



**Compliance Update**  
**October 15, 2016**

**Transitional Reinsurance Fee Reporting Deadline Approaching**

Health care reform established a transitional reinsurance fee to gather money to pay carriers participating in the health care exchanges or marketplaces. The fee is designed to help compensate the carriers for the adverse risk associated with those individuals getting coverage through the health care exchanges or marketplaces.

[Reinsurance Fee Fact Sheet](#)

Employers sponsoring self-funded health plans have to file reports with the government and pay the fee based on the number of people participating in the self-funded health plan. The reporting deadline is November 15, 2016.

**Medicare Secondary Payer Rules Under Review**

The Medicare Secondary Payer Rules (the “Rules”) are designed to require most employer-sponsored health plans to pay primary and Medicare to pay secondary. The Rules preclude employers from offering financial incentives to individuals to waive the employer’s group health plan in favor of Medicare. However, the government has long taken the position that employers can offer cash out plans where individuals can receive cash for waiving the employer’s group health plan and taking Medicare **AS LONG AS THE PROGRAM IS OFFERED TO ALL EMPLOYEES**. In other words, the program cannot be offered to only those eligible for Medicare.

[Are Opt-Outs the Way Out?](#)

Apparently the government is rethinking its position on this issue. With the recent IRS proposed regulations on cash in lieu plans, this has come to the forefront again. Those proposed regulations talk about the affordability provisions with respect to the employer mandate under health care reform.

### [IRS Proposes Rules on 6055 Reporting](#)

This is just another example where one government agency (i.e. the IRS) says one thing and another government agency (i.e. the Centers for Medicare and Medicaid Services – CMS) says another.

### **They're Back – IRS Form 1094 and IRS Form 1095**

It seems like we just got through wrestling with IRS Form 1094 and IRS Form 1095, but the IRS has just released the 2016 versions.

### [1094-C and 1095-C: What To Do Now](#) [Final Form for 2016 ACA Reporting](#)

The forms have gotten a little less complicated because some of the transitional relief for 2015 has expired. So that should make the process a little easier, and this is the second year, so hopefully some of the prior mistakes can be avoided. However, the government is not going to be as lenient as last year when it comes to not assessing the penalty for failing to comply with the reporting requirements.

### **Transgender Posting Requirements**

There has been a lot of press on the new requirements that an individual cannot be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any health program or activity, any part of which is receiving Federal financial assistance. Those rules also require the impacted program comply with posting requirements.

### [Nondiscrimination Compliance Notice](#) [Final Nondiscrimination Rules Effective Now](#)

The notice requirements are effective October 18<sup>th</sup> so employers should be prepared to comply with the rules now.

### **Paid Sick Leave for Federal Contractors**

This is really a labor issue but since the rules may impact a number of employers in the region, I am attaching a couple of articles that talk about the rules governing certain Federal contractors.

### [Paid Sick Leave for Federal Contractors](#)

Again, this is really a labor issue and you should contact labor counsel if you do, in fact, do work for the federal government.

### **You Owe It But Can't Pay It – What Happens**

Large employers that fail to offer quality/affordable health coverage could face huge employer mandate penalties under health care reform. But what happens if the employer simply does not have the money? This article discusses the possibility.

### [What if Employer Can't Pay Penalty?](#)

This situation could come up quite often. If the employer was flush with money, it probably would offer quality/affordable health coverage. So a large majority of the employers facing the penalty are in that boat because they don't have the funds to offer the coverage. If that is the case, chances are they don't have the money to pay the penalty either.

### **New Thinking for COBRA and Severance Packages**

It is relatively common for employers to enter into severance packages with key employees or when there is a layoff. Oftentimes the employer agrees to continue to pay for the employee's health coverage under COBRA for a period of time as part of the arrangement. With health care reform, employers may want to rethink that strategy.

### [Subsidized COBRA Coverage and Marketplace Eligibility](#)

The health care exchanges or marketplaces may offer a viable option for these former employees. However, the rules state an individual must exhaust COBRA if that person wants to get coverage through the exchange or marketplace outside the annual open enrollment period. In other words, the person cannot drop his or her COBRA coverage mid-year and immediately enroll in the health care exchange or marketplace. This article talks about what can happen if the employer agrees to subsidize the person's COBRA coverage for a period of time.

### **Where They Stand**

The presidential election is just weeks away and each candidate certainly has his and her issues. Here is an analysis on where they stand on health care issues.

### [Candidates' Stand on Health Care Issues](#)

A couple of things to keep in mind. What they say may just be rhetoric to get elected. Whoever gets elected will have to work with Congress to change or repeal the law. However, the president can certainly influence the direction of where the country heads when it comes to health care reform.

### **FSA's & HRA's Recap**

Few, if anyone, will argue that the rules have not gotten more complicated over time. This article does a nice job of laying out the various rules governing FSA's and HRA's.

### [New Rules for HRA's](#)

The government continues to complicate matters by issuing new rules that, at times, contradict themselves. Additionally, common sense has little to do with compliance.

### **You Get No Respect**

Oftentimes employees just look at the new amount of their paychecks when thinking about how much the employer pays them. However, as you well know, that is not the case. The government survey says benefits account for over 30% of the employee's compensation.

### [How to Calculate the Value of Your Benefits](#)

This survey breaks out the various benefits and assigns a dollar amount to some of the employer provided benefits.

### **Wellness Programs Under Attack**

Wellness programs may be one way to help control health care costs. Healthier people have less costly claims. So employers, for a variety of reasons, are adopting wellness programs. However, it seems the government is making it more difficult to establish meaningful programs.

### [Is the EEOC Hurting Wellness Programs?](#)

It really is unfortunate the rules are so complex and convoluted. This type of interference discourages employers from adopting wellness programs, which, in the end, could benefit the employers and individuals.

### **Get Those Social Security Numbers**

Employers have been required for years to get the employees' Social Security numbers. However, until the new reporting requirements under health care reform kicked in, there was no real need to get the spouses' and children's Social Security numbers. That all changed for employers sponsoring self-funded health plans. IRS Form 1095 now requires the employer to list everyone's Social Security numbers.

#### [How to Respond to Incorrect Number Notification](#)

#### [Tips for Obtaining SSNs](#)

The first article tells you what to do if you get a notice from the government that you have provided an incorrect Social Security Number. The second article talks about the steps you should take to try to get the Social Security Numbers in the first place.

### **Electronic Distribution of Health Plan Documents**

Snail mail and the distribution of paper documents are becoming things of the past. More employers are distributing documents electronically. It is faster and cheaper. However, you should note there are rules governing the electronic distribution of documents.

#### [Rules for Electronic Distribution](#)

#### [Rules for Intranet Posting of SPD](#)

The first article talks about the various rules applicable to the distribution of health plan documents. The second article tells about posting just the summary plan description or SPD on the Company's intranet. It is important to comply with the rules and if you are not able to, then you need to distribute the documents the old-fashioned way – in paper format.

### **2017 Compliance Changes**

There are so many compliance rules out there it is next to impossible to keep track of all of them. This article highlights the changes for 2017.

### [Here's What's Changing in 2017](#)

Again, this article only highlights the changes. It assumes you understand the rules in the first place.

### **Get Those Ducks in a Row Now – IRS Form 1095**

The deadline for sending out the 2016 IRS Form 1095 (i.e. January 31, 2017) is not that far off. Gathering the data is no small task. This article says you need to start the process now to avoid big penalties down the road.

### [Avoid 1095 Mistakes, or Be Prepared to Pay](#)

This is only the second year of preparing, distributing and filing the forms. Last year the government was hesitant to assess penalties but that may not continue for this year's forms. Therefore, employers need to be prepared to satisfy the compliance rules.

### **Full-Time, Part-Time & Variable Hour Employees**

This three-part series talks about the employee classifications under the employer mandate provisions of health care reform. Nothing new here, but a good recap.

### [Part One: The Look Back Measurement Method](#)

There continues to be confusion about an employee's classification under health care reform. At some point, the "hammer will come down" on employers that are ignoring the rules. The presidential election will help shape the future of health care reform.

### **Employee Benefit Issues in Mergers and Acquisitions**

If you are ever involved in selling or buying a business you have to get lawyers involved. Just do not forget to consider the benefit issues that may be involved in the transaction. It is easy to overlook these items.

### [Benefits Issues Impact Sale Price](#)

Whenever there is a proposed business transaction, you tend to look at the big picture like the purchase price, etc. However, the “devil is in the details” and the benefit issues can have a big impact on the price.

### **Medicare Part D Notice Due**

Medicare Part D is the voluntary prescription drug program under Medicare. Employers are required to distribute a notice each year to Medicare eligible individuals. Many people believe the notice has to be provided by October 15<sup>th</sup> of each year. However, as long as the notice is provided the same time each year, the employer has complied with the rules.

#### [Part D Distribution Deadline Approaching](#)

This means the employer can comply by simply including the Medicare Part D notice in the annual enrollment materials. The government has provided a template employers can use to satisfy the notice requirements. Be sure that you are using the most current template.