

SEPTEMBER 2019 COMPLIANCE UPDATE

MEDICARE PART D NOTICE – DISTRIBUTION RULES

There is a lot of confusion regarding the Medicare Part D notice requirements to the employees. There are a ton of articles saying the notice has to be distributed before October 15th. However, that is not the case. If the notice is distributed the same time each year (e.g. in the open enrollment materials) there is no need to do a separate notice distribution in October.

[PROVIDE MEDICARE PART D NOTICE....ONLY IF YOU HAVEN'T ALREADY](#)

Pay particule attention to this paragraph in the article:

“If an employer provided the notice during open enrollment sometime within the 12 months prior to October 15, the notice obligation to employees has been satisfied and another notice need not be distributed.”

Note: The deadline for the notice to the government (i.e. CMS) is written in stone and has to be done within 60 days of the start of the plan year. However, that strict deadline does not apply to the notice to employees. Again, if the notice to the employees is included in the open enrollment materials that are distributed the same time each year, there is no need to do a separate notice in October. You should read the entire article to see the other rules regarding the notice.

TRENDS IN SELF-FUNDED HEALTH PLANS

Employers have been wrestling with high health costs for years and continue to try several ways to reduce costs. The following is a survey of self-funded health plans sorted by both state and employer size over the years.

[EMPLOYER TRENDS IN SELF-INSURED HEALTH PLAN COVERAGE](#)

It seems as though these things go in cycles. That is, the employers and the carriers try different things throughout the years to try and contract costs.

IS ‘MEDICARE FOR ALL’ THE ANSWER?

It is apparent that health care will be one of the most important issues facing President Trump and whoever runs against him. Some Democrats are advocating ‘Medicare for All’ is the solution.

[MODEST HEALTH REFORM MAY CREATE MORE VALUE THAN 'MEDICARE FOR ALL'](#)

This article suggests that some modest changes to the current system are a better approach than eliminating private insurance and replacing it with a single government-run program.

ICHRAs

We have included several articles on the new individual overage health reimbursement arrangements (ICHRAs). Here is a couple of additional articles.

[TEN THINGS EMPLOYERS SHOULD KNOW ABOUT HRAs](#)

[INTEGRATED HRAs TRANSFER RISK OFF EMPLOYERS, ALLOWING PREDICATBLE COSTS](#)

Whether or not these take off depends, in large part, if the carriers develop attractive individual health policies and if the carriers establish a robust distribution channel for those policies.

NEW FMLA NOTICES?

Often, the government provides templates designed to help employers comply with various statutes. The FMLA has been around for some time and the government is considering updating the sample forms.

[DOL SEEKS TO IMPROVE EMPLOYERS' FMLA FORMS](#)

As a general proposition, it is a good idea to use the government's forms. If there is ever an issue, the employer is in a good place if the employer uses the government templates. However, it does make sense to make minor modifications to some of the forms.

REVISED ACA REPORTING ON THE HORIZON?

It does not look like the employer mandate penalty under the ACA is going away any time soon. One of the biggest complaints is the reporting requirements associated with the statute.

[COMMONSENSE REPORTING ACT OF 2019](#)

I don't like to report about proposed legislation because you never know if it will be enacted. However, I am including an article about proposed changes designed to simplify the reporting requirements associated with the employer mandate penalty. They say "hope springs internal" so we will have to wait and see if the rules are simplified.

GENETIC TESTING- MEDICAL EXPENSE OR NOT?

There has been a recent uptick in advertising for genetic testing. Some of the ads are saying this type of testing can tell the person if they are susceptible to certain diseases.

[GENETIC TESTING SERVICES QUALIFY AS CODE 213\(d\) MEDICAL CARE](#)

So, the question becomes whether the cost of this testing is considered a medical expense. The IRS has ruled that a portion of the cost may be considered a medical expense.

WHERE ARE WE WITH THE CADILLAC TAX?

One of the main and most controversial provisions of the Affordable Care Act is the imposition of a Cadillac tax on certain health plans. The tax is going to be assessed on high-cost health plans.

[THE CADILLAC TAX DO-OVER CHALLENGE](#)

The tax has been delayed twice and is now scheduled to begin in 2022. However, there continues to be 'talk' about repealing the tax altogether.

ME A FIDUCIARY? NO WAY!

ERISA imposes a very high standard on plan fiduciaries. ERISA requires that the plan have a named fiduciary. So without question, one can identify the fiduciary in the paperwork.

[WHAT IS A FUNCTIONAL FIDUCIARY?](#)

However, others can become fiduciaries by what they do. Therefore, it is important to understand if you will be considered a 'functional' fiduciary under ERISA by the things you do.

STUDENT LOAN CRISIS

College isn't for everyone but for those that go, the cost of higher education has skyrocketed over the years. Many students are having a hard time finding good-paying jobs, and so they are saddled with high debt.

[HOW TO PROVIDE STUDENT LOAN REIMBURSEMENT AS A BENEFIT](#)

Therefore, some employers are offering help with student loans as a way to attract young talent. Unfortunately, the current tax laws make it difficult to provide this type of benefit.

IRS GETS TOUGH ON ACA REPORTING

By now large employers are familiar and hopefully complying with the employer mandate under the Affordable Care Act. That is, large employers, i.e. those with 50 or more full time and full time equivalent employees, have to offer quality/affordable coverage to full time employees or pay a penalty.

[EMPLOYERS ARE SLAMMED WITH PENALTIES FOR LATE ACA FILINGS](#)

An important component of the process is the reporting requirements. Employers have to prepare, file, and distribute IRS Form 1094 and IRS Form 1095. The government is now starting to aggressively assess separate penalties for failing to comply with the reporting requirements. These penalties are in addition to the penalty for not offering quality/affordable health coverage

to full-time employees. Therefore, it is imperative employers comply with the ACA reporting requirements.

NOT ALL EMPLOYEES ARE CREATED EQUALLY

Yes, there are discrimination rules that preclude employers from treating employees differently. However, that does not mean employers have to provide identical benefits for all the employees.

[ANTI-DISCRIMINATION AND THE EFFECT ON EMPLOYEE BENEFIT PACKAGES](#)

This brief article lists some of the issues concerning employee benefits. Note: when establishing a program, there are other Federal, state, and even local laws that have to be considered.

EBHRAs

There has been a lot of ink devoted to Individual Coverage Health Reimbursement Arrangements or ICHRAs. However, the latest rules also include Excepted Benefits Health Reimbursement Arrangements or EBHRAs.

[DIGGING INTO THE NEW HRA REGULATIONS PART 4: EXCEPTED BENEFIT HRAs](#)

Although EBHRAs may not have received as much attention as ICHRA, EBHRAs may be a good fit for some employers. This article talks about EBHRA.

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