Benefit Plan Strategies 5314 South Yale Ave. #601 Tulsa, Oklahoma 74135 (918) 398-2600
http://www.bpstrategies.net

Compliance Recap

November 2014

The month of November brought a new delay in reporting required from self-funded plans. It also brought several new notices and regulations that may affect sponsors of group health plans and an updated employer guide and health plan compliance checklist from the Department of Labor (DOL).

Transitional Reinsurance Program Filing Delayed until December 5, 2014

On November 14, 2014, the Department of Health and Human Services (HHS) announced that the due date for major medical plans to submit their transitional reinsurance program filing (TRF) has bee extended until December 5, 2014. The deadline to pay the fee has not changed.

Read an explanation regarding the TRF requirements.

Group Health Plans That Do Not Cover Inpatient Hospital or Physician Services Will Not Meet "Minimum Value"

On November 13, 2014, the Department of Health and Human Services (HHS) and the Internal Revenue Service (IRS) issued a notice that states that plans that do not provide substantial coverage for physician and inpatient hospital services will not be considered minimum value plans, even thougl the HHS calculator determined that the plan had an actuarial value of 60%. Because the notice was released fairly late in the year, a temporary exception will be available to employers that may have implemented one of these plans based on the calculator results.

Read a summary of the notice.

Employer Reimbursement of Premiums for Individual Coverage

Twice previously, the regulatory agencies have said that an employer's payment or reimbursement of premiums for individual coverage violates the Patient Protection and Affordable Care Act (PPACA). The prior releases left some room for debate over whether payment of individual premiums was allowed on an after-tax basis, but Frequently Asked Questions (FAQs) issued on November 6, 2014, make it clear that both pre-tax and after-tax payment or reimbursement of individual premiums, whether through a Section 125 plan, a health reimbursement arrangement (HRA), or another type of Section 105 plan, are not allowed. The takeaway for employers should be that almost any type of employer involvement in offering a method of paying or reimbursing premiums for individual coverage will create an impermissible "employer payment plan," which carries significant penalties (up to $100

per affected person per day) for the employer. This prohibition applies to employers of all sizes. Read a summary of the FAQs.

Incentivizing Employees in Poor Health to Enroll in the Marketplace

The regulatory agencies have also issued a FAQ that states that an employer may not incentivize an employee or dependent who is expected to have large claims to enroll in Marketplace coverage. Read a summary of the FAQ.

Supreme Court Agrees to Rule on Availability of Premium Tax Credits

The U.S. Supreme Court has agreed to rule on whether premium tax credits may only be available to individuals who receive tax subsidies as a result of being enrolled in a state exchange. The decision could have significant consequences, since only about one-third of the states are running their own Marketplace.

Read a summary of the issues.

Compliance Information from the Department of Labor

The Department of Labor (DOL) has updated its summary of the requirements that apply to group health plans, and updated and consolidated a checklist of required and prohibited plan provisions. Although the guide and checklist do not address all of the requirements that apply to health plans (others are imposed through the Internal Revenue Service, the Department of Health and Human Services and, if the plan is insured, through state insurance departments) this information will help employers be prepared for a DOL audit and otherwise make sure their plan meets current requirements.

Determining Minimum Value and Affordability

The IRS has released final regulations that address how wellness incentives or penalties, contributions to a health reimbursement arrangement, and employer contributions to a Section 125 plan are applied to determine affordability. While these regulations were issued in connection with the individual shared responsibility requirement (also called the individual mandate), the agencies said that they expect to use the same approach when determining affordability for purposes of eligibility for the premium tax credit and the employer-shared responsibility/play or pay requirements.

The regulations provide that when deciding if the employee's share of the premium is affordable:

- Wellness incentives or surcharges, except for a non-smoking incentive, may not be considered. In other words, the premium for non-smokers will be used to determine affordability (even for smokers). Any other type of wellness incentive must be disregarded, even if the employee has earned one.
- If an employer makes contributions to a health reimbursement arrangement (HRA) that the employee may use to pay premiums, the employee's cost of coverage may be reduced by the employer's current year contribution to the HRA, provided that the planned employer contribution is publicized before the enrollment deadline.
- If an employer makes flex contributions through a Section 125 cafeteria plan, the employee's required contribution may be reduced by flex contributions that (1) may not be taken as a taxable benefit, (2) may be used to pay for minimum essential coverage, and (3) may only be used to pay for medical care.

Because an employer's contribution to a health savings account (HSA) generally may not be used to pay premiums, employer contributions to an HSA may not be used when determining affordability.

Proposed for 2016

The Department of Health and Human Services (HHS) has issued its proposed Benefit and Payment Parameters for 2016. While these amounts and dates are not yet final, they may be of help for planning purposes. At this time, HHS expects:

- Open enrollment for coverage through the Marketplace in 2016 will be from October 1 through December 15, 2015 (with coverage effective as of January 1, 2016).
- The transitional reinsurance fee for 2016 is likely to be $27 per covered life. Filing for 2016 would b due November 15, 2016, with $21.60 per covered life due January 15, 2017, and $5.40 per covered life due November 15, 2017.
- The out-of-pocket limits for health plans that are not high deductible plans related to HSAs would b $6,850 for single coverage and $13,700 for family coverage (with a maximum out-of-pocket for any family member of $6,850).
- The federally facilitated exchange fee would remain at 3.5% of premium.
- A special enrollment period would be available at renewal for individuals enrolled in non-calendar year plans.
- Retirees and COBRA participants could be covered through a Small Business Health Options Program (SHOP) plan.
- The current benchmark plans for essential health benefits would remain in effect for 2016, with new benchmark plans based on 2014 benefits and enrollment in effect for 2017.

A draft of an updated AV calculator and methodology for 2016 also are available.

Reminders

Group health plans may not impose pre-existing condition limitations any longer. Therefore, as of December 31, 2014, plans do not need to issue certificates of creditable coverage to individuals whose coverage is ending.

Section 125 plans that have not already been amended to cap an employee's contribution to a health flexible spending account at $2,500 (indexed) must have a signed amendment in place by December 31, 2014. Plans that chose to implement a carry-over option for either 2013 or 2014 must have a signed amendment in place by the last day of the 2014 plan year (December 31, 2014, for calendar year plans).

Question of the Month

Q: May an employee who is over age 65 make contributions to a health savings account (HSA)?

A: An employee who is over age 65 may contribute to an HSA as long as the employee is not yet receiving Medicare in any form, and meets the other requirements, such as enrollment in a high deductible health plan. Simply being eligible for Medicare does not disqualify the employee. Keep in mind that a person who is receiving Social Security will automatically receive Medicare Part A upon reaching age 65, so an over-age 65 employee who wants to be able to contribute to an HSA should delay receipt of Social Security.

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