



Compliance Corner

February 7, 2017

Health Care Reform

CMS Updates Consumer Guide on Special Enrollment Periods

On Jan. 17, 2017, CMS released an updated consumer guide on special enrollment periods (SEPs). SEPs allow individuals to enroll in coverage through the exchange when they experience certain mid-year life changes (outside of the annual enrollment period), such as marriage or birth/adoption of a child.

As background, to help consumers better understand which SEPs are available to eligible individuals, CMS has provided this recently updated outreach tool. It includes basic information on SEP eligibility and availability.

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Federal Health Updates

Executive Action Restricts Future Regulations

On Jan. 20, 2017, White House Chief of Staff Reince Priebus issued a memorandum to federal agencies outlining Pres. Trump's regulatory process. Under the memorandum, any new regulations must be reviewed and approved by a department or agency head appointed or designated by the President. Any regulations sent to the Office of Federal Register, but not yet published, must be withdrawn for review and approval. For any regulations that have been published, but have not yet become effective, the effective date is

Announcements

New Podcast Series!

Introducing the *Compliance Corner* podcast! This biweekly audio series will deliver our thoughts on emerging policies, the latest coming out of Washington, industry trends and more. Check out this week's episode with NFP's Suzanne Spradley and Chase Cannon.

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February Webinar Series, Register Now

NFP Benefits Compliance is hosting a series of webinars in February. Training dates are Feb. 8, Feb. 15 and Feb. 22, 2017, at 3:00 pm ET, with the respective topics being: "Top 10 Commonly Asked Questions: What Are We Asked the Most?," "Leaves of Absence: Benefits and HR Considerations," and "What's New: What Changes Are in Store Following November's Election?"

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temporarily postponed for 60 days from the date of the memo. There are limited exceptions for emergency situations or other urgent circumstances related to health, safety, financial, or national security matters.

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IRS Releases Chief Counsel Memo on Tax Treatment of Fixed Indemnity Health Plan Benefits

On Jan. 20, 2017, the Office of Chief Counsel for the IRS released a memorandum regarding the tax treatment of benefits paid by fixed-indemnity plans. As background, fixed-indemnity health plans typically pay a set dollar amount for certain health-related occurrences such as office visits, days in the hospital, and certain diagnoses (such as cancer or other specific illnesses). However, the set dollar amounts paid are generally considered disconnected from permissible IRC Section 213(d) medical expenses incurred by the employee, so taxation of these fixed benefits has always been the subject of controversy.

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Seventh Circuit Dismisses Wellness Plan Case

On Jan. 25, 2017, the U.S. Court of Appeals for the Seventh Circuit dismissed the EEOC's appeal in *EEOC v. Flambeau Inc.*, 2017 WL 359664 (7th Cir. 2017), but interestingly, did not do so on the merits of the case. As background, the EEOC sued Flambeau, Inc. on behalf of an employee whose health coverage was terminated for failure to complete a health risk assessment. While the ADA generally prohibits employers from requiring medical examinations (which would include a health risk assessment), the trial court held for Flambeau, deciding that the examination could be a condition of health plan enrollment under the ADA's bona fide benefit plan safe harbor. The EEOC disagreed with the result and appealed to the Seventh Circuit arguing that the safe harbor should not be applicable to wellness programs.

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IRS Publishes Proposed Regulations on the Definition of "Dependent"

Reminder: Upcoming Reporting Deadlines

Form W-2 Cost of Coverage Reporting

Large employers must report the cost of group health coverage provided to employees on the Form W-2. The requirement applies to employers that filed 250 or more Forms W-2 in 2015. Employer aggregation rules do not apply for this purpose. In other words, the number of Forms W-2 is calculated separately without consideration of controlled groups. Indian tribes, self-funded church plans and employers contributing to a multiemployer plan are exempt from the Form W-2 reporting requirement.

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Sections 6055/6056 Reporting Training Modules Updated

The Benefits Compliance team has recently updated training modules on IRC Sections 6055/6056 reporting. As you may recall, we developed four new training modules last year to help employers as they complete filings of Forms 1094-B, 1095-B, 1094-C and 1095-C. These have now been updated to account for 2016 changes. The introductory module is a 6 minute recorded presentation that includes basic information to help an employer determine which forms need to be completed. The other three modules are self-directed and provide line-by-line instructions and tips for completing the forms.

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On Jan. 19, 2017, the IRS published proposed regulations on the definition of “dependent” as that term is used in IRC Section 152. The proposed regulations are meant to formalize several changes made by prior law, including the Working Families Tax Relief Act of 2004 and the Fostering Connections to Success and Increasing Adoptions Act of 2008. Those prior pieces of legislation amended the IRC for purposes of claiming dependent status and federal income taxation by adding the terms “qualifying child” and “qualifying relative.” The proposed regulations update existing regulations to reflect those changes and other related guidance previously published by the IRS.

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Retirement Updates

Pres. Trump Seeks Additional Analysis of DOL’s Conflict of Interest Rule

On Feb. 3, 2017, Pres. Trump published a memorandum to the DOL, instructing the DOL to analyze the Conflict of Interest Rule (the Rule) and its impact on American investors. The Rule, which is set to take effect on April 10, 2017, expands ERISA’s definition of “fiduciary” by identifying additional forms of communication that would constitute investment advice and would deem the giver of such advice a fiduciary under ERISA.

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IRS Releases Updated Publication 560 for Retirement Plans for Small Business

On Jan. 26, 2017, the IRS released the 2016 version of Publication 560, *Retirement Plans for Small Business*. This publication discusses retirement plans that small business owners can establish for themselves and their employees. The publication specifically addresses Simplified Employee Pensions (SEPs), SIMPLE Plans, and Qualified Plans and the IRC’s requirements for each.

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DOL Hosting Educational Seminars

On Feb. 15, 2017, the DOL is hosting a compliance assistance program entitled “Getting It Right – Know Your Fiduciary Responsibilities.” This seminar will take place in Phoenix, AZ, and is designed to increase awareness and understanding about basic fiduciary responsibilities when operating a retirement plan.

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State Updates

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FAQ

We contribute to a multiemployer plan for our unionized employees.. With respect to the employer mandate reporting, must we report on those union employees? If so, would their 1095-C be completed the same as for non-union employees?

[Read the Answer »](#)

Reference

Commonly Used Acronyms

[Glossary »](#)

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