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## June 15, 2016, Compliance Update

### PCORI Fee Due Next Month

If you sponsor a self-funded health plan (including an HRA), you need to calculate and pay the PCORI fee. The fee is reported on IRS Form 720 and is paid with IRS Form 720V.

#### [PCORI Fee FAQs](#)

The PCORI fee has been around for a while, but this is really a good article on the topic.

### EEOC Issues Final Wellness Rules

The big news is that the EEOC (i.e. the Equal Employment Opportunity Commission) issued final regulations governing wellness programs under the ADA (i.e. Americans with Disabilities Act) and GINA (i.e. the Genetic Information Non-Discrimination Act). Unfortunately, but not surprisingly, the new rules add another layer of complexity on wellness programs.

#### [EEOC Roadmap for Wellness Programs](#)

#### [Final Rules on Wellness Programs](#)

#### [Final ADA Wellness Regulations](#)

#### [Final GINA Wellness Regulations](#)

The issue is that health care reform imposed new standards on wellness programs several years ago. The latest set of rules imposes different standards so employers may now have to revise their wellness programs to ensure compliance with both sets of rules.

### Court Invalidates Part of Health Care Reform

A Federal District Court invalidated an important part of health care reform but the end result may not be that big of a deal to employers. The statute provides that low-income individuals who get coverage through the health care exchanges or marketplaces can receive subsidies to reduce their out-of-pocket costs under the policies. The Federal District Court in Washington, D.C., said Congress has not yet approved the disbursement of funds to the insurance companies. In other words, the Court said the statute was valid but Congress has to approve giving the Federal funds to the insurance companies to reduce the individuals' out-of-pocket costs.

#### [Subsidy Ruling Will Have Little Impact](#)

### [Court Stays ACA Cost-Sharing Ruling](#)

The case is pending appeal. Worst-case scenario is that the insurance companies will not get paid, which means many will pull out of the health care exchanges or marketplaces. This case is another example of how complicated the law is and how contentious it has become.

### **Form 5500s for Calendar Year Plans Due July 31<sup>st</sup>**

The annual report (i.e. Form 5500) for the 2015 calendar plan year is due July 31, 2016. The rules are very clear with respect to the ERISA filing requirements applicable to welfare benefit plans (e.g. health, life, disability). You have to file the forms if there were at least 100 participants (i.e. employees) in the plan on the first day of the plan year. You look at all the lines of coverage when determining the number of participants (i.e. employees). For example, there could have been 85 employees in the medical on the first day of the plan year and 115 employees on the company-paid life on that date. In this case you would need to file the forms because there were more than 100 participants (i.e. employees) in the company-paid life on the first day of the plan year.

Different rules apply to retirement plans. Also, different rules apply to a welfare benefit plan that is maintained pursuant to a trust.

### **Employers Turning to Freelancers**

Health care reform requires larger employers to offer quality/affordable health coverage to full-time employees or face a potential employer mandate penalty. Therefore, employers are starting to turn to freelance individuals for specific projects.

#### [Hiring Freelancers to Avoid Penalties](#)

This is an innovative way to avoid a potential penalty. Assuming the employer can find individuals who can get the job done and who are willing to work on these terms, this can be a win-win for both the employer and individual. However, the employer has to be careful the individual is not, in fact, an employee. This same issue comes up with independent contractors. That is, just because the employer labels the person an independent contractor does not necessarily mean the IRS will agree with that characterization.

### **Health Care Reform/Contraceptive/Religious Objections**

The issue of providing free contraceptives as part of health care reform continues to haunt the nation's conscience. Many religious entities object to this part of health care reform and several lawsuits have been filed across the country.

#### [Court Compromise on Contraceptives](#)

With the U.S. Supreme Court evenly divided four/four, the Court simply sends the cases back down to the lower courts to decide. If the Supreme Court were to rule on

the cases and fail to reach a decision, then the lower courts' holdings would become law. Therefore, it is likely this matter will not be resolved until after another justice is added to the Court, and that probably will not happen until after the Presidential election.

### **Department of Health and Human Services Issues Final Rules on ACA Discrimination**

The Department of Health and Human Services issued final rules prohibiting discrimination with respect to health programs and activities on the basis of race, color, national origin, sex, age, or disability. It is important to note the rules **DO NOT** apply to most employer-sponsored health plans.

[HHS Issues Final Rule on ACA Section 1557](#)

[HHS Issues Final Rule on ACA Nondiscrimination](#)

The rules are directed toward carriers that participate in government programs like Medicare or the health care exchanges or marketplaces.

### **Correcting ACA Reporting Errors**

By now everyone who was required to prepare, distribute and submit IRS Form 1094 and IRS Form 1095 has completed the task. The government said it would not assess penalties so long as the employer made a good-faith attempt to comply.

[Correcting Errors in Your ACA Reporting](#)

The IRS has released a video explaining how employers should correct any errors. Again, employers should make every effort to comply with the reporting requirements. Next year the government will probably be more aggressive when it comes to assessing penalties.

### **Cash Rewards Always Taxable**

Some employers are under the mistaken belief that small cash rewards under a wellness program are tax-free. However, that is not the case.

[Wellness 'Carrots' may be Taxable](#)

[How to Handle Tax Treatment of Wellness Rewards](#)

[IRS: Certain Wellness Programs Don't Save Taxes](#)

Cash payments, no matter how small, under a wellness program are always taxable income. That is, cash payments are never considered a de minimis fringe benefit by the IRS and, as such, always are subject to tax.

### **Check Your Mailbox for ACA Notices**

Federally run health care exchanges or marketplaces (Ohio is one) are going to start sending out notices to employers about employees who are receiving a premium subsidy. Health care reform provides that large employers may be subject to a potential employer mandate penalty if a full-time employee receives a premium

subsidy under a health care exchange or marketplace. Federally run health care exchanges or marketplaces are going to start sending notices out telling employers that one or more of their employees are getting premium subsidies.

[Clarifying ACA Appeals](#)  
[Understanding Employer Notices](#)

The employer will then have the opportunity to contest the employee's eligibility for the premium subsidy but the employer is not required to respond to the notice. However, it may make sense for the employer to contest the employee's premium subsidy eligibility. Note that the actual assessment of the penalty will be made by the IRS. That is, the IRS will send out a notice proposing the penalty and the employer will have to respond to that notice if the employer wishes to contest the proposed assessment. In short, the employer may receive two notices. One from the health care exchange or marketplace, which the employer may (but is not required to) respond to and one from the IRS that the employer must respond to if the employer wants to contest the employer mandate penalty.

### **IRS Releases ACA Calculator**

The IRS has released several calculators that employers and individuals can use to estimate potential penalties, credits and subsidies.

[Online Tools Calculate ACA's Tax Impact](#)

The tools are pretty helpful but they are not substitutes for careful analysis of the statute's impact on the employer's bottom line.

### **Government Tried to Curtail Short-Term Health Plans**

Health care reform subjects most Americans to a penalty for not having health coverage. Many people are turning to short-term individual health plans as a way to avoid the penalty but the government is trying to put a stop to that practice.

[HHS Targets Short-Term Health Plans](#)

The short-term policies are supposed to be a gap-filler for people in between jobs who do not have traditional coverage. The short-term policies do not provide the protection employer-sponsored group health plans offer, so the government is taking steps to curtail the use of these short-term health policies.

### **HSA and Medicare**

HSAs have been around for a while and continue to grow in popularity. One of the requirements to be HSA eligible is that the person (1) be covered under an HDHP (i.e. high deductible health plan) and (2) not be covered under Medicare.

[Medicare Coverage and HSA Eligibility](#)

The technical term is that the individual not be “entitled” to Medicare. This article examines what it means to be “entitled” to Medicare and how that impacts the person’s ability to make or receive HSA contributions.

### **New FMLA Poster May Impact Your Handbook**

As we have reported in previous newsletters the government has issued a new FMLA poster.

#### [New FMLA Poster Rules](#)

The rules say you can continue to use your old poster but if you adopt the new poster you have to ensure that it is consistent with your FMLA policies. So you need to review all of your FMLA communications if you adopt the new FMLA poster to ensure that all the documents are consistent.

### **ACA Affordability Percentages Increase for 2017**

One of the main requirements under health care reform is that large employers offer full-time employees quality/affordable health coverage. Whether the health coverage is affordable is based on the lowest cost of single coverage that offers minimum value.

#### [2017 ACA Affordability Percentages](#)

The cost of that coverage cannot exceed a certain percentage of the employee’s compensation. The percentage increases due to inflation. For 2016 it was 9.66% and for 2017 it will be 9.69%.

### **Government Releases New SBC**

Health care reform requires the distribution of SBC or Summary of Benefits and Coverage templates. The SBC is a four-page summary of the health plan. The intent is that SBCs are required to use uniform terms, which helps people make an “apples to apples” comparison of health plans.

#### [New SBC Template Released](#)

SBCs have been around for a while and the new SBC templates should be used for the first open enrollment period beginning on or after April 1, 2017.

### **Ohio Bails on the Co-Op**

In an effort to “keep the carriers honest” health care reform creates non-profit Co-Ops to offer health coverage to individuals.

#### [13 of 23 Co-Ops Close](#)

That is, the Co-Ops were supposed to compete against the private carriers and this competition would help lower premiums. However, most (i.e. 13 out of 23) Co-Ops have failed and Ohio is the 13th Co-Op in the country to shut its doors.