

Health and Welfare Benefits Compliance Checklist

By Brydon M. DeWitt, Esq.*

2013 was a year of significant regulatory change for health and welfare benefit plans. As the year comes to a close, employers should review their compliance status and prepare for the approaching challenges that will arise in 2014 and beyond. The following paragraphs briefly summarize some of the significant health and welfare benefits issues facing employers.

Health Care Reform

- **Prepare for Play or Pay Mandate.** Payroll in 2014 will impact whether and how employers will comply with the “play or pay” mandate in 2015. Effective January 1, 2015, “applicable large employers” will owe penalties unless they offer compliant health insurance to their full-time employees. An employer will be an “applicable large employer” in 2015 if it employed on average at least 50 full-time employees (including full-time equivalent employees) in 2014. In addition, IRS regulations allow employers to use 2014 service to determine which employees are full-time employees who must be offered health insurance coverage in 2015.
- **Coverage and Design Requirements.** The following requirements apply to group health plan years beginning on or after January 1, 2014:
 - o Eligibility waiting periods may not exceed 90 days;
 - o Annual limits on essential health benefits are prohibited;
 - o Pre-existing condition limitations are not allowed;
 - o Plans may not exclude adult children from coverage merely because they have coverage through their own employers;
 - o Plans must provide coverage for clinical trials; and
 - o Maximum out-of-pocket limits of \$6,350 for single coverage and \$12,700 for family coverage apply.
- **Health FSA Contribution Limit.** The Affordable Care Act limits health flexible spending account annual contributions to \$2,500. This limit became effective for plan years beginning on or after January 1, 2013. Plans must be amended for this change no later than December 31, 2014.
- **Patient-Centered outcomes Research Institute (PCORI) Fee.** The second installment of the PCORI fee is due July 31, 2014. Employers sponsoring self-insured plans must pay the fee. The fee for fully-insured plans is paid by the insurance carrier. The fee is reported on Form 720.
- **Reinsurance Fee.** A reinsurance fee of \$63 per covered life will be assessed in 2014. Insurance carriers will pay the fee for fully-insured plans, and plan sponsors will pay the fee for self-insured plans. Insurers and plan sponsors must report enrollment data to the Department of Health and Human Services (HHS) by November 15 of each year. Payment will be due 30 days after HHS notifies the carrier or plan sponsor of the amount owed.

- **ACA Notice Requirements.** Employers should make sure they are in compliance with the following notice requirements:
 - o **Notice of Exchange.** Employers subject to the Fair Labor Standards Act must issue a notice to employees informing them about the Health Insurance Marketplace (or Exchange). The notice was due October 1, 2013 and must be provided to new employees within 14 days of their date of hire.
 - o **Summary of Benefits and Coverage.** The four-page “Summary of Benefits and Coverage” must be provided to new hires who are eligible for group health plan coverage; to mid-year enrollees, to employees during open enrollment, and upon request.
 - o **Revised COBRA Notice.** The Department of Labor revised the model COBRA election notice to include a paragraph explaining the Health Insurance Marketplace. Employers should use the new model notice or add the new paragraph to their notices.

Defense of Marriage Act Ruling

The United States Supreme Court decision in *United States v. Windsor* struck down section 3 of the Defense of Marriage Act which defined marriage as a union of one man and one woman for purposes of federal law. The *Windsor* decision raises several issues for health and welfare benefit plan sponsors.

- **State of Ceremony Controls.** For federal tax purposes, a couple that marries in a state that recognizes same-sex marriage will be treated as married even if they reside in a state that does not recognize same-sex marriage.
- **Tax-Free Benefits.** Tax free benefits, such as health insurance, and the ability to purchase coverage on a pre-tax basis are now available to same-sex spouses on the same basis as they are available to opposite sex spouses. Employers should no longer impute taxes on tax-free benefits, such as health insurance, offered to same-sex spouses. Cafeteria plans may also allow employees to purchase qualifying benefits for same-sex spouses pre-tax. In addition, health flexible spending accounts and health savings accounts may reimburse medical expenses incurred by same-sex spouses. Because employers may have over-withheld income and FICA taxes with respect to same-sex spouse benefits, employers and employees may make claims for refunds in accordance with IRS Notice 2013-61.
- **Plan Design.** *Windsor* does not require employers to offer health and welfare benefits to same-sex spouses. The decision, however, allows employers to offer such benefits to same-sex spouses in the same manner as they are offered to opposite-sex spouses. In addition, states that recognize same-sex marriage may require health insurance to cover same-sex spouses.

HIPAA Health Information Privacy and Security

New HIPAA health information privacy and security regulations became effective September 23, 2013. The regulations implemented changes required under the Health Information Technology and Clinical Health Act and revised existing privacy and security requirements. Plan sponsors need to take the following steps to ensure compliance with the new rules.

- **Policies and Procedures.** HIPAA policies and procedures should be reviewed and updated as necessary to comply with the regulations. Changes include enhanced individual rights to access protected health information (PHI) and request restrictions on disclosures of PHI. Breach notification rules also must be revised.
- **Notice of Privacy Practices.** The new regulations require notices of privacy practices to include the following: (i) a description of the types of uses and disclosures that require an authorization; (ii) a statement that genetic information may not be used for underwriting purposes; and (iii) a statement that affected individuals must be notified of a breach of unsecured PHI. The updated notice of privacy practices should be posted on the plan's web site and distributed during open enrollment.
- **Business Associate Agreements.** The final regulations expand the definition of the term "business associate" and require additional provisions to be included in business associate agreements. Plan sponsors need to determine whether any vendors not currently treated as HIPAA business associates must agree to a business associate agreement. Business associate agreements need to be reviewed and updated. The deadline for amending business associate agreements that were in effect on January 25, 2013 is September 23, 2014. New business associate agreements or agreements that expire or are modified before September 23, 2014 should be revised as soon as possible.

With the numerous changes and new requirements for health and welfare plans, employers need to review plan documents, summary plan descriptions, and health information privacy and security documents to ensure compliance. Human resources departments and plan administrators must also be made aware of the changes, and new processes need to be implemented.

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