McGohan Brabender

October 2017 Compliance Update

Trump Takes Aim at Obamacare

Congress was unable to enact legislation to repeal and replace the Affordable Care Act aka Obamacare. Therefore, President Trump has taken it upon himself to dismantle President Obama's signature legislation. The first move was in the form of an executive order directing the Department of Health and Human Services, Department of Labor and Treasury Department to issue rules designed to lower premiums for healthier individuals at the expense of older, sicker people.

Note that the executive order has no immediate impact or effect. It simply tells the government agencies to review prior guidance and issue new rules. The executive order has three components. First, it encourages the formation of association health plans. Second, it reinstates short-term health policies. Third, it loosens the rules governing health reimbursement accounts or HRAs.

Will healthier people exit marketplace?

President Trump's second move was to stop cost-sharing reduction payments to insurance companies participating in the health care exchanges or marketplaces.

Premiums expected to soar

The cost-sharing subsidies reimburse the carriers for the individuals' out-of-pocket expenses. Eliminating the subsidies will result in a dramatic increase in premiums and will cause even more carriers to abandon the health care exchanges or marketplaces. People are speculating these moves are intended to force Congress to act when it comes to fixing the health care system.

Medical Loss Ratio Rebate: New-Found Money … Not So Fast

Health care reform requires insurance companies to spend a certain percentage of the premium dollars on health care. If they miss that percentage they have to refund money back to the employers. However, ERISA requires most employers share that rebate with the employees.

MLR rebates and employee share

Basically, if the employees paid a portion of the premiums, then the employees are entitled to a portion of the rebate.

HSAs and Medicare

Health savings accounts continue to grow in popularity and the Trump administration hopes to make them even more attractive. However, there are rules governing who can make and receive HSA contributions.

Medicare and HSA eligibility

One of those rules state a person is no longer "HSA eligible" if they are enrolled in Medicare. This means once the person actually enrolls in Medicare, he or she can no longer make or receive HSA contributions. This article explains the ins and outs of how HSAs and Medicare work.

Equifax Breach Concerns

This really is not a pure benefits issue, but the revelation that Equifax experienced a data breach impacts over 143 million Americans!!!!

Equifax data breach: What employers should know

This article talks about what employers should consider in light of the breach. Again, not really a benefits issue but something that does impact employers and their employees.

IRS to Require Reporting Compliance

Health care reform requires individuals have health coverage or pay a penalty. Obviously the IRS has to know whether or not the individual had health coverage before it can assess the penalty. President Trump signed an Executive Order on January 20, 2017, minimizing the economic burden of the Patient Protection and Affordable Care Act pending repeal. In response to the Executive Order, the IRS processed individual tax returns even if the taxpayer did not include information regarding his or her health coverage.

2016 returns not subject to individual mandate

However, the IRS has just reversed its position and says it will not process any individual tax returns for the 2018 tax season (i.e. the 2017 returns) that do not include the necessary information to determine if the person is subject to the individual mandate.

2017 returns will be subject to individual mandate

It is clear the Trump administration is doing everything possible to undo Obamacare and force Congress to act.

Buddy, Can You Spare a Dime?

The IRS just released the new PCORI fee amount for plan years ending on or after October 2017 and before October 1, 2018. The PCORI fee is part of the Affordable Care Act and is used to fund the Patient-Centered Outcomes Research Institute. Employers sponsoring self-funded health plans have to report and pay the PCORI fee. This article explains the fee and lists the amounts.

[PCORI fee rises by 13 cents]

The fee increased 13¢ and went from $2.26 to $2.39 per covered life. Not a big number, considering the cost of health coverage but just another thing to remember.

Medicare Part D Creditable Coverage

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.

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.

[Meeting the Medicare Part D notice requirement]

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. In other words, by providing the notice to all the employees and the people on COBRA the employer is sure to satisfy this notice requirement. The government has provided a template employers can use to comply with this requirement. The second notice requirement is that the employer notify the government regarding the employer's group health plan status. This notice has to be provided in electronic format and is due sixty days after the start of each plan year.

Health Care Projected Increase Next Year

While Congress and the president continue to struggle over reforming the health care system employers are expected to face the largest increase in costs over the last six years.

[Survey reveals expected increase]

According to this survey employers can expect to see a 4.3% increase in cost per employee, but the good news (if there is any) is that the trend is stable.

Group Health Plan Annual Notice Requirements

There are a number of annual employee notice requirements applicable to group health plans. This is a short checklist of those requirements.

[Overview of annual notice requirements]

This article goes into a lot more detail of year-end items to do before you "close the books" on 2017.

[Details of annual notice requirements]

A lot of plans are maintained on a calendar year basis so I thought it would be a good idea to include the checklist in this newsletter.

EEOC – Back to the Drawing Board

One of the more confusing areas are the rules governing wellness programs. There are a number of rules governing wellness programs and, unfortunately, they are not consistent. The Affordable Care Act imposes limits on the maximum percentage of rewards or penalties permitted under a wellness program and the EEOC has issued different rules under GINA and the ADA on the maximum permitted percentage.

[Court sends wellness rules back for review]

[EEOC says new rules are years away]

A Federal Court told the EEOC to revisit this rule governing wellness program and, in response to the Court's ruling, the EEOC said it will issue new rules which probably will not kick in until 2021.

The Dreaded IRS Forms 1094 and 1095 Are Back

Unfortunately, it does not look like the government is going to eliminate the reporting requirements under the Affordable Care Act. This means larger employers (i.e. those with 50 or more full-time and full-time equivalent employees) and employers with self-funded health plans will have to wrestle with IRS Forms 1094 and 1095.

IRS issues final forms for 1094 and 1095

The good news is that employers had to deal with the forms last year so employers should be familiar with them. The other good news is that the forms are a little less complicated because some of the transitional relief applicable last year has expired which means the forms are simpler. There is talk about revamping the reporting requirements to make them much easier to complete but with the deadlock in Congress it is impossible to predict if there will be any changes as least on the legislative front.

Use New SBC Templates

Health care reform imposed a new disclosure requirement in the form of SBCs or summary of benefits and coverage. SBCs have been around for a while so the requirements have not changed.

New SBC templates for calendar-year plans

However, the government has updated the template and employers with calendar-year plans should be using the new template.

Trump Administration Expands Contraceptive Exemption

There is a requirement under Obamacare that group health plans provide first dollar coverage for preventive benefits. One of the most controversial provisions under the statute is that this requirement means the group health plan has to provide free contraceptive services.

White House narrows contraception mandate

Many employers objected to this requirement on moral and religious grounds. In fact, one employer fought this requirement all the way to the U.S. Supreme Court. The Obama administration drafted rules allowing certain employer group health plans to be exempt from this requirement. The Trump administration has expanded the exemption to include even more employers.

A Number of Topics

This article talks about a number of topics and I thought it was a fitting end to this newsletter that addresses a wide variety of items.

Projected FSA limits

One of the topics is the projected limit on the maximum amount that can go into a Health FSA for next year. That is, the limits are adjusted each year for inflation. However, like Yogi Berra said, "it ain't over till it's over" so wait until the IRS actually releases the new numbers.