



March 15, 2016, Compliance Update

IRS Forms 1095 Due March 31, 2016

We have included numerous articles about the new health care reform reporting requirements, namely IRS Form 1094 and IRS Form 1095. But the day of reckoning is upon us. IRS Forms 1095 have to be distributed to the employees by the end of this month!! The forms have to be filed with the IRS by May 31, 2016, if filed in paper format and June 30, 2016, if filed with the IRS electronically.

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

<http://1.usa.gov/1LR8mF6>

The IRS said it would not impose a penalty if the employer has made a good faith attempt to comply with the requirements. However, the IRS also has stated that failure to submit the forms will not be considered a good faith compliance attempt. Therefore, it is imperative that you send out the forms by March 31, 2016. Also, do not forget the forms have to be submitted to the IRS later this year. You should be getting down to the "short strokes" with the forms!

Community Rating Delayed Another Three Months

The government keeps changing the rules and delaying the effective date of various health care reform provisions. On February 29, 2016, the government delayed the effective date of the community rating rules to no later than January 1, 2018.

<http://go.cms.gov/1M6xB14>

Many of the delays seem to be politically motivated. However, this delay will give small employers the ability to adopt calendar plan years rather than some off-cycle period merely to postpone the community rating rules.

Medicare Data Match Letters

The Medicare Secondary Payer Rules have been around for a long time. Basically, those rules spell out whether the employer's group health plan or Medicare is the primary payer when a person is covered under the employer's group health plan and Medicare.

<http://bit.ly/1OZPP48>

The government has stepped up its enforcement efforts and has recently starting sending out letters asking employers to provide information about certain individuals. Ignoring the letters can result in a \$1,000 penalty for each individual. Therefore, you need to respond in a timely manner.

Government Releases 2017 Out-of-Pocket Limits

One of the issues with health plans is the increasing amount of out-of-pocket expenses people have to pay. Therefore, health care reform limited the maximum amount of out-of-pocket expenses people have to pay under a non-grandfathered health plan.

<http://bit.ly/21ZqcgH>

Those amounts are indexed each year, and the government just released the number for next year.

IRS Notice on Individual Mandate

Under health care reform most people have to have health coverage or pay a penalty (i.e. the individual mandate).

<http://1.usa.gov/1QDpc9z>

The IRS released a one-page notice explaining the penalty and directing people to IRS Form 8965. The notice talks about payment options if the taxpayer is unable to pay the total amount.

Electronic Submissions of IRS Forms 1094 and 1095

As the first article indicates, IRS Form 1095 has to be provided to the employees by the end of this month. However, the first article also says the IRS Forms 1094 and 1095 have to be submitted to the IRS. If there are at least 250 or more IRS Forms 1095, those forms have to be submitted to the IRS electronically.

<http://bit.ly/1U3zrHK>

Most large employers (i.e. those with at least 250 full-time employees) are using outside vendors to prepare and submit the forms. Therefore, if you are, in fact, using a vendor to help with the forms, you need to ensure the vendor is going to submit the forms to the IRS and not simply provide you with the forms that you then have to submit to the government.

Additional Rules for Educational Institutions and Their Vendors

The government continues to issue rules regarding health care reform, and the latest set talks about educational institutions and vendors who provide services to them. The government has issued long, detailed rules explaining when certain employees are considered full-time for purposes of the employer mandate or play or pay rules. Those rules address how employers should handle breaks in services. That is, the rules talk about employees who terminate and are rehired and when they are considered new employees for purposes of the employer mandate of play or pay rules.

<http://bit.ly/1RRiq04>

Special rules apply to educational institutions taking into account that most schools take off for an extended summer break. The latest rules address vendors that provide services to educational institutions and take into account those vendors also have extended summer breaks.

Health Care Reform Law Suit and Part-Time Employees

Health care reform requires larger employers to offer quality/affordable health coverage to full-time employees (i.e. 30 hours or more per week) or maybe pay a penalty. As result, some employers are reducing the employees' hours to fewer than 30 per week so that they need not offer the employees health coverage.

<http://bit.ly/24QERcQ>

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

However, ERISA says employers cannot take adverse employment actions against employees because of an employee benefit plan. This employer reduced the employees' hours, and they filed a lawsuit saying the employer violated ERISA for reducing the their hours to avoid the potential penalty under health care reform. The Court refused to dismiss the lawsuit so stay tuned.

US Supreme Court Makes Subrogation Harder

The typical subrogation plays out something like this. The employer has a self-funded health plan and one of the participants is hurt in a car accident. The person runs up a bunch of medical claims and the self-funded health plan pays those claims. The person then sues the individual that caused the accident and receives money and now the self-funded plan wants to be reimbursed for the claims it paid.

<http://bit.ly/1R7p5Xh>

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

The recent US Supreme Court makes it harder for the health plan to get the money. Now self-funded health plans will need to be more diligent trying to recover the money from plan participants. The same rules apply to fully insured health plans but in that case the carrier will be the one trying to recover the money.

Transitional Relief for Student/Employees

The IRS is providing transitional relief under the employer mandate or play or pay rules under health care reform for colleges and universities that employ students.

<http://bit.ly/1V9Q9CO>

The rules only apply to colleges and universities that hire students as employees so the application is limited. However, if the rules do apply you should read them carefully.

Small Business Tax Credit A Bust?

Most people agree health care reform expanded coverage but did little, if anything, to control costs. One of the health care reform provisions was a tax credit for small businesses (i.e. those with fewer than 25 employees) that offered health coverage.

<http://1.usa.gov/24QF2VC>

However, few businesses have taken advantage of this credit. Nevertheless, the IRS continues to promote the credit, and this link is the latest attempt to get businesses to sign up for the credit.

Retirees Catch a Break Under Health Care Reform

A major provision under health care reform is the fact certain individuals can get government subsidies to help pay for health coverage through the health care exchanges or marketplaces. However, the person is not eligible for a subsidy if the person has access to quality/affordable health coverage through his or her employer.

<http://bit.ly/1U3zEuE>

The IRS has ruled that this only applies to active employees. So a retiree can still get a government subsidy to pay for health coverage through the health care exchange or marketplace even if that retiree has access to quality/affordable health coverage provided by the retiree's prior employer.

Severance Agreement – ERISA Plan or Not?

It is common for an employer to offer select employees a severance agreement, and sometimes it is difficult to determine whether the arrangement is covered under ERISA.

<http://bit.ly/1QGPJ71>

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

Unfortunately it may not be easy to determine the ERISA status of the arrangement. As this article notes, oftentimes it is beneficial for the program to be covered under ERISA.

Many People Dodge Individual Mandate

There are three main components to health care reform. First is the employer mandate or play or pay rules, which require large employers to offer quality/affordable health coverage or pay a potential penalty. Second is the individual mandate that requires most people have health coverage or pay a penalty. Third is the health-care exchanges or marketplaces, where people can get health coverage.

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

This report says most people without health coverage are avoiding the individual mandate penalty because of the various exemptions under the law.

IRS – Another Tax Tip

The IRS continues to issue guidance to taxpayers regarding health care reform. These are directed at taxpayers and try to explain the new IRS Form 1095-B and IRS Form 1095-C.

<http://1.usa.gov/1OZQ8My>

<http://1.usa.gov/1Uemqdg>

You may want to direct employees to these webpages. As a practical matter, the tax rules are so complex most people use a tax preparer to help with the forms.

New SBC on Horizon

In an effort to make health plans more comprehensible, health plans have to prepare and distribute a four-page summary of benefits and coverage or SBC. The government provides a template with uniform terms and provisions.

<http://bit.ly/1Ywlr7Q>

The government is updating the template and the new template will be effective next year. One of the goals of the standardized template is to help consumers make an “apples to apples” comparison of health plans.

President Backs Off Certain Plan Provisions

One of the concerns about the health plans being offered under the health care exchanges or marketplaces had to do with the provider networks. The carriers were attempting to control costs by limiting the provider networks.

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

The government had issued proposed rules requiring the carriers to expand the provider networks but the carriers pushed back and the Obama administration relaxed the requirements in the final rules.

Standardized Health Plans in Federal Exchanges

Health care reform established health care exchanges where individuals can get health coverage. Each state was supposed to establish and run its own exchange. However, if the state refused to run its own exchange, the Federal government would step in and run the exchange for the state. As it turned out,

most states did not establish their own exchanges, and the Federal government is running the exchanges in 38 states.

<http://bit.ly/24QFrj>

Beginning January 1, 2017, these exchanges will offer standardized plans, which will make it easier for individuals to compare plans.

ERISA Preemption Alive and Well

The US Supreme Court ruled earlier this month that ERISA preempts a state law that would have required self-funded health plans to establish and pay for reporting mechanisms to comply with a state law.

<http://bit.ly/1OZQin8>

This is good news for those of you that sponsor self-funded health plans. There have been attacks on the scope of ERISA preemption of state law, and this decision indicates the preemption provision is alive and well, at least for the time being.

Federal Contractors Required to Provide Additional Sick Leave

Some federal contractors will be required to provide qualifying employees with at least seven days of paid sick leave each year, including paid leave for family care. These new rules are scheduled to go into effect by September 30, 2016.

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

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

If the employer fails to comply with the new rules, the government could stop payments or even terminate the contract.

Government Resource Guide

Different government agencies have released numerous forms of guidance on a wide variety of health care reform topics.

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

This publication tries to pull all the information into one central depository with links to the actual source documents. It is pretty comprehensive and it's a good place to go if you have questions.

Employee Benefit Survey

Generally I am not a big fan of surveys because oftentimes they are slanted toward a particular outcome based on the writer's objectives, and you can usually find a survey that reaches the opposite conclusion.

<http://bit.ly/1paRNK4>

However, this survey is pretty objective and provides some general information you can use to see where you stack up against other employers.

Win Some, Lose Some – Maybe

We have included a couple of articles recently where the courts have allowed employers to require employees to complete a health risk assessment before entering the health plan. The EEOC continues to fight the fight, but another consideration is how this could impact the employer mandate or play or pay rules.

<http://bit.ly/223cBFb>

Large employers face a potential penalty for not offering health coverage to a sufficient percentage of full-time employees. It is not clear what happens if the employee refused to complete the health risk assessment and is not allowed to enter the health plan. The government could take the position that the employer did not offer coverage to these employees and this could subject the employer to huge penalties under the health care reform.