Benefits BULLETIN

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Agencies Prohibit All Employer Reimbursement of Individual Premiums

Due to the rising costs of providing group health insurance, some employers have considered helping employees pay for individual health coverage instead of offering an employer-sponsored group plan. However, these employer reimbursement arrangements do not comply with Affordable Care Act (ACA) requirements.

On Nov. 6, 2014, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury issued FAQs clarifying that all individual premium reimbursement arrangements are prohibited. Despite the previously widespread understanding that only pre-tax reimbursement arrangements are prohibited, the clarification includes pre-tax and post-tax premium reimbursements and cash compensation for individual premiums.

An employer arrangement that provides cash reimbursement for an individual market policy is considered to be part of a plan, fund or other arrangement established or maintained for the purpose of providing medical care to employees, without regard to whether the employer treats the money as pre-tax or post-tax for the employee. Therefore, the arrangement is group health plan coverage subject to the ACA's market reform provisions.

In addition, the Nov. 6 FAQs clarify that an employer cannot offer a choice between enrollment in the standard group health plan or cash only to employees with a high claims risk. This practice constitutes unlawful discrimination based on one or more health factors, which violates federal nondiscrimination laws.

Violation of this guidance by offering prohibited individual premium reimbursement arrangements to employees may trigger penalties. Under Code Section 4980D, an employer could be fined an excise tax of $100 per day for each applicable employee ($36,500 per year per employee).

HPID Requirement Delayed Indefinitely

The Health Plan Identifier (HPID) is a standard, unique health plan identifier required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The initial deadline for health plans to obtain an HPID was Nov. 5, 2014.

On Oct. 31, 2014, the Centers for Medicare and Medicaid Services (CMS) announced that enforcement of the HPID requirement is delayed until further notice. This delay applies to:

- The requirement that health plans obtain an HPID; and
- The use of the HPID in HIPAA standard transactions.

This enforcement delay means that health plan sponsors who are subject to the HPID requirement and have not yet received their HPIDs can delay obtaining them.

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HPID Delay, Cont.

This enforcement delay applies to all HIPAA-covered entities, including health care providers, health plans and health care clearinghouses.

The statement from the CMS Office of e-Health Standards and Services (OESS), which is responsible for enforcement of compliance with the HIPAA standard transactions, code sets, unique identifiers and operating rules, explained that the delay was prompted by a recommendation of the National Committee on Vital and Health Statistics (NCVHS), an advisory body to the Department of Health and Human Services (HHS).

On Sept. 23, 2014, the NCVHS recommended that HHS provide in rulemaking that all covered entities (health plans, health care providers and clearinghouses, and their business associates) not use the HPID in HIPAA transactions. The NCVHS instead recommends that the standardized national payer identifier based on the National Association of Insurance Commissioners (NAIC) identifier continue to be used.

Minimum Wage Increases Overview

Most employers in the United States are subject to the minimum wage provisions of the Federal Labor Standards Act (FLSA). These employers are required to pay their employees the current federal minimum wage rate of at least $7.25 per hour. Federal service contractors are subject to a new minimum wage of $10.10 per hour, which was enacted through an executive order signed by President Obama on Feb. 12, 2014.

Additionally, proponents of an increased minimum wage are pushing for the federal minimum wage to be raised to $10.10. Although this has not been enacted at the federal level, states can have their own minimum wages that are different than the federal one, and state wage increases have recently passed in various states.

Some states have adopted minimum wage rates that are higher than the federal rate. When state rates and the federal rate are different, employers must pay their employees the higher rate. As of Jan. 1, 2015, 29 states and the District of Columbia will have minimum wages that are higher than the federal minimum wage. Twenty-one states will see increases to their current minimum wages on Jan. 1. Additional increases to state minimum wages are expected in the District of Columbia, Delaware and Minnesota for the summer of 2015.

Proponents of a higher minimum wage assert that benefits of higher wages will include decreasing employee turnover rates, increasing morale, helping minimum-wage full-time workers stay above the poverty line and helping the economy because workers have more money to spend.

Opponents of a higher minimum wage argue that negative results will include inadvertently limiting job growth, jeopardizing small businesses, increasing unemployment and increasing price of goods and services to accommodate higher labor costs.

Regardless of the anticipated effect of higher minimum wages, employers should be prepared for possible wage changes at either the state or federal level. Although not all states have increased minimum wages, this is a trend that employers should watch carefully in all states. Employers should periodically review employee wage rates and workplace required postings to ensure compliance with state and federal law.

Overview of Trends from the 2014 Wellness Benefits Survey

The 2014 Wellness Benefits Survey reveals that a majority of employers that are offering health benefits to their employees also either offer or are considering offering a wellness program or perk in order to improve employee health.

The number of employers offering a wellness program has remained largely the same for the last several years, although the number of employers considering a wellness program has seen about a 10-point drop from where it has been for the last several years. This coincides with a slight decrease in the number of employers who report improved employee health as a result of wellness initiatives, which dropped from 75 percent in 2012 and 72 percent in 2013 to 68 percent in 2014.

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However, the wide variety of wellness programs that are offered may help explain the differences in whether wellness programs seem to effectively help lower health care costs. The most popular type of program, offered by 64 percent of survey respondents, are health risk assessments, followed closely by health/wellness newsletters, which are provided by 57 percent of employers. More active wellness programs, such as wellness competitions, smoking cessation programs and nutritional counseling are among the programs that are offered by less than half of employers.

The primary motive for implementing a workplace wellness program is to reduce health care costs. Likewise, increasing employee productivity is a factor in implementing a wellness program for many employers. Improving employee morale, improving company culture and responding to employee interest are other common reasons employers report for choosing to implement a wellness program.

Offering incentives often increases employee participation in wellness programs, and 71 percent of employers offer a participation incentive, an increase of 18 percentage points from the last two years. The most common incentives include gifts, gift cards, smaller employee-paid premiums and cash prizes.

For a copy of the 2014 Wellness Benefits Survey or for help implementing your own wellness program, contact Brown & Brown Benefit Advisors

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