Compliance Corner Webinar:

LIVE FROM NAHU! | Compliance Update – New and Ongoing Concerns

June 21, 2018

Q: Regarding the 226J letter, I would like to know how legit it is to claim that no penalties can be enforced since the employer did not receive the Section 1411 notification from the state exchange?
A: This is an area for the courts to decide. The arguments seem pretty well-reasoned but, better to follow the law and get a pleasant surprise down the road if the case is won.

Q: Do employers with fewer than 50 EEs need to do 1095 forms?
A: Generally, no. They do have to do so if the plan is self-insured.

Q: Is the Cadillac tax applicable to all sizes of employers
A: Yes.

Q: What is PCORI?
A: The Patient-Centered Outcomes Research Institute fee was part of the ACA. https://www.irs.gov/newsroom/patient-centered-outcomes-research-institute-fee -- information on the fee

Q: What size group did that apply to, regarding QSEHRAS?
A: The restrictions on QSEHRAs are many and complicated. But, generally speaking an employer must have fewer than 50 employees. We have archived webinars that go into detail on QSEHRAs.

Q: Can we send in the Part D notice earlier than Oct 15...example at renewal?
A: Yes and no. This is from the Model Notice:

> NOTE: You'll get this notice each year. You will also get it before the next period you can join a Medicare drug plan, and if this coverage through [Insert Name of Entity] changes. You also may request a copy of this notice at any time.

Q: Most insurance companies do not provide the current plan's credibility notice prior to 10/15, how do you address this?
A: An employer would have the notice from the prior year. If they make changes to their benefits they could inquire at that time. There is also a "simplified determination" see link below:
https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Downloads/CCSimplified091809.pdf

Q: QHESRA: can an employee use dollars towards both premium and out-of-pocket cost? I.e. if they get $3k and use $2k for premium and 1k for oops cost?
A: Yes, if the plan allows for it.

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Q: Can an employer pay the part B premium?
A: There is no simple answer to this question.
This is an answer from our Medicare and group plans archived webinar:

> Q: Danielle noted that an employer could reimburse Medigap, Part B and D premiums for an employee over 65. In an under 20 employee setting. She said under certain circumstances. Where can I determine what they are. I have a group with one over 65 employee that we would like to reimburse.
>
> A: Unless the employer payment plan is integrated with a group health plan, reimbursing Medicare Part B or Part D premiums will result in a non-compliant group health plan, subject to $100 per employee per day penalties. The following criteria must be met for an employer payment reimbursement program to be integrated with a group health plan:
> - The employer must offer a group health plan to all employees that offers minimum value, even if Medicare-eligible employees decline the plan;
> - The employee who receives premium payment must be enrolled in Medicare Parts A and B;
> - The program must provide that premium payments are only available to employees who are enrolled in Medicare Part A, and either Part B or D; and
> - Premium payment or reimbursement may be only for Medicare Part B or D premiums and excepted benefits, including Medigap premiums

Q: Will there be any information on employers offering wellness incentives in regards to AARP v EEOC wellness program case? Do these need to stop by 1-1-19 regardless of renewal?
A: Wellness plans are confusing because of court actions and regulatory uncertainty. Legal or vendor guidance is recommended due to the uncertainties. The court case does affect penalties.
https://www.benefitspro.com/2018/06/28/the-eeoc-isnt-taking-action-on-wellness-regulation/ -- good article on the topic.

Q: Any guidance on new disability claims procedures and when documents need to be updated by?
A: Generally speaking, these rules will be met by the disability insurers. Otherwise, legal guidance is recommended.

Q: What's happening with the definition of Full Time employee going back to 40 hours/week?
A: This is bipartisan, H.R.3798 and S. 1782, awaiting action in Congress.

Q: Do level funded groups with fewer than 100 enrolled require a 5500?
A: It depends on the contract. Because the carrier collects the level funded amount, it could be considered that this is a funded plan.

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Q: What privacy disclosure/documentation is currently required for distribution with enrollment materials for a partially self-funded medical plan?

A: Assuming that this is an agent working with an HR office, here are the following documents that they need to have in place from a HIPAA standpoint. There will be additional documentation from an ERISA standpoint, but they will need to consult with an expert on ERISA for that information.

1. Business Associate Agreement (BAA)
2. A Notice of Privacy Practices (NPP) Annually, or when coverage changes. The agent only needs to send to the HR office. The HR office is responsible for sending out their own NPP annually, or anytime there is a change in coverage, to individuals. (Hat tip to Jason Karn, Chief Compliance Officer at TotalHIPAA)

Q: Can you address MEC / skinny plans - there seems to be growth with these plans. Are they compliant?

A: Skinny plans meet only the requirement for an employer to offer minimum essential coverage. As a result, an employer may face penalties for employees since the plan does not meet minimum value.

Q: What are considered employer inducements under Medicare?

A: Here is what CMS says on the topic:

> Employers must adhere to the following general guidelines regarding Working Aged GHP coverage that is primary to Medicare. An employer of an actively working Medicare beneficiary or his/her spouse may not refuse to cover, offer different coverage, nor restrict coverage to a Medicare beneficiary because an actively working employee or his/her spouse is on Medicare. An actively working Medicare beneficiary or his/her spouse does have the right to decline GHP coverage that would otherwise be primary to Medicare. However, if the GHP coverage is declined, the employer is prohibited from offering coverage that is secondary to Medicare or sponsoring, contributing to or having any involvement with an individual Medigap policy or Medicare supplement policy for that Medicare beneficiary.
> Source: https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Medicare-Secondary-Payer/Downloads/MSP-Working-Aged.pdf

Q: If an employee is turning 65 and asks their employer to reimburse them for the cost of the Medicare but the employer did not initiate or incent the employee?

A: No. It is still considered an inducement.

Q: What size employer would you recommend setting up Summary Plan Document? Even someone with only 1 employee?

A: All group health plans are required to have this document. We have archived Compliance Corner webinars that address this topic.

Q: QSEHRA ... BeneFLEX writes QSEHRA's ... yes, they can use funds for premium &/or 213d expenses; IF . it's in the plan document & offered to all EEs the same.
A: Yes.

Q: What is the penalty if you do not have a Summary Plan Document?
A: The employer may face a penalty of up to $147/day.

Q: This question relates to the new DOL Final AHP Regulations. California has already announced that they will not allow self-insured MEWAs in their state. Does this mean no self-insured MEWAs situs in CA, or does it mean that self-insured MEWAs that are situs in other states cannot operate in CA?
A: It may depend on how the CA regulations are written. Everyone is still sifting through these rules and how states are responding. Our August Compliance Corner webinar will provide more information on AHPs.

Q: Can you give an update regarding the HSA bills that are in Congress? Specifically interested in expanded use of HSAs and exceptions for telemedicine and on-site clinics.
A: These bills are being heard in committee.

Q: What is happening in this healthcare associations and plans how will this work?
A: Tune in to our August Compliance Corner webinar or check out the podcast where Janet Trautwein discusses AHPs.

Q: Is there a list for all the acronyms in the PPACA?
A: Here is one that an internet search turned up https://www.peoplekeep.com/blog/bid/309256/55-Health-Care-Reform-Acronyms

Q: This question relates to slide 51. When will Schedule J be required to be added to Form 5500? Does this new requirement start in 2019?
A: The effective date in the proposed rule is January 2019.

Q: What was the change you mentioned in regards to the AHP Final Rule? Does the Association have to have another reason for forming other than health insurance? It was my understanding that a state association could form on the bases that the employer resides in the state, but not necessarily in same industry.
A: Your understanding is largely correct. But, the change is that the association must have one "substantial business purpose" other than health benefits.