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2012 Health Care Reform Compliance Checklist

Health care reform continues to bring changes for employers and health plans. Here's what employers need to know for 2012.

- Determine whether you have a **grandfathered plan**, and whether your plan will maintain that status in 2012. If you make certain plan changes, the plan is no longer grandfathered. If you have a **non-grandfathered plan**, it must comply with various health care reform provisions.
- The deadline to provide a **Summary of Benefits and Coverage (SBC)** was extended until final regulations are issued.

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Misclassify Workers at Your Own Risk

Employee or independent contractor? The answer has serious implications on your tax and benefit obligations, and you are also liable for significant financial penalties if you misclassify your workers.

Classifying a worker as an independent contractor is often financially advantageous for a company, as the company is not responsible for paying various payroll taxes or providing benefits. However, the risk of misclassifying a worker is significant, so it is important that companies exercise due diligence in ensuring proper worker classification.

Because it can be difficult to differentiate between employee and independent contractor, the IRS created three criteria to help employers make the distinction:

- **Behavioral control:** If the company trains the employee, specifies the hours of work, tools to be used, specific tasks to be performed, and how the worker goes about the job, the worker is likely an employee.

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2012 Health Care Reform Compliance Checklist, cont.

The former proposed deadline was March 23, 2012. It is unknown when final regulations will be issued.

- Once the SBC requirement becomes effective, plans must provide **60 days' notice of any material modifications** to the plan that are not related to renewals of coverage.
- For non-grandfathered plans starting on or after **Aug. 1, 2012**, certain women's preventive health services must be covered with no cost sharing.
- Fully insured plans may receive **rebates in August 2012** if they qualify for one under the new medical loss ratio rules. The rebates must be used for the benefit of plan members, which may include reducing enrollees' premium payments.
- Beginning with the **2012 tax year**, employers who issue 250 or more W-2 Forms must report the **aggregate cost of employer-sponsored group health coverage** on employees' W-2 Forms. The cost must be reported beginning with the 2012 W-2 Forms, which are issued January 2013. The requirement is **optional for smaller employers** until further guidance is issued.
- If your state previously required you to **impute income** for covering **dependents up to age 26**, check for changes to your state's tax code. All states should now conform to federal tax law, which permits this coverage to be provided tax-free.
- Self-funded plans must pay a **\$1 per covered life fee** for comparative effectiveness research. Fees are effective for the first renewal after **Oct. 1, 2012**.
- Small employers that qualify for the tax credit provided by health care reform can claim it by **filing Form 8941** with their annual tax filings. Employers with fewer than **25 employees** and who pay average **annual wages of less than \$50,000** generally qualify.

Misclassify Workers at Your Own Risk, cont.

- **Financial control:** If the worker is paid a salary and restricted from working for others, he or she is likely an employee.
- **Relationship:** This may include whether a contract exists between the worker and company, and whether the worker gets benefits and specified time off. A contract typically suggests an independent contractor, while benefits and time off are generally given only to employees.

Beyond employee and independent contractor, there are two more classifications:

- **Statutory employee:** Workers classified as an employee for certain tax purposes, including certain distribution and delivery drivers, full-time life insurance or annuity agents, individuals who work at home using your materials and specifications, and full-time traveling salespeople.
- **Statutory non-employee:** Workers treated as self-employed for federal tax purposes, generally including direct sellers and real estate agents.

If employers are unsure about the classification of a worker, they can file a Form SS-8 with the IRS, and the IRS will determine the worker's status:

www.irs.gov/pub/irs-pdf/fss8.pdf.

In addition, the IRS recently announced a new Voluntary Classification Settlement Program. The program gives employers the opportunity to reclassify workers who may have been misclassified in the past, rather than risk an IRS audit. Employers would be subject to a minimal payment covering past payroll tax obligations, avoiding much higher fees and penalties in the event of an audit. More information can be found here:

www.irs.gov/newsroom/article/0,,id=246203,00.html.

Low-Cost Wellness Strategies

Are you sold on the benefits of wellness, but having trouble fitting it into your budget? There are plenty of low-cost wellness strategies and ideas that can help improve the health of your workforce.

Nutrition

- Provide healthy eating reminders and education using posters, email, payroll stuffers, etc.
- Offer healthy food and beverages in vending machines, office meetings and parties, cafeteria, etc.
- Make kitchen equipment available to employees.
- Provide an on-site garden, if possible.

Physical Activity

- Host walk-and-talk meetings.
- Offer flexible work hours to allow for exercise during the day.
- Offer on-site fitness opportunities, such as classes, walking trails, exercise equipment, etc. Provide changing and showering facilities, if possible.
- Provide motivational and educational signs, newsletters, flyers and emails.
- Start employee walking clubs, fitness challenges, sports teams or other groups.
- Offer safely and conveniently located bicycle racks.

General Health

- Develop policies that support wellness initiatives, such as prohibiting tobacco use on company property.
- Promote and encourage employee participation in wellness activities.
- Host an annual health fair.
- Provide regular health and wellness education for employees, in the form of flyers, emails, posters, presentations, seminars, etc.

- Make your health plan more wellness-oriented, such as providing weight management counseling, tobacco cessation treatment and other wellness services at no cost.
- Encourage employees to get recommended preventive screenings and immunizations, and emphasize that they are cost-free under your plan.

Advantages of Benchmarking Your Benefits Program

An attractive benefits program is vital for your recruiting and retention efforts, but is also a significant expense. How do you ensure you are providing a cost-conscious package that is still competitive in your industry?

Benchmark data allows you to compare your offerings with others in your region or industry, providing valuable insight for evaluating your benefits package. Analyzing how other companies structure their plans and what they do to cut costs arms you with vital information when making your own benefit plan decisions.

You can find information for almost any aspect of a benefits program, including total costs, cost-sharing measures, plan design, voluntary offerings, workers' compensation, paid leave and more.

In light of health care reform, benchmark data is even more advantageous. As you make decisions regarding new provisions or requirements, would you find it valuable to know how other employers are handling the issue?

Brown & Brown Benefit Advisors can provide an array of benchmark data to help you evaluate your benefits plan and make informed decisions.

The information contained in this newsletter is not intended as legal or medical advice. Please consult a professional for more information.
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