



Reporting Due February 28th and March 1st

We are fewer than 30 days into the Trump administration and a lot has changed, but more on that later. There is a lot of talk about repealing and replacing Obamacare, but as of today's date the Affordable Care Act is still the law of the land and that includes the Form 1094 and Form 1095 reporting requirements.

[New due dates for 1095b and 1095c](#)

The deadline for getting IRS Form 1095 to the employees has been extended to March 2, 2017, but getting IRS Form 1094 to the government has not been extended. Those deadlines are February 28, 2017, if submitted in paper format and March 31st if filed electronically.

Many people believe that both the individual and employer mandates will go away but some of those people think even if the mandates are repealed, some form of reporting requirements will remain in effect.

HRAs for Small Employers

Even before the new administration took office, the Obama administration reversed course and enacted a law that allows small employers to adopt standalone HRAs that permit employees to use the money to pay for individual health policies.

[New HRAs for small employers](#)

This move could be viewed as an acknowledgement that the Affordable Care Act needs to be modified. We reported on the new rules extensively in last month's newsletter.

HIPAA Breach Reporting Deadlines Approaching

HIPAA requires covered entities and business associates to protect the individuals' protected health information or PHI. The statute requires them to report breaches to the government. The third article talks about a penalty being assessed for failing to follow the notification requirements.

[Small breach notifications due March 1](#)

[Definition of breach](#)

[Notification enforcement action announced](#)

If there was a breach the individuals have to be notified as soon as possible but no later than 60 days after the breach. If the breach involved fewer than 500 people any time in 2016, the government has to be notified by March 1, 2017. If the breach affected 500 or more individuals, the media and the government have to be notified within 60 days of the breach. Hopefully a breach never happens!!!

IRS Clarifies Tax Issue Regarding Fixed Indemnity Plans

Most health plans are subject to health care reform. On the other hand, disability or income replacement plans are not. Employers can provide health plans to employees on a tax-free basis and benefits under a health plan also are tax-free to the employees. However, the taxability of benefits under disability or income replacement plans depends upon who paid the premiums.

If the employer pays the premiums or the employees pay for the premiums of a disability or income replacement plan on a pre-tax basis, then the actual benefits under the disability or income replacement plan are taxable. Whereas if the employees pay for the premiums on a post-tax basis or the employer includes the value of the premiums in the employees' taxable income (i.e. the premium amounts are included on the employees' Form W-2 as taxable wages), the benefits are tax-free.

[Fixed indemnity tax rules](#)

The IRS has ruled recently that fixed indemnity plans are treated the same as disability or income replacement plans for tax purposes. This means if the employer paid for the premiums or the employees paid for the premium on a pre-tax basis, the benefits under a fixed indemnity plan will be taxable. A fixed indemnity plan is defined for these purposes as any plan that provides a fixed benefit (e.g. \$100 per day) regardless of any medical expenses. According to the IRS, fixed indemnity coverage is more akin to "income replacement" insurance (e.g., disability insurance) than medical insurance because the payment under a fixed indemnity plan is paid in cash and not tied to or coordinated with the cost of medical care, and the cash can be spent in any way the employee chooses. Therefore if you are sponsoring these types of plans and you are paying the premiums or allowing the employees to pay the premiums tax-free you may want to modify the program.

Diagnosis Does Not Equal Disability

An employee benefit plan is really a contract between the employer and employees. Therefore, the terms of the plan control. A recent lawsuit illustrates this point.

[Diagnosis alone doesn't make a disability](#)

In this case the employee was diagnosed with fibromyalgia and wanted that finding to automatically entitle the employee to benefits under the employer's disability plan. However, the court ruled that the terms of the plan control and that the mere diagnosis of a medical condition does not automatically mean the person is disabled under the terms of the plan.

Trump's Repeal and Replace

One of President's Trump campaign promises was to repeal and replace Obamacare. The administration took a giant step forward with the recent confirmation of Tom Price as Secretary of Health and Human Services. However, that may be easier said than done.

[Issues affecting repeal effort](#)

[Ryan: Replacement legislation coming this year](#)

[Blog: Repeal on track for spring](#)

Most people agree that the current law has to be changed but how and when that will happen is still up in the air. Although the Trump administration is less than 30 days old, it has created controversy on a number of items like the travel ban. So it remains to be seen how soon the government changes the rules.

Dependent Health Plan Audits Roadmap

Providing health coverage to employees and their spouses and dependents is expensive. Therefore, it certainly makes sense the coverage be provided to only those who qualify for coverage. One way to ensure that is the case is to audit the plan.

[Tips for easier eligibility audits](#)

This is when the employer (or an outside entity hired by the employer) requires the employees to provide documentation proving their spouses and dependents are, in fact, eligible to be covered under the plan. This article outlines the steps to ensure such an audit runs smoothly.

ERISA Fiduciary Liability

ERISA imposes a pretty high standard on fiduciaries. That is, the fiduciary must act in the best interest of the plan participants. However, the rules governing employee benefit plans are complex and most employers rely on outside third parties to handle many of the day-to-day duties.

[Fiduciary duties under ERISA](#)

Many outside vendors go to great lengths to say they are not fiduciaries to the plan. Others are willing to say they are plan fiduciaries. Whether or not an entity is a plan fiduciary really turns on the facts. Stated another way, simply saying you are or are not a plan fiduciary is not controlling. It boils down to what the entity is doing as to whether that entity is a plan fiduciary. However, even if the outside vendor is a fiduciary, the employer still has a responsibility to ensure the vendor is complying with ERISA. In other words, the employer cannot avoid all responsibility by simply trying to unload its own fiduciary obligations on the outside vendor.

Spiraling Prescription Drug Costs

Health costs continue to rise and one of the main drivers is prescription drug costs; especially specialty drugs. Employers and carriers are fighting back, and this article explains some of the steps they are taking.

[Fighting back against rising drug costs](#)

Specialty drugs can be life savers, and no one disputes the fact that those drugs are important. However, their high price tags cost everyone and it is not surprising people are looking at ways to help lower the costs.

New Disability Plan Claim Rules

The government passed new rules governing claims submitted under disability plans. The rules are designed to make the claims procedures under a disability plan look a lot like the claims rules under a health plan.

[Which disability plans are impacted?](#)

In short, the rules provide more protection to the participants. Note, however, the rules do not become effective until next year assuming they are not changed under the Trump administration.

HSAs, FSAs & HRAs

It seems like we are using all the letters of the alphabet when it comes to various employee benefit plans. However, each one has its pros and cons.

[HSA, FSA, HRA Comparison Chart](#)

This is a link to a one-page chart highlighting the differences between each program. Obviously the rules governing each program are complex but the chart does a nice job of comparing each program with the other two.

Wellness Program Notices

Among the more confusing aspects of wellness programs are the different sets of rules. There are a couple of government agencies involved and, unfortunately, they have issued different guidelines. This makes it hard for employers to comply with all the rules.

[Wellness notice mandate for 2017](#)

The EEOC issued a sample notice employers can use to comply with the notice requirements applicable to its rules for plan years starting on or after January 1, 2017. This article talks about that notice.

Medicare Part D Notice to Government Due March 1st

Medicare Part D is the voluntary prescription drug program under Medicare. There are two notice requirements under the program. The notices inform both employees and the government whether or not the employer's group health plan provides "creditable" or "non-creditable" coverage. The notice to the government is due 60 days after the start of each plan year.

[Part D disclosures due March 1](#)

This means if your group health plan is on a calendar year basis, the notice to the government is due March 1st. The notice has to be provided to the government electronically.

Insurance Across State Lines

One of President Trump's ways to reduce insurance costs is to allow the sale of health insurance across state lines. According to President Trump this will encourage competition, which, in turn, will reduce premiums.

[Interstate sales: Pros and cons](#)

However, not everyone believes this is the case. Allowing carriers to sell across state lines may reduce costs because some states require plans to cover fewer benefits. On the other hand, an important component of the premiums revolves around the provider discounts. So, for example, a group health plan sold in Ohio by a carrier located in Idaho may be required to cover fewer services than a carrier located in Ohio because of Idaho law. However, the carrier in Idaho may not have the same provider discounts that the Ohio carrier has secured.

COBRA and Medicare

These two statutes have been around forever (at least in terms of the employee benefit world) and yet there continues to be tremendous confusion as to the how the statutes interact. If you look at COBRA it clearly states Medicare entitlement is a qualifying event that entitles the individuals to COBRA. However, it is not that simple.

[Medicare, COBRA and qualifying events](#)

A qualifying event is really a two-step process. First, there has to be an enumerated event and two, that event has to cause a loss of coverage. Clearly Medicare is one of the listed events. However, the Medicare Secondary Payer Rules preclude employers from dropping the person's coverage due to Medicare entitlement. Therefore, in most cases, Medicare entitlement **IS NOT** a qualifying event because it does not cause a loss of coverage. This has been the rule for many years but it still confuses a lot of people.

Open Enrollment Checklist

Open enrollment season is pretty much over for those sponsoring calendar year health plans. Nevertheless, I ran across this pretty good checklist so I thought I would end this newsletter with it.

[Open enrollment notice requirements](#)

It is pretty comprehensive and provides a concise roadmap of the various notice requirements. Hopefully, it confirms that you complied with all the notice requirements.

All eyes and ears are on Washington as the new administration tries to fulfill its campaign promises to repeal and replace the Affordable Care Act aka Obamacare. McGohan Brabender will be holding seminars in late April to give an update on the Trump's administration progress. Stay tuned!!!!!!