

As indicated earlier this month, we intend to provide you this type of information twice a month. This is the third installment and is a work in progress. Therefore, if you have any questions or comments, please direct your questions back to your McGohan Brabender Account Team.

There is a saying that the only thing constant is change. They must have been thinking about employee benefits when they coined that phrase. I try to touch on the most current topics every two weeks in this newsletter. However, there may be times when I reach back further than that just because I find something interesting. In any event, here is this bi-monthly edition of the newsletter.

Proposed Extension of Premium Subsidy

As you all know by now, the premium subsidy has been extended to those involuntarily terminated on or before February 28, 2010 and the premium subsidy has been expanded for up to 15 months. There is talk about another extension as part of the jobs creation legislation. Please note this has not yet been passed. However, I wanted to give you a “heads up” that the premium subsidy can live on after the end of this month. The following article talks about the proposed law.

<http://www.businessinsurance.com/article/20100207/ISSUE01/302079977>

If you read this article you will see that the new law would complicate the administration even more by changing the maximum subsidy period to 12 months.

So basically you have the original premium subsidy lasting 9 months. Then they amended the rules to expand the subsidy for 15 months. Now they are talking about a whole new set of rules that would provide a 12 month subsidy. Again, this is just a “heads up” and we are still under the 15 month subsidy that is scheduled to end for employees involuntarily terminated on or before February 28, 2010.

As a side point, the maximum coverage period under Ohio’s mini-COBRA law for small employers (i.e. those with less than 20 employees) is one year. Remember the length of the premium subsidy does not change or alter the maximum 12 month coverage period under Ohio law.

Mental Health Parity Act

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The mental health parity act (also called the Wellstone – Domenici Mental Health Parity and Addiction Equity Act of 2008) requires fully insured and self funded health plans to provide mental illness and substance use and disorder benefits on the same basis as other medical benefits for plan years beginning on or after October 3, 2009. Sounds simple enough. The government issued 43 pages of regulations explaining the rules. The following article highlights the important points.

<http://www.alston.com/files/Publication/e27ae10f-23b4-4fc9-b336-f85f71e30ca9/Presentation/PublicationAttachment/682ac376-60d9-41b1-a52e-f8de84f6b698/Wellstone%20Regulations.pdf>

Note that the regulations become effective for plan years beginning on or after July 1, 2010. This means if your health plan is maintained on a calendar year basis, the newly released regulations do not apply to you until January 1, 2011. As a practical matter, the insurance company probably will handle this if the plan is fully insured and your TPA should contact you if the plan is self funded and tell you how to comply with the new rules.

Government Releases CHIPRA Notices

The Children’s Health Insurance Program Reauthorization Act of 2009 (the “Act”) was one of the first pieces of legislation President Obama signed. The Act, also referred to as CHIPRA expanded legislation that President Bush signed.

There has been a clear and massive movement on the Federal government’s part to shift as much of the health care burden from government to the private sector. CHIPRA is simply one step in that direction. CHIPRA provides, in part, that states can, in lieu of offering low income individuals a health plan (i.e. Medicaid), simply pay the child’s premiums under the employer’s group health plan. In other words, the state can choose to cover the child under Medicaid or simply pay for the child’s premiums under the employer’s group health plan.

There are forty states that have adopted this option. However, Ohio is not one of the forty states. That is, Ohio has yet to adopt this option and, as a result, the Ohio Medicaid system does not currently provide for the payment of premiums for the employer’s group health plan in lieu of covering the child under Medicaid.

There are brand new notice requirements under CHIPRA. One would think that since Ohio has not yet adopted this option, Ohio employers are “off the hook” when it comes to the new CHIPRA notice requirements. However, not so fast!

The new rules require employers to notify all employees of their potential CHIPRA rights. Therefore, if an employer has participants in any of the forty states that have adopted this option, then the employer must comply with the new CHIPRA notice requirements. So, for example, assume an Ohio employer has employees in Kentucky, even though Ohio has not adopted the option of paying the child’s premiums under the employer’s group health plan, this Ohio employer must notify all the employees in Kentucky of the new CHIPRA rules. The rules say that if an employer has employees in any of the forty states that have adopted the premium payment option, the employer may, for administrative ease, send the notice to all employees.

Note that the notice goes to all employees and not simply to those in the health plan. That is, the notice must be provided to “each employee regardless of enrollment status.” The government has provided a sample form. The notices apply for plan years beginning on or after February 4, 2010. However, for plan years beginning on or after February 4, 2010 and before May 1, 2010, the employer has until May 1, 2010, to send the notices. The rules explain how the notices should be distributed.

We recommend you contact your carrier or TPA to ensure that the notices will be distributed on time. The following is a brief summary of the new notice requirements.

<http://www.infinisource.net/Infinisource/Article.aspx?articleId=61783fa8-6827-4b06-9a44-1360506c7ece>

We also are attaching a link to the actual notice.

<http://www.dol.gov/ebsa/chipmodelnotice.doc>

We will provide additional guidance in future articles.

New HIPPA Rules

HIPAA has been around for some time but, as with many things, the government continues to tweak the rules and issue additional guidance. As a general rule, the HIPAA privacy rules really do not have a major impact on most employers. HIPAA, as

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originally enacted, required “covered entities” to protect and safeguard a person’s protected health information or “PHI.” A “covered entity” is a health plan or health care provider. Note that the employer, as the employer, is not considered a “covered entity.”

In the case of a fully insured health plan, the carrier is really the one responsible for HIPAA compliance. This means the carrier must ensure that the PHI is protected. In the case of small employers the carrier generally does not even release the PHI to the employer. Instead the carrier may provide the small employer summary health information which is exempt from the HIPAA rules. Therefore, the “bottom line” in the case of a small employer with a fully insured health plan, is that the employer really does not have to worry about the HIPAA privacy rules.

In the case of a self funded health plan, the employer, as the plan administrator, must ensure the self funded health plan complies with the HIPAA privacy rules. However, as a practical matter, the TPA will help the employer navigate the rules. The American Recovery and Reinvestment Act (also known as the Stimulus Package) modified the HIPAA Privacy rules. The HIPAA privacy rules, as amended by the Stimulus Package, now impose the HIPAA privacy rules on all business associates.

Business associates are defined as most vendors (e.g. TPAs and brokers) that help advise employers and help administer health plans. The new rules now require business associates to comply with the HIPAA privacy rules. As a result, business associates will now be directly responsible to ensure that PHI is safe and secure and will be subject to both civil and criminal penalties for violating the rules. The following is a short article explaining the new HIPAA rules.

<http://www.buckconsultants.com/buckconsultants/Portals/0/Documents/PUBLICATIONS/Newsletters/FYI/2010/FYI-02-03-10-HITECH-Compliance-Required-Soon.pdf>

As a practical matter, the changes should not have a major impact on employers and, for the most part, the changes will be transparent for both the employer and plan participants.

New IRS Form 8928

I have mentioned in the past the IRS is going to start enforcing the rules better. There have always been penalties for violating various rules. However, the IRS has not really enforced the rules that much. However, with a mounting deficit and a major effort

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towards health care reform, that may be starting to change. One step in that direction has been to develop a mechanism for employers to actually report and pay the penalty for violating certain rules. Stated another way, how is the employer supposed to report the violation and pay the penalty if there is no way for the employer to notify the IRS? Now there is!

The IRS has developed Form 8928 that employers can use to report and pay the penalty (i.e. excise tax) for violating various rules. I am attaching the links to an article explaining the rules, the form and the instructions to the form.

Article

<http://www.mcguirewoods.com/news-resources/item.asp?item=4523>

Form

<http://www.irs.gov/pub/irs-pdf/f8928.pdf>

Instructions

<http://www.irs.gov/pub/irs-pdf/i8928.pdf>

The form should be used to report COBRA and HIPAA violations as well as not complying with some of the rules governing HSA contributions. The form and instructions state that often times the penalty can be avoided if the person did not know of the violation and/or the violation is corrected within a certain period of time.

We suggest you take a few minutes to review the form and instructions. This will be a helpful reminder of some of the more important rules.

Health Care Reform – Is it Legal?

Trying to predict where we will end up with health care reform is like trying to pick the Power Ball. For those of you who are students of the political process I am attaching a link to an interesting article that answers the question of whether the U.S. Constitution allows the Federal government to force people to buy health insurance. Again, I am listing this article simply because it makes for interesting reading.

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http://www.law.georgetown.edu/oneillinstitute/national-health-law/legal-solutions-in-health-reform/Individual_Mandates.html

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