



December 16, 2014

Health Insurance Tool for Calculating Premiums for Individual Coverage

The Kaiser Family Foundation has updated their tool that allows individuals to determine the amount individuals will have to pay based on where they live, their income and number of people in the family.

<http://bit.ly/1qRY2lP>

Basically, it is a premium subsidy calculator that has been updated to reflect the 2015 premiums charged by the carriers in each state.

NAIC Addresses Network Issues

One of the ways carriers are trying to increase profits (or reduce losses) for exchange products is to limit the network of providers under the health care exchange or marketplace products. This creates an unpleasant surprise for a lot of people. What happens is they can get coverage cheaper on the exchange because of the subsidies so they select the same carrier they currently have thinking the product will be the same. However, they come to find out that their doctor is not on the network under the exchange product.

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

This has become a problem and the National Association of Insurance Commissioners (NAIC) addresses this issue. Although the NAIC does not have regulatory authority, it does carry a lot of weight and the Federal and state governments do pay attention.

Flex Credits and Health Care Reform

Some employers sponsor full-blown cafeteria plans that provide employer flex credits in addition to allowing employees to pay for the various benefits through pre-tax salary deferrals. How the program is structured dictates how the employer's flex credits are treated under health care reform.

<http://bit.ly/16oLkw>

As a practical matter, most employers nowadays do not sponsor a cafeteria plan with employer flex credits. However, if you do, you should read this article.

Annual ERISA Filing Requirements

I worry about this every year!!! The rules governing the annual filing requirements (i.e. Form 5500) under ERISA are pretty clear when it comes to welfare benefit plans. You have to file the forms within seven months after the close of the plan year if there were at least 100 participants (i.e. employees) in the plan on the first day of the plan year. Failure to file the forms on time can result in penalties of up to \$300 per day, up to \$30,000 per year. You look to see which line of coverage had the most employees. So, for example, there could be 95 employees in the health plan and 110 employees in the company-paid group term life insurance. Therefore, this employer would have to file a Form 5500 for the plan.

<http://bit.ly/1vS6IUR>

Note that the rules are different if the welfare benefit plan is maintained pursuant to a trust or is part of a MEWA. Also, different rules apply to retirement plans.

IRS Spits Out Additional Guidance

The IRS continues to provide guidance on a number of topics. The latest set talks about the requirement that individuals have some sort of health coverage or pay a penalty. The rules also talk about how wellness incentives factor into the affordability of the health coverage, which could impact the employer mandate or play-or-pay rules.

<http://bit.ly/1uIYj64>

Most of the topics had already been addressed but the latest guidance is in the form of final regulations and another IRS Notice.

White House Gives Nod to Wellness Programs

One of the many frustrations facing employers is the fact the government is not speaking with one voice when it comes to wellness programs. On one hand, health care reform contains rules governing wellness programs. One would think if they complied with those rules they would be safe. However, the EEOC has filed lawsuits against employers adopting wellness programs that comply with health care reform saying those programs violate other Federal statutes.

<http://bit.ly/1ySqhP2>

A White House spokesperson recently expressed concern about the EEOC filing these types of lawsuit. So hopefully the government will get its act together and take a uniform position. That

is, if the wellness program complies with health care reform, the EEOC will not challenge the program under other statutes.

Hire Qualified Auditors

Certain employee benefit plans have to be audited each year. That is the case with most retirement plans and some welfare benefit plans. In the case of a welfare benefit plan, the plan has to be funded which, in most cases, means the plan is maintained in conjunction with a trust.

<http://bit.ly/1wa9ytH>

In any event, this is a good article to read when selecting an auditor for your various plans. It lists things to consider when picking an auditor.

Chart Lovers, Rejoice

I know there are a lot of chart lovers out there. They like to see things in a kind of graph format, so here is a chart that illustrates disallowed tactics with respect to the play-or-pay rules under health care reform.

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

Personally, I am not a big fan of charts. They oversimplify the rules. There are hundreds of pages of regulations explaining the employer mandate so there is no way a one-page chart is going to address all the issues. At best, the chart is a relatively good starting place.

SHOP Off to Slow Start

Everyone is aware the health care exchange or marketplace is where individuals can go to get health coverage. However, another (but little known and utilized) option under the exchanges or marketplace is the SHOP. The SHOP is where small businesses can go to get coverage for their employees.

<http://wapo.st/13qGuTy>

The government envisioned the SHOP to be a fully automated system where small employers could go and offer their employees a wide range of options. In reality the system utilized paper applications last year and, although more automated this year, not many employers are using the SHOP. The one thing to note is the employer must get coverage through the SHOP to take advantage of the employer tax credit. Having said that, not many employers are, in fact, taking the small employer tax credit.

Seasonal Employees and Health Care Reform

This article talks about seasonal employees and how they can impact the employer under health care reform's employer mandate or play-or-pay rules.

<http://bit.ly/1uNUM7f>

The rules provide special treatment for seasonal employees. Do not confuse seasonal employees with short-term employees. A seasonal employee is an employee hired the same time each year (i.e. on a seasonal basis) for a period of less than six months. A short-term employee is anyone hired for a short duration but not a seasonal basis. As a general proposition, the employer need not offer health coverage to seasonal employees but will have to offer coverage to short-term employees after 90 days if the short-term employee is scheduled to work at least 30 hours per week, or pay a penalty.

Tips for 2015

This is a short article that discusses the employer mandate or play-or-pay rules as we close in on 2015.

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

This article offers some sage advice by saying if you think you have come up with a slick way to avoid the rules, chances are, it violates the rules. The article concludes by saying when in doubt, take the conservative approach and offer coverage if you are subject to the employer mandate.

The ABCs of SBCs

It has been awhile since health care reform was enacted (i.e. over four years ago) and one of the requirements is the summary of benefits and coverage or SBC. It is a four-page summary of the health plan.

<http://bit.ly/1yUs2QG>

There is talk that the government may make changes to the SBC template for 2016. That is, the SBC is supposed to use uniform terms in a set format so people can make an "apples to apples" comparison between plans. So stay tuned for some potential upcoming changes to the SBC templates.

Small Employers and Self-Funding

As we get closer to community rating, it is anticipated that more and more smaller employers will turn to self-funding as a way to control costs. This article talks about some of the advantages to self-funding under health care reform.

<http://brook.gs/1AdhLwd>

Obviously there are pros and cons to self-funding. However, health care reform makes self-funding more attractive than before and many of the carriers are developing products that make self-funding more viable for smaller employers.

Confusion Abounds

There is a lot of confusion out there about whether employees are eligible for a subsidy under the health care exchange or marketplace. These rules also impact the employer under the employer mandate or play-or-pay rules. Basically, most Americans have to have some form of health coverage or pay a penalty. Additionally, large employers have to offer quality/affordable health coverage or pay penalty. There are two types of potential penalties with respect to the employer mandate. First, there is a penalty if the employer fails to offer health coverage to the full-time employees. Note that the coverage need not be quality or affordable for the employer to avoid this penalty. As a result, some employers are offering a bare bones or “skinny” plan to avoid this penalty. Note that offering the skinny plan does not make the employees ineligible for a subsidy under the exchange or marketplace.

<http://bit.ly/1zfYPI5>

The employee is not eligible for a subsidy only if the employer-sponsored plan is both quality and affordable.

Nondiscrimination Rules & Health Plans

I get this question all the time: Do I have to offer my group health plan to all employees? The answer is no and maybe. Self-funded group health plans have been subject to discrimination rules for some time. Those rules preclude employers from disproportionately benefitting the higher paid employees with respect to eligibility and benefits. Fully insured group health plans have not been subject to discrimination rules. Health care reform imposes discrimination rules on nongrandfathered health plans. However, those rules have been postponed until the IRS issues regulations.

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

So where we are today, self-funded group health plans are (and have been) subject to discrimination rules. Although this has not been a high enforcement area for the government, there is an affirmative obligation on the employer to test its self-funded group health plan to ensure it does not discriminate. Fully insured group health plans currently are not subject to discrimination rules but that will change if and when the IRS issues the regulations.

Jonathan Gruber Apologizes

Economist Jonathan Gruber was one of the architects of health care reform. He advised the White House on a number of issues while the statute was being drafted.

<http://wapo.st/1qSw6OM>

There have been a number of articles and videos where Mr. Gruber said things like the people were stupid and misinformation was released when the law was being debated so that the public would accept the new law. Clearly this has been an embarrassment for the Obama administration and now Mr. Gruber has apologized for his recent remarks.

Holiday Break

You may not know this but I am one of Santa's helpers so the next newsletter will not come out until next year. I also know who has been naughty and nice. Have a safe and happy holiday season!!!!