HR News Alert

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Pay or Play Requirements Delayed Until 2015

Employer Penalties Will Not Apply for 2014

The U.S. Treasury Department has announced that it will delay enforcement of the "pay or play" requirements for one year. As a result, any penalties will not apply until 2015, which changes the initial effective date scheduled for January 1, 2014.

The "pay or play" provisions require large employers, defined as those with at least 50 full-time employees and full-time equivalents, to offer affordable health insurance that provides a minimum level of coverage to full-time employees (and their dependents) or pay a penalty tax if a full-time employee receives a premium tax credit or cost-sharing reduction for purchasing coverage on an Exchange.

According to the announcement, the law requires that certain information be reported by insurers, self-insuring employers, and other parties that provide health coverage. It also requires information reporting by certain employers with respect to the health coverage offered to their full-time employees. In order to ensure a smooth transition and allow for real-world testing of reporting systems, the agency is providing transition relief with respect to these reporting requirements which will make it impractical to determine which employers owe shared responsibility payments for 2014.

Accordingly, the transition relief is being extended to the "pay or play" penalties and any such penalties will not apply until 2015. The Employer shared responsibility payments will not apply for 2014.

The additional year will give employers time to understand the employer mandate rules, to make decisions about providing health coverage and to adapt their reporting systems, without worrying about potentially significant penalties. It is unclear how the new deadline will impact guidance that has already been issued, such as the transition relief for non-calendar year plans and the optional safe harbor for determining full-time status.

Marshall and Sterling will keep you up to date on the effects of this decision and monitor the situation. If you have any questions, please do not hesitate to contact your Account Manager or Producer.

In This Issue…

Supreme Court Strikes Down Key Part of Defense of Marriage Act

The U.S. Supreme Court has ruled that the federal Defense of Marriage Act (DOMA) violates the constitutional guarantee of equal protection. Specifically, the decision invalidates the section of DOMA which defines marriage as a legal union between one man and one woman for purposes of all federal laws and agency regulations.

DOMA impacts over 1,000 federal statutes and numerous regulations, including laws pertaining to government healthcare benefits, Social Security, and taxes. As a result of the ruling, legally married same-sex couples are entitled to full federal benefits in states where same-sex marriage is recognized.

Further guidance is expected to help clarify the impact of this decision, including how the ruling may apply to legally married same-sex couples living in states that do not recognize their marriage. Updates will be posted in our Employee Benefits section as more information becomes available.

Delay Finalized for Employee Choice of Health Plans in SHOP Exchanges

A final rule confirms that SHOPs (Small Business Health Options Programs) will not be required to provide employers the option of offering employees a choice of qualified health plans, until plan years beginning on or after January 1, 2015.

SHOPs are expected to begin operating in 2014 as an option for qualified small employers to purchase employee health coverage. The federal government will run SHOPs in states that do not elect to establish the program. Under the law, employers would be able to choose a level of coverage to offer (bronze, silver, gold, or platinum), select a premium contribution amount, and then offer employees choices of multiple insurers and plans.

As a result of the delay, for plan years beginning in calendar year 2014, federally-facilitated SHOPs will only permit employers to select a single qualified health plan from the choices available in the SHOP to offer qualified employees. State-based SHOPs have the option of allowing employers to offer qualified employees a choice of qualified health plans at a single level of coverage.

Our Summary by Year features additional upcoming changes under Health Care Reform.

First PCORI Fees Due by July 31st for Employers Sponsoring HRAs and Other Self-Insured Plans

The IRS has revised Form 720, Quarterly Federal Excise Tax Return, for employers sponsoring certain self-insured health plans to report and pay new fees imposed under Health Care Reform to fund the Patient-Centered Outcomes Research Institute (PCORI).

Affected Employers

PCORI fees are imposed on plan sponsors of applicable self-insured health plans for each plan year ending on or after October 1, 2012, and before October 1, 2019. Applicable self-insured health plans generally include health reimbursement arrangements (HRAs) and health flexible spending arrangements (FSAs) that are not treated as excepted benefits.

Calculating the Fee

The fee for an employer sponsoring an applicable self-insured plan is two dollars (one dollar for plan years ending before October 1, 2013) multiplied by the average number of lives covered under the plan. For plan years ending on or after October 1, 2014, the fee will increase based on increases in the projected per capita amount of National Health Expenditures.

How to Report and Pay the Fee

Form 720 must be filed annually to report and pay the fee no later than July 31st of the calendar year immediately following the last day of the plan year to which the fee applies. Note that the regulations do not permit or include rules for third-party reporting or payment of the PCORI fee.

According to a recent IRS memo, employers may deduct PCORI fees as ordinary and necessary business expenses for federal tax purposes.

Review our Health Care Reform Checklist for information on other requirements impacting employers and group health plans this year.

Changes to Wellness Programs Coming in 2014

Final rules outline the amended criteria for wellness programs offered in connection with group health plans to comply with the federal Health Insurance Portability and Accountability Act (HIPAA). Highlights of the final rules, which are effective for plan years beginning on or after January 1, 2014, include:

- Increasing the maximum permissible reward under a health-contingent wellness program, from 20% to 30% of the cost of coverage;
- Further increasing the maximum permissible reward for wellness programs designed to prevent or reduce tobacco use, from 20% to 50% of the cost of coverage; and
- Clarifications regarding the reasonable design of health-contingent wellness programs and the reasonable alternatives they must offer in order to avoid prohibited discrimination.

A health-contingent wellness program requires an individual to satisfy a standard related to a health factor in order to obtain a reward. Examples include programs that reward those who achieve a health-related goal (such as a specified cholesterol level, weight, or body mass index), as well as those who fail to meet such goals but take certain other healthy actions. Health-contingent wellness programs must meet special requirements to comply with HIPAA.

In contrast, a participatory wellness program does not include any conditions for obtaining a reward that are based on an individual satisfying a standard related to a health factor--for example, programs that reimburse the cost of a fitness membership or that reward employees for participating in a smoking cessation program (without regard to whether the employee quits smoking). Participatory wellness programs generally do not violate HIPAA if they are made available to all similarly situated individuals.

Keep in mind that wellness programs may be subject to additional requirements under federal and state laws, including nondiscrimination laws other than HIPAA. Be sure to check with a knowledgeable attorney to ensure full compliance. You can access valuable information, guidelines and resources for planning a healthier workplace in our section on Health and Wellness.

Marshall & Sterling Insurance will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.

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