HEALTH & WELFARE PLAN LUNCH GROUP

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Health Benefits Year in Review

December 2019

Disclaimers

- There is no attorney/client privilege. Accordingly, please only ask general questions and do not provide sensitive information.
- We are not providing individualized advice or general solutions. Your situation may vary. Be sure to consult with your advisors.

Agenda

- HRA Final Rule and Follow-up Guidance on Pay or Play, and Non-Discrimination Requirements
- Extensive Proposed Regulation on Health Plan Transparency
- June 24th Presidential Executive Order
- HSAs and Preventive Care
- Agencies Obtain Criminal Conviction in Double Dip Tax Scheme
- Invalidated DOL Fiduciary Rule Still on DOL Business Plan
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- IRS Delays Some ACA Reporting
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HRA Final Rule and Follow-up Guidance on Pay or Play and Non-Discrimination Requirements

The agencies finalized regulations governing individual coverage health reimbursement arrangements (ICHRAs) and excepted benefits health reimbursement arrangements (EBHRAs). If certain requirements are satisfied, an employer may establish an HRA to pay employees' premiums for individual market coverage (other than excepted benefit or short-term coverage) and other unreimbursed medical expenses

ICHRAs

- Considered minimum essential coverage.
- Among other requirements, employers may not offer a traditional group health plan and an ICHRA to the same class of employees.

EBHRAs

- May be established without integration
- Must satisfy four requirements, the:
  - Maximum annual contribution is $1,800;
  - Employee must also be offered traditional health insurance from the same employer;
  - Employee cannot also be offered a premium reimbursement HRA; and
  - Terms and conditions must be the same for all "similarly situated" classes of employees.

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Extensive Proposed Regulation on Health Plan Transparency

Recently introduced proposed regulations would impose significant new transparency requirements on group health plans (other than account based plans). The deadline for comments is January 27, 2020. The proposal would take effect one year after finalization (i.e., likely some time in 2021).

Health plans would be required to provide the following to consumers:

- Estimated cost-sharing liability
- Accumulated cost share amounts
- Out-of-network allowed amount
- Items and services content list
- Notice of prerequisites to coverage
- A “disclosure notice”

Health Plans would be required to make such information available in two ways:

- Through an Internet-based “self-service tool”; and
- In paper form by mail upon a consumer’s request

Health plans would also be required to publicize in-network provider negotiated rates and data outlining the historically allowed amounts for covered items or services provided by out-of-network providers.

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June 24th Presidential Executive Order

President Trump issued an Executive Order on June 24th that required Treasury to address three issues:

- Patient ability to select high-deductible health plans that can be used alongside a health savings account, and that cover low-cost preventive care, before the deductible, for medical care that helps maintain health status for individuals with chronic conditions.
- The inclusion of expenses related to certain types of arrangements, potentially including direct primary care arrangements and healthcare sharing ministries, as eligible medical expenses under IRC 213(d).
- Guidance to increase the amount of funds that can carry over without penalty at the end of the year for flexible spending arrangements.

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HSAs and Preventive Care

On July 17, 2019, the IRS issued new guidance (IRS Notice 2019-45) that is intended to make health savings accounts (HSAs) more user-friendly by allowing a high deductible health plan (HDHP) to cover certain treatments for chronic conditions before the plan's deductible is satisfied.

IRS Notice 2019-45

- Clarifies the scope of preventive services that may be provided under an HDHP for persons with chronic conditions.
- Employers offering (or considering to offer) HDHPs/HSAs should review their plans with new guidance in mind and consult advisors as to design changes.
- Notice projects future guidance on a 5 to 10-year timeframe.

Agencies Obtain Criminal Conviction in Double Dip Tax Scheme

Recent federal-state criminal enforcement action demonstrates continued commitment by the DOL and other federal agencies to combat fraudulent tax avoidance schemes involving health benefit arrangements.

DOL publicized recent case involving a version of the classic "double dip" consisting of two basic steps:

- employees pay for their portion of the cost of an otherwise excludable employer health plan through pre-tax salary reduction; and
- employees are paid a portion of their salary reduction contribution purportedly on a tax-free basis, to bring their take-home pay back up to the pre-salary reduction level.

Penalties on underpayments may be waived by the IRS for employers and employees who were not aware the arrangement was fraudulent, but the amount of unpaid taxes (plus interest) can still be collected.

As regulators continue to pursue these unlawful arrangements, employers need to be sure they are dealing with a legitimate plan in order to avoid unexpected tax liabilities for themselves and their employees.

Invalidated DOL Fiduciary Rule Still on DOL Business Plan

The DOL's far-reaching investment fiduciary rule would have imposed significant new disclosure and approval burdens on entities receiving investment-related compensation from covered plans.

But….the Fifth Circuit declared the rule invalid, and the DOL quickly issued a non-enforcement bulletin.

- While an updated fiduciary rule has been on the DOL Business Plan, nothing has been released yet.
- Brokers, under SEC rules, may be impacted by a similar regulatory regime finalized by the SEC.

DOL Electronic Disclosure Rule

DOL introduced a revamped electronic disclosure rule under ERISA.

- New rule significantly pushes the electronic communication ball forward for retirement plans.
- It is not applicable to health and welfare plans (including FSAs and HRAs).
- We expect similar changes coming down the pike for health and welfare plans (perhaps in 2020).

IRS Delays Some ACA Reporting

The IRS has issued some ACA Form 1095 reporting relief for certain ACA reporting requirements.

In Notice 2019-63, the IRS:

- Delayed the due date to furnish 2019 form 1095s to recipients until March 2, 2020.
- Provided that no penalties will be assessed for failing to furnish a 1095-B or a 1095-C (regarding only individuals covered under a self-insured plan that are not full-time) to recipients so long as:
  - Prominent notice is placed on website that a copy may be requested; and
  - Notice is provided within 30 days of request

NOTE: These provisions do NOT extend to forms required to be filed with the IRS.

- Good faith relief extended to 2019 forms.

State Law Potpourri

Following the elimination of the individual mandate, several states passed individual mandate laws that also require reporting by coverage providers, including employers who sponsor group health plans.

To date, the following states have passed such laws:

- New Jersey,
- Washington D.C.,
- Vermont,
- Rhode Island, and
- California.

New Jersey and D.C.'s laws are effective in 2019, which means reporting will be due in 2020. The others become effective in 2020 with reporting to commence in 2021 (for 2020). Insurers and plan sponsors that cover residents in these states should ensure compliance with these requirements.

2020 Cost-of-living Adjustments for Popular Benefits

BENEFIT	2020	2019
HSA contribution max (including employee and employer contributions)	$3,550 ($7,100 family)	$3,500 ($7,000 family)
HSA additional catch-up contributions	$1,000 (this is not indexed)	Same
HDHP annual deductible minimum	$1,400 ($2,800 family)	$1,350 ($2,700 family)
Limit on HDHP OOP expenses	$6,900 ($13,800 family)	$6,750 ($13,500 family)
Health FSA salary reduction max	$2,750	$2,700
QSEHRA max reimbursement	$5,250 ($10,600 family)	$5,150 ($10,450 family)
Transit and parking benefits	$270	$265
401(k) employee elective deferral max	$19,500 (Catch-up contributions $6,500)	$19,000 (Catch-up limit unchanged)
Highly compensated employee	$130,000 (applies for 2021 plan year under look-back rule)	$125,000 (applies for 2020 plan year under look-back rule)
Key employee	$185,000	$180,000

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