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Compliance Recap

June 2016

June was another quiet month for federal agencies in relation to employee benefits. A tri-agency proposed rule regarding expatriate health plans, excepted benefits, and essential health benefits was released.

UBA Updates

UBA's Human Resources department released a checklist and advisor on new OSHA requirements:

- OSHA Reporting Changes: Employer Checklist
- OSHA's Final Rule on Electronic Tracking of Workplace Injuries and Illness

UBA updated existing guidance:

- HRAs, HSAs, and Health FSAs- What's the Difference?
- FAQ about Wellness Program Legal Requirements

Proposed Rule

In a tri-agency proposed rule, the Department of Labor (DOL), Department of Health and Human Services (HHS), and Department of the Treasury (Treasury) have published guidance discussing expatriate health plans (expat plans), excepted benefits, and essential health benefits (EHBs).

The proposed rule would allow expatriate health plans, employers as sponsors of expatriate health plans, and expatriate health plan insurers to be exempt from certain Patient Protection and Affordable Care Act (ACA) requirements such as medical loss ratio, and, for employer plans that cover expatriates assigned to work in the United States, the Cadillac tax.

The proposed rule also discussed excepted benefits, which are generally exempt from HIPAA and ACA requirements. Excepted benefits are not minimum essential coverage (MEC) and can cover things such as limited scope dental and vision care, workers' compensation, and accidental death and dismemberment coverage. Individuals with an excepted benefit can still qualify for an advance premium tax credit (subsidy) to purchase coverage in the Marketplace.

The proposed rule provides further requirements of group policies that cover fixed-dollar indemnity coverage, in order to remain an excepted benefit.

Existing regulations define short-term, limited-duration coverage as insurance provided pursuant to a contract with an issuer that has an expiration date specified in the contract, taking into (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract.

To address the issue of short-term, limited-duration insurance being sold as a type of primary coverage, the proposed regulations revise the definition of short-term, limited-duration insurance so that the coverage must be less than three months in duration, including any period for which the policyholder renews or has an option to renew with or without the issuer's consent. The proposed regulations also provide that a notice must be prominently displayed in the contract and in any application materials provided in connection with enrollment in such coverage.

Read more about the proposed rule.

Question of the Month

Q. Should an employer respond to the Marketplace notice they received, alerting them to the fact that an employee received an advance premium tax credit for health coverage purchased in the Marketplace?

A. That depends on a multitude of factors. The Marketplace notice will identify the employee, that he or she is eligible for the tax credit, that this could trigger a penalty on the part of the employer, and that the employer may appeal the decision. Employers are strictly prohibited from retaliating against an employee for going to the Exchange or receiving a tax credit.

The Department of Health and Human Services (HHS) has a four-page Employer Appeal Request form, which must be submitted within 90 days of receipt of a Marketplace notice. The form asks for basic information about the employer, provides a place to identify a secondary contact, and asks for the employer to explain why it is appealing the determination that the employee is eligible for premium assistance.

This appeal will not determine if the employer owes a fee, but could help prevent employees from erroneously obtaining an advance premium tax credit, which, in turn, could provide the employer with information about whether or not it might owe a penalty. By preventing employees from incorrectly obtaining the advance premium tax credit, applicable large employers could lessen the chance of being asked to provide further information to the IRS to prove they met their obligations under the employer shared responsibility requirements.

Small employers who offered health coverage to employees should speak with their counsel about how to respond to the letter. Although they had no obligation under the ACA to offer coverage, if the coverage was affordable, it could impact their employee's ability to receive a subsidy. Impeding an HHS or IRS process to identify who should and should not have gotten a subsidy could have negative consequences.

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The UBA Compliance Advisors help you to stay up to date on regulatory changes to help simplify your job and mitigate compliance risk.