



February 28, 2015

### Three State Law Changes in Ohio

While everyone is focusing on health care reform on the Federal level there have been three major changes on the state level in Ohio that impact employers sponsoring fully insured health plans.

1. The definition of full-time employee in the small group market in Ohio is changing from 25 hours per week to 30 hours per week. A small group employer under Ohio law is an employer with between 2 and 50 eligible employees during the previous calendar year. This change takes place for plan years beginning on or after January 1, 2016. So if you are a small employer you will be able to exclude employees who work fewer than 30 hours per week from your group health plan. Note that this change does not constitute a “qualifying event” under COBRA, which means those employees (and their family members) that lose coverage because of the change will not be entitled to COBRA.
2. The definition of adult child in Ohio is up to age 28. The age is being lowered to age 26 for plan years beginning on or after January 1, 2016. The COBRA rules are less clear with respect to adult children who lose their health coverage because of this change.
3. The Ohio Department of Insurance has recently changed its position with respect to spousal carve outs. Previously the Ohio Department of Insurance took the position that employers could only implement a spousal surcharge. That is, the employer could charge more to cover spouses who had access to other group health plans but the employer could not exclude those spouses from the group health plan. The Ohio Department of Insurance will now allow employers to completely exclude the spouse if the spouse has access to another group health plan. It is important to note that the carrier has to approve the spousal carve out provision. In other words, you have to get your carrier to issue a policy that has the spousal carve out provision. The employer cannot implement a spousal carve out without the carrier’s prior approval.

The first two changes bring Ohio law into line with the Federal statute. That is, Federal law defines a full-time employee as one who works 30 hours per week and Federal law requires employers to offer coverage to a child up to age 26. So, again, the first two changes simply bring Ohio into line with the Federal rules. The third change allows employers that sponsor fully insured health plans the same opportunity to exclude spouses that employers with self funded health plans have been doing for some time.

## **Small Employers Get Temporary Reprieve**

The government continues to say employers cannot, on either a pre-tax or post-tax basis, pay premiums for individual health policies. However, the government is giving small employers (i.e. those with fewer than 50 full-time and full-time equivalent employees) until June 30, 2015, to stop this practice.

<http://bit.ly/1DWFkgs>

<http://bit.ly/18pzZTE>

<http://bit.ly/1BhexuZ>

Failure to comply will result in a \$100 per day or \$36,500 penalty for each violation. Again, the government has issued several rulings on this topic so it is serious about enforcing the rules.

## **Don't Listen to this Court**

In a surprising decision a Court ruled that a person could change his beneficiary designation over the phone!!!

<http://bit.ly/1GxFlr7>

The plan document did not require changes be made on a specific form or that the change be in writing so the Court honored a beneficiary change that was made over the phone. The lesson here is that you should require all changes be made in writing, on an approved form. You should not follow this case!!!!!!!!!!!!!!

## **IRS Finalizes 2014 Form 1094 and Form 1095**

The IRS has finalized Form 1094 and Form 1095. These are the forms employers will use to report health plan coverage to both the IRS and the employees. Note that the reporting obligations were voluntary for 2014 and, as a practical matter, few employers are preparing the forms.

<http://bit.ly/1FxZL20>

<http://bit.ly/1DWFQv8>

However, all employers with 50 or more full-time and full-time equivalent employees and employers sponsoring self-funded health plans regardless of size must prepare and distribute the forms for the 2015 calendar year. The forms have to be distributed to the employees by January 31, 2016, and filed with the IRS by February 29, 2016, if the employer is submitting the

forms in paper format and by March 31, 2016, if the employer is filing the forms with the IRS electronically. You need to start gathering the data now!!!!!!

### **ACA on the Horizon**

We are coming up on the fifth anniversary of health care reform and most of the provisions have already kicked in. However, there are a few things yet to come.

<http://bit.ly/1BAMVCX>

The US Supreme Court is set to rule later this year on a key component of the statute. So even though it has been five years since the law was passed there still is uncertainty.

### **Exchange Notices are Coming**

The health care exchanges or marketplaces are starting to send notices to employers saying their employees are getting premium subsidies under the exchange which may result in the employer having to pay a penalty under the employer mandate. The notice says the employer has the right to appeal the employee's eligibility for the subsidy.

<http://bit.ly/18pB8dV>

It is important to note that the employer need not respond to the exchange notice. The employer will have the opportunity later on to contest any assessments under the employer mandate. This article explains the rules and clearly states (1) the employer is not required to respond to the notice and (2) the employer will have the right to contest any penalties under the employer mandate at a later date.

### **ACA and Contingent Workers**

The rules are pretty clear. Large employers (i.e. those with 50 or more full-time and full-time equivalent employees) have to offer quality/affordable coverage to full-time employees (i.e. those that work at least 30 hours per week) or potentially pay a penalty. However, some individuals are not easily classified as either full time or part time.

<http://bit.ly/18pBbXe>

This article talks some the categories of employees that fall into "gray" areas under the law. It is important that you correctly identify these employees and treat them properly under the statute.

### **Top 10 Questions**

You probably already know this but here is a list of the top 10 questions employees have when selecting a group health plan.

<http://bit.ly/1GxFvif>

There is nothing earth shattering here and, as I said, since you are in HR you probably having been fielding these questions for some time.

### **Stop Loss Considerations**

Traditionally only larger employers sponsored self-funded health plans because they were the only ones able to handle potential risk associated with self-funded health plans. However, health care reform has caused the carriers to develop innovative self-funded health plans for smaller employers. One of the most important parts of any self-funded health plan is the stop loss coverage.

<http://bit.ly/1aptbWI>

This article talks about things to consider when reviewing any stop loss contract. Therefore, you should take the time to read this if you are sponsoring or thinking about sponsoring a self-funded health plan.

### **Minimum Value Health Plans Have to Cover Hospital and Physician Charges**

The employer mandate or play or pay rules require large employers to offer quality/affordable coverage. A plan is considered “quality” if the plan, on average, pays at least 60% of the eligible claims.

<http://bit.ly/1ETtr9T>

Some group health plans were meeting the 60% threshold but were not covering hospital and physician charges. The government issued rules saying that regardless of the percentage of claims paid under the plan, the plan had to, in addition, cover physician and hospital charges to be considered a “minimum value plan” under ACA.

### **Is a Cadillac in Your Future?**

Before you get all excited and think you can travel in style in your new Cadillac, I am talking about the nondeductible excise tax assessed on rich health plans beginning in 2018. This article talks about the latest government guidance on the Cadillac tax.

<http://bit.ly/1EuJLzH>

The Cadillac tax is scheduled to start in 2018, and many provisions of health care reform have been postponed. However, it is prudent to start thinking about the tax now and not to assume that it will be postponed or repealed.

### **Time to Pay Uncle Sam Back**

The health care exchanges or marketplaces are where individuals can buy health coverage. A major component of the exchanges or marketplaces are the government subsidies for low-income individuals to help pay the premiums. Those subsidies are based on the person's household income. The subsidies are paid throughout the year.

<http://bit.ly/1821t0q>

This article estimates that over 50% of the people who received subsidies last year will have to repay a portion of the money. That is, they underestimated their income, which in turn resulted in a larger subsidy than they were entitled to under the law. As a result, they will have to repay the excess subsidy back to the government.

### **FMLA and Same Sex Spouses**

The Federal government's trend to recognize same sex spouses continues. The government just released rule under the FMLA that says same sex spouses should be treated the same as opposite sex spouses.

<http://bit.ly/1DeiD3D>

The FMLA is a Federal statute and the latest rules say it does not matter where the employee lives. As long as the employee is legally married to his or her same sex spouse, the employee can take FMLA leave to care for that spouse.

### **Anthem Continues to Address Breach**

The following is a link to Anthem's webpage devoted to the recent security breach.

<https://www.anthemfacts.com/>