Compliance Update, September 2016

Medicare Part D Notice Requirements

The Medicare Part D program is the voluntary prescription drug program under Medicare. There is an annual notice requirement associated with the program and the government has developed a template employers can use to comply. However, there is a lot of confusion regarding the timing of the notice. Many people believe the notice has to be distributed in October of each year but that is really not the case. The rules say the notice has to be distributed prior to the annual Medicare Part D enrollment period, which begins October 15. So people take this to mean the notice must be distributed in October.

Medicare Part D Notices PDF

However, the “prior to” provision means within the past 12 months. Therefore, as long as the Medicare Part D notice is distributed the same time each year, the employer has complied with the rules. As a result, employers can simply include the Medicare Part D notice in the annual enrollment materials rather than doing a separate notice in October and still comply with the rules. Note that the notice also must be provided to new hires upon request and if the status of the plan changes. This link talks about the notice requirements.

Increased Reporting in 2019

The government is proposing to increase the ERISA annual reporting requirements (i.e. Form 5500) for the 2019 plan year. The most important change is that ALL group health plans will have to submit forms. Currently, fully insured, unfunded or a combination of insured and unfunded health plans with fewer than 100 participants (i.e. employees) in it on the first day of the plan year are exempt from the filing requirements. This means most small employers do not have to submit the forms currently.

Changes for Form 5500 Reporting

This will change starting with the 2019 forms that will be due in 2020. All forms have to be submitted electronically and this will present challenges for small employers. It also will be difficult for some employers to gather the additionally requested data. The
government is asking for comments, and the proposed requirement may change, but employers should be aware that change may be coming down the road.

**IRS Released Draft Form 1094 and Form 1095**

It seems like just yesterday we were fiddling around with the new health care reform reporting requirements (i.e. IRS Form 1094 and IRS Form 1095) for the last calendar year. The IRS has just released drafts of the 2016 forms.

1094-C and 1095-C Changes Minimal

ACA Reporting for Self-Insured Employers

Overview of 2016 Form 1095-C Instructions

The government said it would not assess penalties for 2015 as long as the employer made a good-faith attempt to comply with the rules. Employers should not bank on the government being as generous for the 2016 forms.

**New SBCs for 2017, Kind Of**

Health care reform requires carriers and employers provide a four-page uniform description of the health plan called a summary of benefits and coverage or SBC. The government provides a template to be used when preparing the SBC. The government is updating the template for plan years beginning on or after April 1, 2017. So if you are on a calendar year basis you need to use the new template as of January 1, 2018.

Update SBC Template for 2017

The SBCs have been around for a while and, in the case of a fully insured plan, the carrier is preparing the document. So this should not be too big of a deal for employers but you should be aware of the new template and should start using it once it becomes effective.

**Government Produces YouTube Video**
The government continues to provide resources for both employers and employees. The latest effort includes a YouTube video talking about the government's newly designed webpage.

**New EBSA Website Video on YouTube**

The webpage does contain some useful information. However, I would caution employers from asking the government to solve issues. Once you contact the government about a potential issue it is impossible to “put the genie back in the bottle.” That is, once the government is aware of the issue you may be at the mercy of the government when it comes to correcting that issue.

**Government Moves to Strengthen Marketplaces**

One of the cornerstones of health care reform is the health care exchanges or marketplaces where individuals can go to get health coverage. The problem is the carriers are losing money on the individuals getting coverage through the exchanges or marketplaces. As a result, carriers are pulling out of many of the exchanges or marketplaces. The government is proposing to modify the rules to make the exchanges or marketplaces more attractive to the carriers.

**CMS Proposes New Marketplace Standards**

Again, the marketplace or exchanges are a critical component of health care reform and it is imperative they remain viable. This means the carriers have to participate to make the system work.

**IRS Released Indexed Numbers**

Many provisions of the statute allow for the government to index or increase various numbers to account for inflation. The following lists updated numbers for next year.

**Updates ACA Indexed Amounts PDF**

There is a handy chart at the end of the article that shows the historical numbers plus the numbers for 2017.

**Cadillac Tax Running Out of Gas?**

It is very tricky trying to predict changes to the law. Especially with the way the Federal government seems to be in deadlock. However, both parties seem to be opposed to the Cadillac tax.

**Bipartisan Opposition to Cadillac Tax**
The problem is, be careful what you ask for. If the Cadillac tax is repealed the government will need to replace that lost revenue, and one option may be to limit the tax deductibility of employer provided health coverage. This article says limiting the tax deductibility of employer provided health coverage is unlikely.

**Hospital and Fixed Indemnity Products and Health Care Reform**

Health care reform imposes all kinds of rules on group health plans. However, certain hospital and fixed indemnity products are not considered group health plans and, as such, are exempt from the health care reform rules. The government was concerned that individuals are buying these types of products thinking they provide comprehensive coverage and that those individuals would forego actual group health plans.

Blog: Hospital and Fixed Indemnity Policies

Therefore, the government issued rules saying hospital and fixed indemnity products are not exempt from health care reform unless the person had health coverage. Obviously this upset the carriers so they filed suit saying the government could not impose that type of restriction on their products. The Court ruled in favor of the carriers but it remains to be seen if the government is willing to throw in the towel at this point or will the government continue to push the issue.

**HSA Withdrawals**

Health savings accounts or HSAs are becoming more popular. This article talks about the rules governing HSA withdrawals.

HSA Owner's Manual: Withdrawals

This is nothing new and is simply a refresher of the general rules that have been around for awhile.

**Review Your Cash-Out Plans**

We have included several articles in previous newsletters about the new rules governing a cash-out plan where the employer offers employees additional taxable compensation if they waive coverage under the employer’s group health plan. If the program is not structured properly the amount of cash offered for waiving the group health plan has to be added to the cost of the coverage when determining if the employer’s health coverage is “affordable” under health care reform.

Proposed Rules for Opt-Out Payments

This is simply another article on the topic. Again, we have included several articles on this topic in previous newsletters.
Health Care Reform and Transgender Benefits

Health care reform precludes covered entities from discriminating on the basis of race, color, national origin, sex, age or disability in health programs and activities that receive Federal financial assistance. As a result, the health plan must cover transgender benefits. At first glance, it looks like the rules do not impact private employers unless they receive federal funds. However, that is not the case. The government has taken the position that, if the insurance company receives federal funds, all of the carrier's insured products must comply with the rules. As a practical matter, most carriers do, in fact, receive Federal funds. For example, if the carrier offers a Medicare Advantage program or participates in a health care exchange or marketplace and receives premium subsidies, then the carrier is receiving Federal funds and all of that carrier's products must comply with the rules.

Time to Review Gender Transition Coverage

If the employer sponsors a self-funded health plan and the employer does not receive any Federal funds, the employer is not technically required to cover transgender benefits. However, many of the third party administrator or TPAs are strongly encouraging employers with self-funded health plans to cover the benefits.

Get Those Social Security Numbers

Employers routinely get the employees' Social Security numbers but the reporting requirements under health care reform (i.e. IRS Form 1095) requires employers to gather the Social Security numbers for the employee’s spouse and children.

IRS Guidance on Collecting SSNs

The IRS has issued proposed rules on the steps employers should go through to try to collect the numbers.