

Compliance Update: June 1, 2015

PCORI Fee & Form 5500

The PCORI fee and the Form 5500 are coming due. The PCORI fee, which is part of health care reform, is a temporary fee to fund and support clinical effectiveness research. The amount is assessed on health plans but employer sponsored self-funded health plans will have to pay the fee directly. So if you are sponsoring a self-funded health plan, you need to calculate the fee and pay it by July 31, 2015, by filing IRS Form 720. Those sponsoring self-funded health plans will remember going through the drill last year. Here is an article outlining the rules and how to calculate the amount, which is relatively low.

www.kapnick.com

Form 5500 is the bane of my existence. The rules are very clear when it comes to “welfare benefit plans.” You have to complete the forms if there were at least 100 participants (i.e. employees) in the plan as of the first day of the plan year. The forms are due seven months after the close of the plan year. So if the plan is maintained on a calendar year basis that means the 2014 forms are due July 31, 2015.

There are no taxes due but there is a potential \$300 per day up to \$30,000 per year penalty for not filing the forms on time. When you determine if there were at least 100 participants (i.e. employees) in the plan, you look at all lines of coverage. So, for example, there may be 85 employees in the health coverage but 115 employees in the company-paid life insurance. In this case, you would need to file the forms.

Finally, if you are sponsoring a self-funded plan and the plan is considered “funded” you need to file the forms regardless of the number of participants. Therefore, if you are sponsoring a hybrid health plan it is imperative you determine the plan’s status for Form 5500 filing purposes. The issue is if the plan is considered “funded” vs. “unfunded.” It is not a question of whether the plan is fully insured or self funded. Those are different concepts.

Embedded Maximum Out of Pocket

Health care reform limits the maximum out of pocket non-grandfathered plans can impose with respect to in-network providers performing essential health benefits. The government said earlier this year that the maximum out of pockets have to be embedded. However, it was not totally clear whether that rule applied to all non-grandfathered health plans or only those fully insured plan sponsored by small employers.

www.dol.gov

The government cleared up the uncertainty by saying **ALL** non-grandfathered health plans have to comply. This means fully insured and self-funded non-grandfathered health plans

sponsored by large and small employers have to used embedded maximum out of pocket limits.

Self-Policing Under ACA

Some people go by the “no harm/no foul” rule but that does not apply when it comes to compliance issues. The rules require employers to self-monitor compliance issues and to report the violations. In fact, employers are supposed to use IRS Form 8928 to report and pay the penalty.

www.cowdenassociates.com

The rules also provide the penalty may be abated or reduced if the employer comes forward and reports the violation and shows reasonable cause. It may not be easy to step up and report the violation but it is the right thing to do and the outcome can be positive.

EEOC/ADA/Wellness

As we reported in the last newsletter, the EEOC has issued proposed rules saying how employers can comply with the ADA (i.e. Americans with Disabilities Act) when it comes to wellness programs.

www.mcguirewoods.com

mcgrawwentworth.com

Here are a couple more articles on the topics. Remember the rules are in proposed format so hopefully they will fall more into line with the health care reform rules governing wellness programs.

New FMLA Forms

The government tries to provide compliance help in a variety of ways and one way is providing sample forms or templates. The government recently released updated FMLA forms.

www.fmlainsights.com

Government templates may be a good starting place but prudent employers will review the forms and sometimes it makes sense to modify the forms.

Chart Lovers, Rejoice

I know there are a lot of you chart lovers out there that like to look at charts as a starting place when tackling various issues. Here is a chart showing the differences between HRAs, FSAs and HSAs.

www.mcgteam.com

My concern is that some people may look to an easy-to-read chart and think that is all there is to the issue. However, the topics are extremely complex and to rely on a one- or two-page chart as your only resource is dangerous to say the least.

More Rules on Preventive Care Services

Health care reform requires group health plans to provide first dollar coverage for preventive care services provided by in-network providers. Unfortunately that definition is constantly changing.

www.groom.com

The government recently issued a series of Q&As talking up what it considers to be preventive services for these purposes. Remember that there are no free lunches when it comes to health care costs so if the plans are required to pay the claims, this will translate into higher premiums.

Seasonal Employee vs. Seasonal Worker

The terms sound almost identical but they are not. Health care reform allows employers to disregard seasonal employees when determining if the employer is subject to the employer mandate. Employers may not have to offer coverage to seasonal employees under the employer mandate.

www.healthcare-attorneys.com

So it is very important to understand the difference between a seasonal worker vs. a seasonal employee. They are not the same!

The Interns are Coming, the Interns are Coming!

As we get into the lazy, hazy days of summers a lot of employers are hiring interns for the summer. Before health care reform, employers really did not have to pay a lot of attention to offering these kids health coverage during their limited stay. However, health care reform requires employers to take a close look at these interns in a different light.

www.theabdteam.com

It is critical employers properly analyze the interns to ensure that the employer is not faced with a huge penalty for not offering coverage to a sufficient percentage of the workforce. As a practical matter, most interns are covered under their parents' health plan and would not take the coverage in the first place. Nevertheless, the employer could be penalized for not offering the interns coverage.

Tobacco Wellness Programs

There has been a lot of attention to wellness programs now that the EEOC issued proposed rules governing wellness programs under the ADA. In fact, we have several articles in this newsletter on the topic.

www.employeebenefitsupdate.com

However, this article is focused on the most popular form of wellness programs – those involving tobacco.