

NOTE: McGohan Brabender has posted videos from the health care reform community meetings. To view the videos or download the presentation, visit:
<http://www.mcgohanbrabender.com/hcr/>

With ALL the attention on health care reform lately, I thought I would start off this newsletter with something that has been around for awhile but could catch some of you off guard. The number of you that could be impacted may not be that large but if this applies to you, it could have a significant impact.

Mandatory Medicare Reporting Requirements

An in depth discussion of the Medicare Secondary Payer Rules (the “Rules”) is beyond the scope of this article. Suffice it to say that the Rules are designed to shift the cost of providing health care from the government to the private sector. Basically the Rules provide that in most cases if an individual is on Medicare and is covered by an employer sponsored group health plan, the group health plan will be primary and Medicare will be secondary.

Previously the government often found out the person was covered under an employer sponsored group health plan after Medicare paid the claims. Therefore, the government had to chase down the employer and try to recoup the money. Obviously this was time consuming, expensive and, many times, the government had a hard time collecting the money.

The law was changed on December 29, 2007, to help streamline the process and to better protect the government's money. Under the new rules there are mandatory reporting requirements applicable to group health plans. The new rules require insurance companies, if the group health plan is fully insured, to report certain information to the government so that the government will know prior to paying any claims if the person also is covered under a group health plan. If the plan is self funded, the TPA is responsible for reporting the information to the government. The insurance companies and TPAs are called Responsible Reporting Entities ("RREs") and must submit certain information to the government electronically periodically. If the RRE does not submit the information to the government, the RRE can be penalized up to \$1,000 per day per person!!!

Again, in most cases the insurance company or TPA is the RRE and is responsible for gathering and submitting the information to the government and, most importantly, is the one liable for the penalty. However, the government has ruled that health reimbursement accounts ("HRAs") are considered group health plans for these purposes. What this means is if you are sponsoring an HRA and you administer the HRA in house, then you are subject to the new reporting requirements and, more importantly, the \$1,000 per day per person penalty!!!

Note that the reporting requirements do not apply to Health FSAs and if you are sponsoring an HRA that is being administered by a TPA or insurance company then you do not have to worry. However, if you are maintaining an HRA, even if that HRA does

not carry over unused balances, then you must report certain information to the government or face huge penalties.

The reporting rules are extremely complicated and the penalty for non-compliance is huge. The reporting requirements begin the fourth quarter of this year and you must begin the registration process with the government this month. Therefore, it is imperative that if you offer your employees an HRA you take steps immediately to begin the compliance process. The following are links to a couple of government web pages that help explain the reporting rules:

www.Section111.cms.hhs.gov

<http://www.cms.gov/mandatory/Rep/Downloads/GHPUserGuideV3.pdf>

However, before you decide to undertake this task, be forewarned that the rules are extremely complicated and many may decide to outsource this as soon as possible.

Cafeteria Plan Amendment

Last newsletter we did an in-depth article on the requirement that group health plans offer coverage to adult children up to age 26. We talked about the differences between the Federal rules and the relatively recent change to Ohio law that requires fully insured plans and public employers in Ohio to offer coverage to children up to age 28. The IRS issued Notice 2010-38 that more fully explains the Federal tax consequences of employer

provided group health coverage to children. That Notice can be accessed at the following web page:

<http://www.irs.gov/pub/irs-drop/n-10-38.pdf>

However, as the title to this article indicates, I want to focus on one aspect of Notice 2010-38. The Notice specifically states cafeteria plans and premium only plans (POPs) can be retroactively amended to reflect the new tax rules. However, the amendments must be adopted prior to December 31, 2010. That is, employers should amend their documents before the end of this year to reflect the change to the Internal Revenue Code regarding the tax treatment of employer provided health coverage to adult children. The following article more fully explains the rules.

<http://tinyurl.com/26629k3>

Employers have time but it is prudent to make arrangements now to amend the plan documents.

Early Retiree Reinsurance Program

One of the provisions under health care reform is a temporary reinsurance program for early retirees. Basically the government will reimburse employers for claims incurred by early retirees and their spouses and/or dependents. An early retiree is a former employee between the age of 55 and 64. Note that the retiree's spouse or dependent

child claims are eligible for reimbursement under the program even if the spouse or child is under age 55.

The claims are reimbursed at 80% and only apply to an individual's claims between \$15,000 and \$90,000. This means that the maximum amount eligible for reimbursement is \$75,000 (i.e. \$90,000 less \$15,000) and, since the reimbursement percent is 80%, the maximum reimbursement the employer can receive under the program for a claim is \$60,000 (i.e. \$75,000 x 80%). The reinsurance program applies for claims incurred on or after June 1, 2010. However claims incurred on or after January 1, 2010, still counts towards the \$15,000 threshold but simply are not eligible for reimbursement under the program. The rules state the reimbursement is tax-free but the money has to be used to reduce future increases and/or out-of pocket costs for the participants.

It is important to note that the government has allocated \$5 billion dollars to the program and the program is scheduled to end on the earlier of January 1, 2014 or when the money runs out. It is anticipated that the money will not last long and it is a "first come-first serve" deal. The government has just issued rules on how employers can apply for the funds. Those rules are available at the following web site:

<http://edocket.access.gpo.gov/2010/pdf/2010-10658.pdf>

The following articles helps explain the rules. The articles list the main points of the new rules:

<http://tinyurl.com/2f9xwz4>

<http://tinyurl.com/29b6xmu>

If you offer early retiree benefits and you are willing to “jump through the hoops” to receive the reimbursement, you should act quickly because once the money is gone it’s gone!

HIRE

I have written about the Hiring Incentives to Restore Employment Act (HIRE) in past editions. The government continues to issue additional guidance. Here is a link to an article talking about the new guidance:

<http://www.mcguirewoods.com/news-resources/item.asp?item=4744>

If you are going to take advantage of the program you should stay current on the developments.

Survey of Colleges and Universities

The IRS has released a survey of salary and benefits provided by colleges and universities. The following is a link to that information:

http://benefitslink.com/IRS/cucp_interimrpt_052010.pdf

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It is a very long document but you may find some interesting information if you are in education.

New 1099 Reporting Obligations

Buried deep in the health care reform legislation is a rule that will impact every business in America and it really does not have anything to do with the health care system. Beginning in 2012 everyone will have to complete Form 1099 for anyone receiving more than \$600 per year. This expansion of the reporting requirements is really aimed at reducing the underground economy where people simply pay cash, fail to report the money and, most importantly, neglect to pay taxes. We have a couple of years to get ready for the change but it certainly will create more paperwork for everyone.

<http://tinyurl.com/2ugcmff>

No one believes that health care reform will be cheap and this is just one of the ways the government is looking for money to pay for it.

Federal Health Web Portal

There has been a lot of attention on health care exchanges. Basically, these exchanges are going to be state run market places for individuals and small businesses to shop and buy health insurance. However, the health care exchanges are not going to be operational

until 2014. In the interim the Federal government is required to establish a portal that is a precursor to the exchanges. The portal is going to provide information about various options small employers and individuals have when it comes to health coverage. The government is starting to release information about the portal. The following link talks about the portal.

<http://tinyurl.com/27awa2h>

This is just the first step in developing a full fledged market place for health coverage. Some people believe that the health care exchange will ultimately become the “one stop shop” for health coverage. However, as those in HR know, health coverage is extremely complicated so the jury is still out when it comes to how well the exchanges will work.