in communications targeted to beneficiaries, enrollees, applicants, and members of the public, except for significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures; in conspicuous physical locations where the entity interacts with the public; and in a conspicuous location on the covered entity's Web site accessible from the home page of the covered entity's Web site.

*Again, although PLAN DESIGN changes are not required until plan year renewals on or after January 1, 2017, the majority of these requirements are required within 90 days of the effective date of July 18, 2016, which would mean, for the most part, notices, taglines, etc. are required by mid-October, 2016 (October 17, 2016 specifically).*

### **Small Employer Applications**

***Does a small employer have to do anything?*** Again, all covered entities must comply at any size, but only employers with 15+ employees must provide a grievance procedure and an employee designated to coordinate compliance.

### **Enforcement**

The existing enforcement mechanisms under Title VI, Title IX, Section 504 and the Age Act apply for redress of violations of Section 1557. These mechanisms include: requiring covered entities to keep records and submit compliance reports to

OCR, conduct compliance reviews and complaint investigations, and providing technical assistance and guidance.

Regarding benefit design in health coverage plans, OCR reviewed comments that issuers would need time to come into compliance with the requirement prohibiting discrimination in benefit design. The applicability date of the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2017. ##

***THIS INFORMATION SHOULD NOT BE CONSTRUED AS LEGAL ADVICE. THE AUTHOR HAS GATHERED PUBLIC INFORMATION FOR THIS ARTICLE. WE URGE YOU TO SEEK LEGAL COUNSEL.***

***Reference Sources*** (Public Reference Sources Published by the Department of Health & Human Services (HHS):

***Federal Register***, Volume 81, Number 96, Wednesday, May 18, 2016, including Preamble of regulations

***Press Release, HHS Office for Civil Rights in Action***, May 13, 2016, "HHS Finalizes Rule to Improve Health Equity under the Affordable Care Act"

***Summary: Final Rule Implementing Section 1557 of the Affordable Care Act***, HHS, May 13, 2016

***Fact Sheets on Key Provisions of Section 1557***, HHS, May 13, 2016

***FAQs on Final Rule, Section 1557***, HHS, May 13, 2016

***Eye on Washington: Health Care Reform Update***, ADP, LLC, Updated May 20, 2016



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## OCAHU October Meeting

Maxwell Schmitz, MSFS

### SB 281 and the New Conversation Around LTC Planning

CE COURSE NUMBER 339931



Governor Brown signed SB 281 into law in 2013. This law mandates that anyone who sells LTC solutions must know the differences between traditional tax-qualified long-term care insurance, life insurance with long-term care riders, and accelerated death benefits. This enlightening one-hour CE course will keep you compliant with CA law and help your clients find the best solutions available in today's marketplace.

**OBJECTIVES:** Address the need for LTC, Bust some myths around LTC, Introduce SB 281, Describe today's LTC marketplace. Max will discuss the differences between benefit structures, eligibility criteria, tax consequences, advantages and disadvantages of each solution in today's marketplace.

**Please mark your calendars for Tuesday, October 11th!**

Radisson Hotel, Newport Beach

11 AM Registration, OCAHU Business & Lunch 11:30—12 noon, Program 12—1 pm



Region 8 Leadership Meeting 2016



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## - THE C.O.I.N. -

Please join us at our events!

### SCHEDULE OF EVENTS

|                     |                         |                                    |
|---------------------|-------------------------|------------------------------------|
| CAHU Summit         | September 13 & 14, 2016 | Universal Sheraton, Universal City |
| OCAHU CE Day        | September 20, 2016      | Radisson Newport Beach             |
| OCAHU Meeting       | October 11, 2016        | Radisson Newport Beach             |
| (Maxwell Schmitz    | SB 281 & LTC Planning)  |                                    |
| OCAHU Programs      | November and December   | To Be Announced in the Next Issue! |
| Compliance Program  | January 10, 2017        | Radisson Newport Beach             |
| (Marilyn Monahan    | Monahan Law Offices)    |                                    |
| NAHU Cap Conference | February 13-15, 2017    | Washington, DC                     |
| Business Summit     | February 21, 2017       | Hilton Costa Mesa                  |
| OCAHU Program       | March 8, 2017           | Radisson Newport Beach             |