COMPLIANCE UPDATE

February 16, 2015

Anthem Data Breach

It was bound to happen but few people thought it would happen on this scale. Anthem has reported a data breach involving up to 80 million people. Anthem has set up a webpage to provide data about the breach.

http://www.anthemfacts.com/

In the context of a fully insured health plan Anthem will be responsible for notifying plan participants, the government and media. However, in the context of a self-funded health plan, the employer may have to take steps to comply with various Federal and state statutes. Here are a couple of articles that talk about what employers may or should do with respect to the breach.

http://bit.ly/1MjhBek

http://bit.ly/1uPj9aj

http://bit.ly/1J96kOD

Anthem is still gathering information and formulating a response so it may be premature for employers to take any formal steps at this point. Obviously this is an unfortunate situation but Anthem is one of the largest carriers and is taking this very seriously. We believe Anthem will do everything possible to remedy the situation as much as possible and do everything to help employers comply with all notice and reporting requirements.

Medicare Part D Notices Due

Medicare Part D is the voluntary prescription drug program under Medicare. Employers have two notice obligations under the program. First, the employer has to provide employees a notice regarding the employer's group health plan status as either "creditable" or "non-creditable coverage" with respect to the prescription drugs. The second notice is to the government and this notice is due within 60 days of the start of each plan year. This means if your plan year is the calendar year, the notice to the government is due March 1, 2015.

http://bit.ly/1B6yOEn

This website talks about the notice requirements and has a link to the government's webpage you have to use to comply with the notice requirement. Again, if your plan year is the calendar year, the notice to the government is due March 1st.

IRS Finalizes Form 1094 and Form 1095

Health care reform imposes all kinds of reporting and disclosure requirements on employers and carriers. One of the more onerous ones is the Form 1094 and Form 1095. These forms are used to tell the government whether or not the employer is subject to the employer mandate and help the employees determine if they have to pay the penalty under the individual mandate.

http://1.usa.gov/1DNptkI

http://1.usa.gov/1E7JtfX

http://1.usa.gov/1vIlJjl

http://1.usa.gov/1KSKBIf

http://1.usa.gov/1uPkNZD

http://1.usa.gov/1F5XvlS

The IRS has finalized these forms **BUT BUT BUT** they are voluntary for 2014. That is, the employer may, but is not required, to complete and submit the forms to the IRS and distribute them to the employees for the 2014 calendar year. Therefore, we are hard pressed to see why an employer would want to complete the forms for the 2014 calendar year.

However, all large employers (i.e. those with 50 or more full-time and full-time equivalent employees) and small employers (i.e. those with fewer than 50 full-time and full-time equivalent employees) that sponsor self-funded health plans need to comply with the reporting requirements beginning January 1, 2015, regardless of the plan year. Note that the employer mandate has been postponed until 2016 for large employers with between 50 and 99 full-time and full-time equivalent employees. However, the reporting rules for all large employers (i.e. those with 50 or more full-time and full-time equivalent employees) have to comply with the reporting requirements for 2015. This means they have to gather the data for the 2015 calendar year (regardless of the plan year) and report the information to the IRS and employees early in 2016.

Some Carriers Are Trying to Beat the System

Most people will agree that health care reform increased access to health coverage. However, the majority of those people also will say the statute did little to control costs. So some carriers are designing plans that discourage the sickest people from signing up by requiring them to pay substantial amounts for certain drugs.

http://wapo.st/1vIm31t

Since the law precludes carriers from charging sicker people higher premiums, some carriers are designing plans with drug benefits that make the plans less attractive to people with chronic illness. In fact, some people have filed a complaint with the government to stop this practice.

COBRA Not Going Away

With all the focus on health care reform it is easy to forget about COBRA since it has been around for so long. Also, with the new Healthcare Exchanges or Marketplaces most people think few people will elect and pay for COBRA coverage. However, employers need to comply with COBRA and, most importantly, with the various notice requirements.

http://bit.ly/173vLPP

This court case reminds us it is easy to forget about sending out the COBRA Election Notice when there is a "qualifying event." So just because you think no one will actually elect COBRA coverage, you still need to comply with the COBRA rules.

SBCs to be Revamped

Health care reform requires plan participants to receive a summary of benefits and coverage or SBC. The SBC is a 4-page summary of the health plan and is designed to simplify the health plans for employees by using a uniform format and definitions.

http://bit.ly/1zABZO6

http://bit.ly/1vqKH0E

http://bit.ly/171VokA

The government is in the process of updating the SBC templates and expects to issue the new versions later this year.

US Supreme Court Speaks on Retiree Health Coverage

One of the seminal court cases on retiree health coverage was in the Sixth Circuit which includes Ohio. That case, decided back in 1983, made it difficult for employers to modify or terminate retiree health benefits. That ruling held that unless the employer clearly stated it could amend or terminate the retiree health coverage there was a presumption the retirees became vested in those benefits. In other words, the employer could not modify or terminate the retiree health coverage unless the employer clearly stated that was the case. The US Supreme recently ruled that there should not be a presumption the retiree health coverage cannot be amended or terminated.

http://bit.ly/1J99hPl

http://bit.ly/1J99oKQ

Instead the general principals of contract law should apply. This means the courts should not presume the employer is precluded from amending or terminating the retiree health coverage just because the employer did not specifically reserve those rights. Obviously the employer should clearly state it reserves the right to amend or terminate the retiree coverage to avoid any confusion but all is not lost from the employer's prospective if the documents are not clear.

Premium Tax Credits

One of the main components to health care reform is the premium tax credits that low-income individuals receive to help pay for their coverage through the health care exchanges or marketplaces. Here is a quick chart showing how much a person may receive in credits based on their household income.

http://bit.ly/1A4bq7H

Remember the US Supreme Court is going to rule later this year if individuals getting coverage through exchanges or marketplaces run by the Federal government (as opposed to a state run exchange or marketplace) are eligible for the subsidies.

Taxing Health Premiums

In most cases, the employer gets to deduct the amount it pays for providing health coverage to employees and the benefits are tax-free to the employees. This article talks about what would happen if health plan premiums lost their tax favored status.

http://bit.ly/1zcM4Sq

The tax favored treatment of health plan premiums cost the Federal government billions of dollars each year. So disallowing the tax deduction for employer and/or treating the value of coverage as taxable income to the employees would certainly create a windfall for the

government but probably is not palatable from a political standpoint. Note that in 2018 the Cadillac tax is scheduled to kick in which results in a nondeductible excise tax for value of health coverage above a set amount.

To Exchange or Not To Exchange – That is the Question

Health care reform opens up a whole new option for most Americans. Now individuals have an option other than the employer sponsored group health plan. They can waive the employer's coverage and go to the health care exchange or marketplace. Then depending on their household income, receive a subsidy to help pay for the exchange or marketplace coverage.

http://bit.ly/1FHiR6C

This article talks about the dynamics that go into the decision whether to get coverage through the exchange or marketplace or participate in the employer's group health plan.

COBRA and the Employer Mandate

Health care reform has some really complicated rules when it comes to determining whether a variable hour employee has to be considered a full time employee with respect to the employer mandate. Basically, in the context of a variable hour employee, there is the measurement period, administrative period and the stability period. Remember that these concepts apply when determining if the employer may be subject to a penalty under the employer mandate. These rules do not necessarily govern the actual eligibility requirements under the health plan. They also complicate the COBRA rules.

http://bit.ly/1KSNh8L

This is one of the best articles I have seen on how the COBRA rules intersect with the employer mandate provisions under health care reform. It really is worth the time to read.

How to Calculate Employer Mandate Penalty

Until we hear otherwise, it is full steam ahead with health care reform including the employer mandate. The IRS released a paper explaining how to calculate the employer mandate penalty.

http://1.usa.gov/19f4eg1

What happens is the IRS will notify employers after the end of the year about the potential assessment of the penalty. The employer will then have an opportunity to contest the proposed penalty. What this means in real terms is that the employer will have to track every employee's hours. The penalty only is assessed against the employer for full-time employees (i.e. those that work at least 30 hours per week). So if the IRS wants to assess the penalty for a part-time employee, the employer has to demonstrate that that particular employee worked

less than 30 hours per week. So, as you can see, the employer is going to have to keep accurate records on all employees so the employer can defend its position if the IRS attempts to impose a penalty under the employer mandate.