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2015 Planning for Health and Welfare Benefit Plan Operations

As 2014 comes to a close, it's time for employers and plan sponsors to look forward to compliance issues for 2015. To that end, the calendar below presents a schedule of activities that address important deadlines for 2015. Additionally, the recently updated Reporting and Disclosure Guide identifies and addresses other activities that are event-based and participant specific. In terms of planning, many of the projects put in place in 2014 will need to be maintained for 2015, but employers and sponsors will also need to address some new issues.

In this article: Preparing for ACA Reporting | Cafeteria Plan Amendments | 2015 Out-of-Pocket Maximum Limits | Wellness Programs Issues | Waiting and Orientation Periods | HPID Requirement Delayed | In Closing | Calendar of Health and Welfare Benefit Plan Compliance Tasks

Preparing for ACA Reporting

The ACA information reporting requirements go into effect for health coverage provided during the 2015 calendar year, with the first information returns due in early 2016. The IRS will use the reported information to enforce the individual and employer shared responsibility requirements and to administer the low-income subsidies provided to eligible individuals who purchase coverage in the marketplace. The IRS has issued draft forms and instructions for this purpose. (See our July 25, 2014 and August 29, 2014 editions of *For Your Information*.) Employers will be required to provide detailed information about the covered employees and the cost of health coverage they receive. Particularly burdensome will be the requirement to include social security numbers of participants, spouses, and dependents. Employers are required to make a reasonable effort to obtain these. At this point, employers should be gathering the necessary data and determining what support service providers, such as payroll vendors and benefit administrators, will provide. It's likely these forms will be tweaked by the IRS before they are finalized.

Volume 37 | Issue 174 | December 2, 2014

Cafeteria Plan Amendments

The IRS recently issued guidance permitting a cafeteria plan election change when an employee experiences a reduction in hours during a shared responsibility stability period and for public marketplace special or open enrollment periods. Employers choosing to allow election changes in these circumstances must amend their plans on or before the last day of the plan year in which the new election change events are allowed. Under a special rule for 2014, employers who wish to allow these changes during the 2014 plan year have until the last day of the 2015 plan year to adopt an amendment. (See our October 21, 2014 *For Your Information.*)

Separately, employers can also let participants carry over unused health FSA amounts of up to $500 and apply those amounts toward qualified medical expenses incurred during the following plan year. Documents must be amended to permit the carryover on or before the last day of the plan year from which amounts may be carried over and may be effective retroactive to the beginning of the plan year. (See our November 1, 2013 For *Your Information*.)

Satisfaction of 2015 Out-of-Pocket Maximum Limits

The 2015 annual out-of-pocket maximums (OOP) on essential health benefits (EHB) for non-grandfathered group health plans are $6,600 for self-only coverage and $13,200 for coverage other than self-only coverage. The transition rule allowing prescription drug carve-outs for plans using more than one service provider applied only to the first plan year beginning on or after January 1, 2014 and is not available for subsequent plan years. Plan sponsors, however, can continue to divide a plan's OOP limit among different coverage categories so long as the combined amounts don't exceed the annual OOP limit. (See our March 11, 2014 *For Your Information*.)

Additionally, a plan may be designed so that only generic prescription drugs will be considered EHB (if available and if determined medically appropriate). Under such circumstances, if an individual chooses to purchase a brand name prescription drug (when the generic is available and medically appropriate), both the copayment and any cost difference between the generic and brand named drug will not count towards the OOP maximum. (See our June 10, 2014 *For Your Information*.)

Wellness Programs Issues

In recent months, the EEOC has filed several lawsuits challenging employer-sponsored wellness programs, asserting that financial rewards and penalties provided under the arrangements create programs that are not voluntary and, therefore, unlawful under the ADA. The EEOC's actions have raised questions about the extent to which employers may use wellness programs to encourage healthy behaviors in employees. Given these recent cases, and until a court rules on these issues, employers should consult with trusted advisors and legal counsel to review their wellness programs and to assess any risk associated with program designs. (See our October 30, 2014 and November 4, 2014 editions of *For Your Information*.)

Volume 37 | Issue 174 | December 2, 2014

Waiting and Orientation Periods

For plan years beginning on or after January 1, 2014, group health plans subject to the ACA may not impose a waiting period of more than 90 days on individuals who are otherwise eligible for coverage. Final regulations issued by the Departments of Treasury, Labor, and Health & Human Services (departments) retain the definition of waiting period set out in the proposed regulations and also clarify that being "otherwise eligible to enroll in a plan" means that the individual has met the plan's substantive eligibility conditions, including satisfaction of any "reasonable and bona fide" orientation period. (See our April 2, 2014 *For Your Information*.)

In June, the departments also issued final regulations that set out rules regarding this orientation period. The regulations permit an orientation period of no longer than one month, which is measured by adding one calendar month and subtracting one calendar day from an employee's start date. (See our July 3, 2014 *For Your Information*.)

HPID Requirement Delayed

HIPAA regulations require sponsors of health plans to obtain a unique health plan identifier (HPID) for each controlling health plan (CHP) to be used on all standard transactions by the plan and its business associates. (See our August 26, 2014 *For Your Information*.) The deadline for large plans to obtain an HPID was originally November 5, 2014 (small plans had an additional year to comply); however, CMS recently announced that the requirement has been delayed indefinitely. In its announcement, CMS referenced a report from the National Committee on Vital and Health Statistics (NCVHS) that discussed the lack of clear business need and purpose for the HPID, confusion about how the HPID would be used in administrative transactions, and challenges faced by health plans with defining CHP. (See our November 3, 2014 *For Your Information*.) Thus, until further notice, group health plans (and other CHPs) will not need to apply for or use the HPID.

In Closing

Planning ahead to identify tasks and set compliance goals for the coming year is an important first step for assuring smooth operations during the year. In addition to the significant items noted above, plan sponsors may want to perform an annual "checkup" (i.e., an audit of operational practices and fiduciary responsibilities) to address plan compliance and design considerations. Plan sponsors may conduct their own self-audit or contract with an independent party. Regardless of who performs the audit, identifying problems and initiating corrections in advance of any official governmental audit is certainly the preferred course of action.

We have published companion pieces to this *FYI In-depth* that cover year-end planning for defined contribution and defined benefit retirement plans: *2015 Planning for ERISA Single-Employer Defined Contribution Plan Operations* and *2015 Planning for ERISA Single-Employer Defined Benefit Plan Operations*.

Volume 37 | Issue 174 | December 2, 2014

Calendar of Health and Welfare Benefit Plan Compliance Tasks[1]

Action Item	Due Date
January	
Reporting of value of health coverage on Form W-2	January 31, 2015
March	
Disclosure of creditable/noncreditable status of prescription drug coverage to CMS	March 1, 2015
DOL Form M-1 (for MEWAs)	March 1, 2015
Last day of 2 ½ month grace period for flexible spending accounts with grace periods	March 15, 2015
May	
Form 990 or Form 8868 if requesting extension	May 15, 2015
July	
Summary of Material Modifications for prior year amendments	July 29, 2015
Form 5500 or file Form 5558 to request an extension	July 31, 2015
Form 720 filing and payment of PCORI fee	July 31, 2015*
August	
Form 990 (if on extension) or Form 8868 if requesting additional extension	August 15, 2015
September	
Summary Annual Report (if no extension)	September 30, 2015
October	
Provide notice of creditable/noncreditable prescription drug coverage to participants	October 14, 2015
Form 5500 filed if on extension	October 15, 2015
November	
Transitional reinsurance fee - report to HHS on number of covered lives	November 15, 2015*
Form 990 (if additional 3 month extension)	November 15, 2015

Volume 37 | Issue 174 | December 2, 2014

Action Item	Due Date
December	
Summary Annual Report (if on extension)	December 15, 2015
Deadline for correcting DCAP discrimination test failures	December 31, 2015
Deadline for plan amendment adopting health FSA carryover for 2014	December 31, 2015

[1]*Assumes calendar plan and sponsor tax year. Does not account for weekends, extended due dates other than for Forms 5500 and 990, short plan years, or new plans. The "weekend rule", which extends due dates falling on weekends to the following Monday, generally applies to filing deadlines and certain other acts under tax rules.*

[*]*Date does not vary regardless of plan year*

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