



COMPLIANCE UPDATE

Nov. 3, 2014

FLASH UPDATE: The government announced on Friday an indefinite delay in the requirement that health plans obtain a health plan identifier or HPID. Large health plans (i.e. those with at least \$5 million in claims) were required to obtain the HPID by November 5, 2014, and smaller health plans had an additional year to obtain the HPID.

<http://go.cms.gov/1pgMsQR>

The announcement of the delay can be found in the third paragraph. On one hand this is welcome news. On the other hand, it creates uncertainty in the business community. The employer mandate was delayed a year and community rating has been delayed until as late as 2017.

Videos are Up and Running

In the meantime, two other deadlines are still impending. In an effort to keep you up to date we have prepared four videos on these important and timely topics. The first video is an introduction by Scott McGohan, CEO of McGohan Brabender. The second video had talked about the Health Plan Identifier, or HPID, which has been delayed indefinitely.

The third video about is the transitional reinsurance fee. Self-funded health plans have to report census information to the government by November 15, 2014, and have to pay the fee next year. Note that the government has released the forms to submit the plan census and pay the fee. This video is riveting because I am the presenter.

The fourth and final video talks about the new reporting requirements under health care reform that begin January 1, 2015. All employers, regardless of size, sponsoring self-funded health plans must complete new IRS forms and file them with the government and distribute them to the employees. Large employers (i.e. those with 50 or more full-time and full-time equivalent employees) must complete new IRS forms and file them with the government and distribute them to the employees.

This is the link to the videos:

[MB HCR Updates](#)

We strongly encourage you to watch the videos. The topics are very important, and now is the time to start preparing your compliance efforts. You should watch the Transitional Reinsurance Fee video if you sponsor a self-funded health plan. You need to watch the Reporting Requirement video if (1) you sponsor a self-funded health plan and/or (2) you have 50 or more full-time and full-time equivalent employees.

It is important to realize the government continues to issue rules. Therefore, it is imperative that you visit the government's webpages often to ensure you have the latest information. For example, the government released the forms so that you can submit the plan census and pay the transitional reinsurance fee.

<http://go.cms.gov/1zN2YfH>

Also, note the deadline to apply for the health plan identifiers or HPID is NOW!!!! So you need to ensure that you are complying with all the rules.

Jury Still Out on Health Care Reform

Technically speaking, it is the US Supreme Court that may still rule on the Affordable Care Act. One of the main components of health care reform is the health care exchanges or marketplaces where individuals can go to get coverage. A critical part of the exchanges or marketplaces is that low-income individuals can get government subsidies to help pay for the coverage. As written, the statute says those subsidies are available under state-run exchanges or marketplaces. However, a majority of the states failed to establish the exchange or marketplace so the Federal government stepped in and set up the exchange or marketplace. The question has now come up whether the government subsidies are available to those who signed up for coverage under an exchange or marketplace set up by the Federal government as opposed to an exchange or marketplace set up by the state.

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

If the US Supreme Court rules the subsidies only are available to individuals who signed up for coverage through an exchange or marketplace established by a state (as opposed to the Federal government) the whole statute could fall apart.

EEOC Says Wellness Program Violates ADA

The Equal Employment Opportunity Commission (EEOC) filed lawsuits against two employers that adopted wellness programs that shifted the entire cost of the premiums to employees who failed to complete or participate in the programs.

<http://bit.ly/1sK5olu>

The EEOC is taking the position that the programs in question are not voluntary and, as such, violate the Americans with Disabilities Act (ADA).

Is a Cadillac in Your Future?

Before you get all excited, this is not a good thing. Beginning in 2018 high value health plans will be subject to an excise tax. Many people believe the Cadillac tax may be the biggest “hit” under health care reform. This article talks about the Cadillac tax.

<http://bit.ly/1DBM5kA>

Although the tax does not kick in until 2018, now is the time to start planning for the tax and developing ways to avoid or at least minimize the impact.

Change in Look-Back Periods

The IRS issued a notice explaining how to handle changes in look-back periods. The notice addresses two different situations. The first is if an employee changes positions when the positions use different look-back periods. The second situation is when the employer simply changes or modifies its look-back methodology.

<http://bit.ly/10Bct24>

<http://bit.ly/1tIE7tf>

As a practical matter, most employers will probably adopt one look-back period for all employees and will rarely, if ever, change it. However, the IRS notice also can be used when two companies merge.

ACA and Staffing Agencies

Large employers have to offer full-time employees quality/affordable health coverage or pay a penalty under health care reform or the ACA. Many employers are using staffing agencies or Professional Employer Organizations (PEOs) for a variety of reasons. This article provides a really in-depth analysis of how these arrangements can impact employers under health care reform and specifically, the employer mandate or play-or-pay rules.

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

This is a related article and talks about the rules where one entity offers coverage to employees on behalf of another entity.

<http://bit.ly/1E5fMwy>

If you use an outside staffing agency or PEO is it critical that you fully understand all the ramifications under health care reform. It also is important that the contract with the staffing agency or PEO spell out each party's responsibilities and what happens if the government assesses a penalty. Therefore, you need to read both articles to fully understand the rules.

Excepted Benefits are Exempt from Health Care Reform

Certain benefits, called excepted benefits, are excluded or exempt from health care reform. There had been some confusion as to whether certain stand-alone dental and vision plans as well as EAPs were subject to health care reform. As a practical matter, most of these plans would fail to comply with all the requirements (e.g. unlimited benefits, etc.). The government has issued final rules that exempt most of these plans.

<http://bit.ly/1p63Zec>

All three types of plans (i.e. dental, vision and EAPs) are popular, and if the government did not exempt these plans employers would have been forced to drop them. So it is not surprising that the government gave them a pass.

Private Exchange Checklist

There has been a lot of buzz around private exchanges. So far they have not been that well received. Most people define a private exchange as simply a vehicle where the employer can contribute a set amount each month and the employees can pick and choose among the various benefits they find most attractive. In theory this sounds good, but the exchange is only as good as the underlying products and most large carriers are hesitant to participate in a private exchange. Putting that all aside, this article talks about things to consider when selecting a private exchange.

<http://bit.ly/13jFy3e>

Again, the most basic question is what products are being offered under the exchange, and if the products are not attractive, there is little reason to move forward.

Skinny Plans and Not So Skinny Plans

There are two separate penalties under the employer mandate or play-or-pay rule under health care reform. One penalty applies if the employer fails to offer health coverage to a sufficient percentage of full-time employees. This article talks about offering a "skinny plan" to avoid this penalty.

<http://on.wsj.com/1wHNQvm>

The article continues and talks about avoiding the other penalty (i.e. failure to offer quality coverage) by offering a health plan that does not cover in-hospital care.

2015 Is Just Around the Corner

There are a number of compliance items that start January 1, 2015. One is the new reporting requirements applicable to (A) employers with 50 or more full-time and full-time equivalent employees and (B) all employers that sponsor self-funded health plans regardless of size. Specifically, IRS Forms 1094 and 1095. The employer's size and whether the health plan is self-funded or fully insured dictates which forms and what parts of those forms have to be completed. The following is a chart outlining these rules.

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

By now everyone knows the employer mandate or play-or-pay rules were postponed until next year. Additionally, employers with 50 to 99 full-time and full-time equivalent employees have an additional year (i.e. until 2016) in most, but not all, cases. In other words, the additional year delay for medium sized employers is not automatic. These employers have to satisfy a couple of requirements before they get the extra year free pass. This article outlines those requirements.

<http://bit.ly/1xFcX0Y>

Again, the employer mandate kicks in next year for large employers (i.e. those with at least 100 full-time and full-time equivalent employees) and the rules apply to medium sized employers (i.e. those with 50 to 99 full-time and full-time equivalent employees) in 2016 but only if the medium sized employer complies with the rules listed in this article. Otherwise, the medium sized employer has to comply with the employer mandate next year.