



JULY 2019 COMPLIANCE UPDATE

PCORI FEE DUE JULY 31st

The PCORI fee is part of the Affordable Care Act to help fund patient-centered outcomes research that addresses a variety of high priority conditions and topics. It is assessed against all health plans. If you sponsor a fully insured health plan, the carrier reports and pays the fee. However, if you sponsor a self-funded health plan, an HRA, then you must report and pay the fee.

[PCORI DEADLINE FAST APPROACHING- JULY 31](#)

[PCORI - LINKS AND RESOURCES](#)

[PCORI FEE PAYMENT DUE JULY 31](#)

The fee is reported on IRS Form 720 and is paid with IRS Form 720V. Again, the PCORI fee is due the end of this month. The PCORI fee is not that much when compared to the total health care spend. Note, the PCORI fee expires which means this is the last time you will have to report and pay the fee.

NEW HRA RULES

In a major development, the government issued final rules expanding the use of Health Reimbursement Arrangements or HRAs. The new rules, which become effective January 1, 2020, may change the way employers provide health benefits to employees.

[NEW HRA RULING COULD MAKE EMPLOYERS CHEER](#)

[NEW ERA OF HRAS IN 2020](#)

[FINAL RULE ON HRA COULD SHAKE UP THE MARKETS](#)

The new rules allow any size employer to establish an HRA and provide funds on a tax-free basis for certain classes of employees to pay individual health policies and for Medicare. The rules are complex, but these three in-depth articles do a great job explaining the new programs. The real question is how will the carriers respond? Employees can use HRA funds to pay individual health policies, both on and off the health care exchanges, but if the carriers do not develop attractive products, then the employees will not be able to take advantage of the new HRAs. Finally, the government changed the long-standing position prohibiting employees to pay premiums for individual health policies on a pre-tax basis. Beginning January 1, 2020, employees will be allowed to pay their portion of the premiums associated with individual health

policies on a pre-tax basis provided the individual health policies are not purchased through the health care exchanges.

CROSS PLAN OFFSETTING GETTING GREATER SCRUTINY

Cross plan offsetting occurs when the overpayment to a non-network provider under one plan is offset from the underpayment to a different non-network provider, under a different employer's plan. For example, the Acme TPA manages the ABC Company's self-funded health plan as well as the XYZ Company's self-funded health plan. The ACME TPA overpays a non-network provider for a claim under the ABC Company's self-funded health plan and the Acme TPA uses that overpayment to reduce the amount it pays the non-network provider for services under the XYZ Company's self-funded health plan.

[COURT RULING ON CROSS PLAN OFFSETTING POSSIBLY JULY 31](#)

This practice raises ERISA issues because the assets of one plan (i.e. the funds under ABC Company's self-funded health plan) are being used to pay benefits under a different plan (i.e. the XYZ Company's self-funded health plan). A large insurance carrier has asked the U.S. Supreme Court to rule on this matter. The outcome of this case may have a major impact on employers sponsoring self-funded health plans.

OBAMACARE LITIGATION – HERE WE GO AGAIN!!

The Affordable Care Act (aka ObamaCare) was enacted in 2010 and the validity of the statute has gone up to the U.S. Supreme Court twice and both times the Court has ruled the law passes Constitutional muster. Perhaps the third time is the charm.

[FIFTH CIRCUIT COURT TO RULE ON ACA VALIDITY](#)

Congress amended the law to eliminate the individual mandate as of January 1, 2019. Several states and the Trump administration are saying the entire statute is now unconstitutional. The matter is before and the Fifth Circuit Appellate Court. This Court is expected to issue a ruling early next year and there is a good chance that whatever the Fifth Circuit rules, the matter will end up in front of the U.S. Supreme Court. However, until the matter is ultimately resolved, the status quo remains in effect.

DRAFTING SEVERANCE AGREEMENTS

Often employers will offer certain employees leaving the company a severance agreement. In its basic form, a severance agreement is basically a contract between the employer and departing employee. The employer provides something of value in exchange for the former employee agreeing not to sue the employer.

[ARE YOU USING THE CORRECT SEVERANCE AGREEMENTS?](#)

The severance agreement must comply with various statutes to be enforceable. This article does a nice job of listing those requirements and things to consider when drafting a severance agreement.

PRESIDENT TRUMP SHARPENS HIS PENCIL AGAIN

It seems as though the gridlock in Washington keeps getting worse. So, getting the Senate, House and President to agree on major health care issues seem slim.

[EXECUTIVE ORDER ON HEALTH CARE PRESCRIBES CHANGE AHEAD FOR PROVIDERS AND INSURERS](#)

[UNPACKING THE EXECUTIVE ORDER ON HEALTH CARE PRICE TRANSPARENCY AND QUALITY](#)

President Trump has turned to issuing executive orders to change the health care system. These articles list the latest directives by President Trump to the federal agencies to adopt rules aimed at improving health care price and quality transparency. As I have said many times, do not underestimate the changes that can be accomplished by adopting new regulations.

NEW HIPAA FACT SHEET

HIPAA has been around for some time. At its core, the statute is designed to protect individual health information. Although the statute's goal can be easily stated, the rules are very complex.

[HHS IDENTIFIES HIPAA LIABILITY FOR BUSINESS ASSOCIATES](#)

The government recently issued a fact sheet listing when a business associate can be directly liable for HIPAA violations. There is nothing new here, but it is an interesting read; especially if you are sponsoring a self-funded health plan.

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