LEGALLY SPEAKING

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4th Quarter 2016 Compliance Update

Relief for Small Employers

The IRS has issued several rules clearly stating employers cannot pay for individual health policies on either a pre-tax or post-tax basis. Employers that do are subject to a $100 per day per employee penalty. Congress recently passed and President Obama has signed legislation that allows small employers (i.e. those with 50 or fewer full-time and full-time equivalent employees) to pay for individual health policies. This article talks about the new law.

Small Employers and Standalone HRAs

Small Employers and Standalone HRAs – Article II

Many small employers do not offer a group health plan but want to help employees get health coverage. So this change will be a positive for a lot of employers and their employees. However, it is frustrating when the government issues rules and then retroactively repeals them.

Change is in the Wind

President-elect Trump's selection of Rep. Tom Price as Secretary of the Department of Health and Human Services brings into serious question the future of health care reform, i.e. Obamacare. Mr. Price is a former physician and one of the staunchest critics of health care reform. These articles talk about what may happen to Obamacare under the new administration. Trump also named Andrew Puzder to head up the Department of Labor. Mr. Puzder has gone on record saying he opposes the overtime rules.

Taking Stock of Health Care Reform

DOL Secretary and Health Care Reform

Health care reform is politically charged. If the Republicans “touch it, they own it.” This means if they make changes to Obamacare, they will get the blame if anything goes wrong assuming no Democrats join the effort. There is a popular notion out there that the Republicans will repeal it early next year but the effective date of the repeal may be up to three years down the road. This will give them time to come up with a replacement plan and allow people currently covered under Obamacare to keep their coverage in the interim. Health care is extremely complex and the replacement has to be comprehensive. Otherwise, Congress and the President will have to keep tinkering with it every two or three years, and no one wants that.

Extended Deadline for IRS Form 1095 Distribution

The previous article talks about the future of health care reform. One of the items “on the bubble” is the employer mandate or play or pay rules. That is, the new administration may take away the employer mandate. This would mean there is no need for employers to report health plan coverage to the government, which suggests there is no need to prepare IRS Form 1094 and IRS Form 1095. However, as of the today, employers do have to prepare and distribute those forms. The first article talks about the extended deadline and the second article highlights the changes to the forms from last year’s forms to this year’s forms.

IRS: You Have More Time in 2017

ACA Forms: What's Changing in 2017

The IRS has extended the time employers have to distribute IRS Form 1095 to employees for this year. The original due date was January 31, 2017, but the new deadline is now March 2, 2017. Note that the deadline for submitting the forms to the government **HAS NOT** been extended. Those deadlines are February 28, 2017 if the employer is submitting the forms in paper format to the IRS and March 31, 2017 if the employer is filing the forms in electronic format.

Sex Discrimination Rules Kick in January 1, 2017

Health care reform prohibits certain health plans from discrimination on the basis of race, sex, color, national origin, age, or disability. We have talked about the rules in previous newsletters but we wanted to mention the rules again because they become effective January 1, 2017.

Employer Obligation - Transgender Benefits

The rules apply to most fully insured health plans because most insurance companies have to comply with the rules. In other words, if the insurance company is subject to the rules, that insurance company can only offer insured products (i.e. fully insured group health plans) that comply with the rules. If you sponsor a self-funded health plan and do not receive federal funds, then you are not required to comply with the rules. However, many third party administrators are requiring their clients to sign a hold harmless agreement if the employer sponsoring a self-funded health plan does not want its self-funded group health plan to comply with the rules.

Wellness Programs Update

Most people think the most productive way to reduce health care costs is to address the core issue – people's health status. That is, the main way for the employer to reduce health costs is to have healthier employees and family members. One of the best ways to accomplish that goal is through wellness programs. However, the government has issued a number of rules governing wellness programs.

Wellness Programs: Regulatory and Litigation Update

Unfortunately, the rules are complicated and often contradict each other. On top of that, different government agencies (e.g. the Department of Labor and Equal Employment Opportunity Commission) and even the Courts have taken different positions of the topic. This article provides an update on where we stand with wellness programs.

EEOC Tries to Clarify Wellness Rules

Many people believe that addressing the individual's health status is the next frontier in the battle to reduce health care costs. One tool to accomplish that goal is a wellness program. Unfortunately, the rules governing wellness programs are confusing and, sometimes, contradict themselves.

Clarifications on Incentive Limits

Wellness Program Regulatory and Litigation Update

The first article addresses the EEOC's maximum limits allowable under a wellness program. The second article gives a general update on wellness programs. Note that the Department of Labor has imposed different limits on wellness programs. Hopefully, the new administration will address this area and issue one set of understandable rules.

ERISA Protection Rights

ERISA governs both retirement and welfare benefit plans. There is a section of ERISA that precludes employers from taking adverse employment actions against employees based on the employee's right to benefits. This article does a nice job explaining those rules.

ERISA Retaliation

Under health care reform the employer mandate states large employers must offer quality/affordable health care to full-time employees. An employer that reduces an employee's hours to avoid the employer mandate can be accused of violating those ERISA rules.

ERISA Plans – What Are They?

ERISA has been around since 1974 and sometimes it is not easy to determine whether or not a particular program is subject to ERISA.

Identifying ERISA Plans

This article does a nice job of identifying which programs are, in fact, covered under ERISA and the significance of that determination.

2017 HSA and Health FSA Limits Released

Several provisions in the Internal Revenue Code are indexed for inflation. That is, the government has the ability to change the numbers due to inflation.

HSA, FSA 2017 Contribution Limits

This article lists the maximum annual amount people can contribute to an HSA and the maximum annual amount that can be contributed to a Health FSA for 2017. These numbers were released earlier this year but I wanted to list them again in the final newsletter for this year.

Comments on Proposed Form 5500 Filing Rules

The government issued proposed rules changing the reporting requirements on Form 5500 and, most importantly, took away the exemption for small fully insured group health plans. The government asked for public comments and this detailed article is from the SPARK Institute commenting on the proposed changes.

SPARK Comments on 5500 Proposals

The changes are scheduled to take effect for the 2019 plan year for forms filed in 2020. However, it remains to be seen if the Trump administration will repeal the proposed changes. That is, President-Elect Trump has stated he wants the Federal government to be more business friendly, and many view the proposed changes as extremely burdensome. So, the proposed changes may never come to pass.

Rescinding Coverage During the Stability Period

As the first article indicates, the new administration may very well repeal, or at the very least, greatly modify Obamacare. Two of the most criticized parts of the law are the employer mandate and the individual mandate. Currently, employers have to track the employees' hours and continue to offer the full-time employees quality/affordable health coverage or be subject to a potential penalty. The tracking rules are extremely complex and provide, in part, that if an employee is considered full-time, the employee retains that status during the entire stability period.

Three Conditions for Rescinding Coverage

This article talks about the employer's ability to rescind coverage to an employee during the stability period. Again, the future of health care reform is up in the air. However, until the law is repealed or modified, employers need to comply with the statute.

DOL Audit Letter

Traditionally the Department of Labor's enforcement actions have been directed more at retirement plan compliance than at group health plans. However, that trend is starting to change in that the Department of Labor is auditing group health plans. This article discusses what you should do if you are contacted by the Department of Labor.

Handling a DOL Audit

The audit can be triggered two main ways. The first is simply a random audit and the second way is because someone filed a complaint with the government. Either way you should take the audit seriously and respond promptly.

Transitional Reinsurance Fee

If you have a self-funded group health plan you should have reported the member count to the government last month.

Reinsurance Fee Fact Sheet

The first payment will be due January 17, 2017, if you elect to pay it in two installments and the total amount is due on that date if you chose to pay the entire amount with a one-time payment.

Two Compliance Checklists

Here are a couple of checklists to help ensure you are doing everything you are supposed to do when it comes to group health plans and other welfare benefit plans.

Highlights for 2017 Compliance

2016 Year End Checklist

The first article focuses on 2017 requirements and the second article talks about things that should be done by year end.

How to Respond to Request for Documents

ERISA requires the plan administrator to provide certain documents upon the written request of the participant, beneficiary and others. It is prudent to include a cover letter with those documents.

Cover Letter Simplifies Requests

Although ERISA does not require a cover letter, it is a good idea to include a CYA letter that provides proof that you did, in fact, respond to the request for documents in a timely manner. This article explains the benefits of such a cover letter and what that letter should contain.

This year has been no different from previous years when it comes to compliance issues. The government continued to issue rules that were complex and, at times, contradictory. Next year will be very interesting. The Trump administration has promised to repeal and replace Obamacare and also said it will reduce and simplify regulations. It remains to be seen if the new administration will keep its campaign promises and how that will translate into government action or inaction.

As this year draws to close, we wish everyone a safe and happy holiday season. Stay tuned - the next newsletter will be in January 2017. For further information, contact Dunlevey, Mahan + Furry at (937) 223-6003 or visit our website at www.dmfdayton.com.