

COMPLIANCE UPDATE, SEPTEMBER 2017

HCR – Here To Stay for Time Being

The Republican controlled Congress and White House have been unable to repeal and replace Obamacare. Until that happens, the Affordable Care Act remains the law of the land even though President Trump promised to repeal and replace it.

[ALE determination in five steps](#)

One of the most unpopular aspects of the current law is the employer mandate that requires larger employers to pay a penalty for not providing quality/affordable coverage to full-time employees and their children. This article talks about how to determine if the employer is considered a large employer and if the employer is subject to the employer mandate.

DOL Opposing Offsetting Claims

Oftentimes the insurance company's contracts allow the carrier to offset overpayments for one participant to offset payments for another participant. An example would be where the insurance company overpaid a claim for one person and used that overpayment to reduce the amount owed for another person.

[DOL opposes cross-plan offsetting](#)

The Department of Labor is taking the position that this practice violates ERISA. According to the government this enriches the carriers at the expense of the participants.

Read the Fine Print

There is nothing more boring than reading insurance policies but they are binding contracts that govern the relationship between the employer and carrier. Since health plans have to provide unlimited lifetime benefits, the value of the benefits can be tens of millions of dollars.

[Review health plan documents](#)

[10 carrier contract pitfalls](#)

So you have to know what is in the master contract and policy terms. These articles talk about some of the things you should look for when reading the documents. The time to read the documents is now, and not when there is an issue.

Here It Comes Again

I am talking about the annual open enrollment season for calendar year plans. This article discusses some of the documents that need updating.

[2018 open enrollment requirements](#)

Probably the most notable is the fact the government has released a new SBC template employers should be using for the 2018 open enrollment period.

Employer Mandate – Two Points to Remember

Until the law is actually changed, large employers are subject to the employer mandate. There are two points to remember. First, the law prohibits employers from taking adverse actions against employees receiving a subsidy for getting coverage through the health care exchanges or marketplaces. Second, if the employer receives a notice from the IRS about a potential assessment under the employer mandate, the employer has a limited time period to contest the assessment.

[IRS assessments expected to arrive soon](#)

Both the individual and employer mandates remain extremely unpopular and it remains to be seen if the Trump administration will aggressively enforce them. However, as just noted, the mandates are “still on the books” so employers should not ignore them.

Estimate Employee Total Health Care Costs

According to this survey the total annual employee cost for health care, including premiums and out-of-pocket expenses, will be around \$5,200 for next year.

[U.S. workers to pay \\$5,200 in health care costs](#)

Premium costs account for about half of those dollars, and out-of-pocket expenses account for the other half.

They’re Back – IRS Forms 1094 and 1095!!

One of the biggest headaches under Obamacare is the current reporting obligation applicable to large employers. Namely the dreaded IRS Forms 1094 and 1095.

[IRS releases draft instructions 1094, 1095](#)

The IRS has released draft instructions for the forms. The forms should be a little less confusing this year since many of the transitional rules expired. Nevertheless, the forms are complicated.

Same-Sex Benefits

The dust has pretty much settled with regards to same-sex benefits. After the U.S. Supreme Court case requiring states to recognize same-sex marriages, same-sex couples are becoming part of mainstream America.

[More discontinue domestic partner benefits](#)

However, one aspect of this trend is that employers are eliminating coverage for domestic partners and requiring same-sex couple to become married. So if an employee wants to cover his or her same-sex partner, employers are requiring the employee to become married.

Affordability Percentage Drop

The Affordable Care Act aka Obamacare requires large employers to offer quality/affordable health coverage or pay a penalty under the employer mandate. The coverage is considered affordable if the cost of single coverage does not exceed a certain percentage of the employee's household income.

[2018 affordability rates](#)

[Affordability threshold decreases](#)

Surprisingly, that percentage is dropping next year. For 2017 the percentage is 9.69 but for 2018 the percentage will be 9.56. This is not good news for employers since the lower percentage means the coverage will be considered unaffordable for more employees and that the employers could be subject to the employer mandate if the full time employees receive a subsidy under the health care exchanges or marketplaces.

Another ACA Fee Scheduled to Kick In Next Year

The Affordable Care Act has a number of fees to help pay for the coverage. One of those fees is the Health Insurer Tax or HIT. The fee started in 2014 and there was a moratorium in 2017, but it is scheduled to start again in 2018.

[Insurance providers fee returns](#)

The fee, if not repealed or postponed again, is projected to increase annual premiums an average of 3%.

Trump Administration to Cut Advertising Expenses

In another example of President Trump's distaste for Obamacare, the Trump administration has indicated it will cut spending to promote the health care exchanges or marketplaces.

[ACA advertising slashed](#)

In 2016 the government spent \$100 million promoting the health care exchanges or marketplaces. The government has indicated it will spend only \$10 million promoting them for the upcoming enrollment season.

Medicare Part D Notices

Employers are required to provide employees the Medicare Part D Notices each year indicating whether the employer's group health plan provides creditable coverage.

[Part D notice requirements PDF](#)

This article talks about the notice and states the deadline for providing the notice is October 14, 2017. However, employers can comply by providing the notices at same time each year. For example, the employer would satisfy the annual notice requirement by including the Medicare Part D Notice in the open enrollment materials each year.

Wellness Programs – EEOC – Back to the Drawing Board

Although many people believe wellness programs will help to reduce health care costs, the rules governing wellness programs are confusing. The Affordable Care Act has one set of rules governing wellness programs but the EEOC has a different set of rules that are not consistent with the ACA rules.

[Court rejects EEOC wellness regulations](#)

A Federal District Court recently held the EEOC needs to review its rules. As a result, there is some uncertainty as to how employers should proceed with their wellness programs. It seems like employers should keep the status quo, at least for the rest of this year.

DOL Looking Into Wellness Program

The previous article talks about a recent court decision regarding wellness programs. This article talks about the Department of Labor's recent enforcement activity with respect to a wellness program.

[Wellness plan under DOL scrutiny](#)

The government filed a lawsuit against a large employer sponsoring a wellness program that did not comply with the statute. Namely, the participatory wellness program involving tobacco use did not offer a reasonable alternative for those that cannot complete a nicotine cessation program.

Opt Out Incentives

Oftentimes employers offer cash incentives for employees to waive coverage under the employer's group health plan. The thinking behind this is that the cash payment to the employees waiving coverage is less than the employer's share of the health plan premiums.

[The ins and outs of opt-outs](#)

Employers still can do this, but if the program is not set up properly the cash payments can impact the employer negatively under the Affordable Care Act. This article explains those rules.

Formal Severance Plans

It is not unusual for an employer to enter into a severance arrangement when a certain employee is leaving for whatever reason. Most employers enter into these arrangements on an ad hoc basis.

[Benefits of formal severance plans](#)

This article talks about the advantages of entering into a formal severance plan that is covered under ERISA.

Government Release Draft Form RE: Mental Health Parity and Addiction Equity Act

The Mental Health Parity and Addiction Equity Act generally requires health plans to treat mental health and addiction issues the same as any other health issue.

[Parity disclosure request form](#)

The government has released a draft form individuals can use to question whether the health plan complies with the rules. Plans are not required to use the form.

Guessing the Amount of the Employer Mandate

The future of the employer mandate under the Affordable Care Act remains in doubt but until it is actually repealed, it remains the law of the land. The statute provides that the amount is indexed for inflation.

[Indexed employer mandate penalties](#)

According to this article, the penalties for 2018 will be \$2,320 for not offering coverage and \$3,480 if the employee goes to the exchange or marketplace and gets a subsidy. Again, this assumes the employer mandate rules actually go into effect.

Out-of-Network Provider – Surprise!!!

A lot of health plans have different benefits for in-network and out-of-network providers. This article explains how using an out-of-network provider can result in a much higher out of pocket cost for your employees.

[Understanding out-of-network balance billing](#)

If your plan provides different benefits for out-of-network providers you may want to educate your employees on how they could end up paying a lot more than they thought they would if they use an out-of-network provider.

Limited Circumstances for Both HSA and HRA

By now most people know about HSAs and HRAs. As a general proposition, an employee cannot have both. Having an HRA will preclude the employee from making or receiving HSA contributions in most cases.

[Can you have both an HRA and HSA?](#)

This article talks about the rules governing the interaction between the two vehicles and the very limited circumstances where someone can have both.

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