



Compliance Update, June 2017

Health Care Reform – Senate Proposal

The Republicans in the House, in a close vote with no Democratic support, were able to pass legislation designed to repeal and replace the Affordable Care Act aka Obamacare. So the next stop along the way is for the Senate to pass a bill.

[Can Senate GOP get the votes?](#)

[What ACHA means to employers](#)

It is again expected no Democrats will support the bill so the Republicans can afford to lose only 2 senators if the legislation is to pass in the Senate. Assuming it does pass the Senate, the Senate and House versions will have to be reconciled in a joint committee into a piece of legislation that can then pass both the House and Senate. This is a very fluid process that is constantly changing and is garnering a lot of press.

Medicare for Everyone?

As the health care reform debate rages on, some people are suggesting we simply adopt a single payer system. In other words, why not say Medicare for everyone?

[The problem with Medicare for all](#)

This article says the concept makes sense but, in reality, that will not work. Such a system will experience adverse selection and the political pressure to keep premiums low would result in disaster down the road.

Affordability Safe Harbors

The employer mandate requires larger employers to offer quality/affordable health coverage to full-time employees or pay a penalty. One way for employers to demonstrate the coverage is affordable is based on the Federal Poverty Level or FPL. That amount is adjusted each year. For 2018, this safe harbor will apply if the employee's monthly cost of single coverage is \$96.08 or less.

[2018 affordability safe harbor](#)

The employer and individual mandates are extremely controversial, and health care reform may eliminate the mandates altogether. However, until the statute is changed the mandates still apply.

Intermittent Leave under FMLA

The Family Medical Leave Act was signed into law by President Clinton so it has been around for a while. The FMLA requires larger employers provide up to 12 weeks of unpaid leave to certain employees.

[Intermittent leave under FMLA](#)

It is relatively easy to keep track of 12 consecutive weeks. However, the FMLA does not require the employee to take all 12 weeks at one time. That is, employees can take shorter periods and the employer has to keep track of all the intermittent leaves to ensure the employer complies with the statute. This article talks about those rules.

Anthem Leaving Ohio Exchanges

Anthem has indicated that it will no longer participate in the health care exchanges or marketplace in Ohio next year.

[Anthem exiting Ohio individual marketplace](#)

It is important to note this decision only applies to the individual market. It does not impact group health plans.

New Disability Plan Claims Procedures

We have reported on this in previous newsletters but I am adding another article on the new claims procedures applicable to disability plans. It is important to note the rules apply to claims filed on or after January 1, 2018.

[Final rules for disability claims and appeals](#)

The new rules are more complicated and provide participants with more rights. The new claims procedures applicable to disability plans more closely follow the rules applicable to group health plans.

PCORI Fee Due July 31

If you sponsor a self-funded health plan, including an HRA, you need to report and pay the PCORI fee by July 31, 2017.

[PCORI fee deadline approaching](#)

[Summary of PCORI fee and instructions](#)

The fee is less than \$3 per person and is reported on IRS Form 720 and is paid with IRS Form 720V.

Forms 5500 Due July 31

The annual filing requirement (i.e. Form 5500) is due seven months after the close of the plan year. This means if your plan is on a calendar year basis, the 2016 Form 5500 is due July 31, 2017. The penalty for filing the forms late can be over \$2,000 per day!!!

[Form 5500 delinquency can be costly](#)

The rules are very clear. You have to file the forms if you had 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. For example, there could 85 employees in the group health plan and 115 employees in the company-paid life. You would need to file the forms because there were more than 100 employees in the company-paid life even though there were fewer than 100 employees in the group health plan. Special rules apply if plan benefits are paid out of a trust. Also, all retirement plans regardless of the number of participants have to file the forms.

COBRA Notice in English Only

COBRA has been around since 1986 and it does not look like it is going away anytime soon. With health care reform and the health care exchanges and marketplaces, people now have options other than just COBRA. So fewer people are electing COBRA coverage.

[English-only COBRA is legal](#)

So it is easy to forget about COBRA but the penalties for not sending out the COBRA notices still apply. This court case held the employer still has to send out the notice but the notice only has to be written in English.

ERISA considerations for telemedicine

Telemedicine is the wave of the future. It is really convenient to simply pick up the phone and talk with a physician rather than taking time off and going to the doctor's office. Additionally, the cost of a telemedicine consultation is usually cheaper than an office visit.

[Telemedicine and Compliance](#)

However, there are a couple of legal pitfalls with telemedicine programs that are outlined in this article. Hopefully, the legislation will catch up to the technology and the rules will become more clear.

IRS Addresses Wellness Program Tax Scams

Some people are promoting wellness programs as a way to reduce taxes. The IRS recently issued a memorandum saying these programs are tax scams and are invalid.

[IRS warns of wellness scams](#)

[Tax treatment of wellness benefits paid](#)

The old adage that “if it sounds too good to be true, it probably is” applies here. You should be cautious of any program that is marketed when the main goal is to reduce taxes.

ACA Reporting Requirements

The employer mandate rules are in the crosshairs of health care reform. That is, the employer mandate rules may be eliminated under the Republican’s repeal and replace legislation. One of the main complaints with the current rules is the reporting requirement. Namely, the requirement employers complete IRS Forms 1094 and 1095.

[Reporting requirements may be simpler](#)

Assuming the current law is repealed and replaced with something, chances are employers still will be required to comply with some level of reporting. However, as this article suggests, the new reporting requirements will be much simpler.

Speaking of IRS Form 1094 and IRS Form 1095, this article talks about what to do when there are incorrect Social Security numbers.

[What if you get a number wrong?](#)

It is pretty easy to get the employees’ Social Security numbers, but getting the numbers of the spouses and children can be challenging.

HIPAA Is Not Going Anywhere

There is a lot of focus on health care reform but one thing for certain is that HIPAA is not going anywhere soon. HIPAA requires covered entities, business associates and their vendors to protect the individuals’ protected health information or PHI.

[HIPAA is here to stay](#)

Since that is such a lofty goal, it is impossible to imagine the government would ever eliminate the rules and say there is no need to protect people's medical data. As a result, the HIPAA rules are here to stay.

Severance Programs and ERISA

Most of the time it is pretty easy to determine if the program is subject to ERISA. For example, a group health plan is subject to ERISA unless the plan sponsor is a church or government entity. However, for some programs it is a little harder to determine its status under ERISA. Severance programs can, depending on the structure, be covered under ERISA.

[ERISA advantages for severance plans](#)

This article talks about the advantages of having the program be subject to ERISA. Therefore, employers may want to consider these items when drafting a severance program.

2018 Numbers for HDHPs and HSAs

High Deductible Health Plans (HDHPs) and Health Savings Accounts (HSAs) are becoming more popular. The Internal Revenue Code mandates that HDHPs comply with certain rules regarding the minimum deductible, maximum out of pocket amount and maximum HSA contributions.

[Inflation-adjusted HSA amounts](#)

Those amounts are indexed each year to reflect inflation. The IRS has released the numbers for 2018.

SHOP is a FLOP

Health care reform established a way for small employers (i.e. those with fewer than 50 employees) to get health coverage through the health care exchanges or marketplaces. However, as it turned out, very few employers took advantage of the program.

[Fed to eliminate SHOP](#)

As a result, the Trump administration is eliminating the ability for small employers to get coverage through the federally run health care exchanges or marketplaces next year.

Tax Aspects of Wellness Programs

There are a variety of wellness programs out there but the common goal is to promote better health, which hopefully will reduce costs. The most common incentive under wellness

programs is cash. The cash may be in the form of reduced premiums or lower deductibles and/or coinsurance.

[Taxability of wellness rewards](#)

This article lists different forms of wellness plan incentives and their tax treatment. It is certainly worthwhile if you offer any type of wellness program.