Compliance Recap

March 2017

In March, the employee benefits world watched as the House Speaker unveiled a proposal to replace parts of the Patient Protection and Affordable Care Act (ACA) with the American Health Care Act (AHCA). The AHCA bill was withdrawn from consideration by the full House on March 24 because it appeared that there would not be enough votes to pass the AHCA.

On March 13, 2017, the U.S. Senate approved Seema Verma as the new administrator of the Centers for Medicare & Medicaid Services (CMS), which spends more than a $1 trillion annually on health care programs.

The IRS updated its Q&As to address whether family members of an employee who declines employer-sponsored coverage would be eligible for a premium tax credit for Marketplace coverage. The IRS updated its Publication 969 regarding health savings accounts and other tax-favored health plans. The IRS released its Information Letter regarding the treatment of cafeteria plan forfeitures. The Department of Labor (DOL) released an advisory opinion on whether an association's administrative services program was an ERISA employee welfare benefit plan or a multiple employer welfare arrangement (MEWA).

UBA Updates

UBA released one new resource in March:

- Important News Regarding the Employer-Tax Exclusion for Health Insurance

UBA updated existing guidance:

- Health Savings Accounts: What You Need to Know
- Option for Some to Renew Policies That Do Not Fully Meet ACA Standards
- SBC Template, and Required Addendums for Covered Entities Under ACA Section 1557 (previously called Final Summary of Benefits and Coverage Template and Update)
- Summary of Benefits and Coverage Frequently Asked Questions
- HRAs, HSAs, and Health FSAs – What's the Difference?

IRS Updates Guidance on Premium Tax Credit Eligibility When Employer-Sponsored Health Plan Coverage is Offered to an Employee's Spouse and Children

The IRS updated its Questions and Answers on the Premium Tax Credit. Specifically, Q&A 15 addresses a situation in which an employer offers minimum value, affordable coverage to an employee, the employee's spouse, and the employee's children. The plan only allows the spouse and dependent to enroll if the employee enrolls. The employee declines to enroll.

The IRS determined that all three family members are not eligible for a premium tax credit for Marketplace coverage because they could have enrolled in the employer-sponsored coverage through the employee's coverage and the coverage would have been minimum value and affordable.

IRS Updates Its Publication 969

The Internal Revenue Service (IRS) updated its Publication 969 Health Savings Accounts and Other Tax-Favored Health Plans for use in preparing 2016 tax returns. The publication describes HSAs, MSAs, FSAs, and HRAs, including eligibility requirements, contribution limits, and distribution information.

IRS Releases Information Letter

IRS released Information Letter Number 2016-0077, in which it explains how an employer may dispose of a flexible benefit plan's unused funds when an employer ceases business operations and terminates a plan and when a participant forfeits funds to an ongoing plan.

The plan documents will determine how an employer may dispose of unused funds when a cafeteria plan terminates. Unused funds will not revert to the U.S. Treasury.

The IRS explained that the Internal Revenue Code (IRC) Section 125 rules apply to funds forfeited by a participant in an ongoing plan. Per IRC Section 125, the participants' forfeited funds may be:

- Retained by the employer maintaining the plan,
- Used to defray plan expenses, or
- Returned to current participants and allocated on a reasonable and uniform basis (but not based on claims experience).

Finally, the IRS explained that when an employee terminates employment, IRC Section 125 prohibits the plan from reimbursing health care expenses incurred after the employee terminates employment and no longer participates in the plan.

DOL Issues Advisory Opinion

On January 13, 2017, the Department of Labor (DOL) issued Advisory Opinion 2017-01A. The DOL determined that an association's administrative services program for its members' employee benefits plan is not an ERISA employee welfare benefit plan and not a multiple employer welfare arrangement (MEWA).

As background, the association is comprised of large employers that sponsor self-insured benefit plans through administrative services only (ASO) agreements with insurance companies. The association has a member-owned and member-funded cooperative that analyzes health care spending, utilization, and outcomes; however, the association does not and will not provide insurance services to its members;

determine benefit levels, administer plans, benefits, or claims; facilitate payment of ASO fees to insurers; or file or process claims.

The DOL determined that the program is not an ERISA employee welfare benefit plan because it has no employee participants and it does not offer or provide benefits to employees or their dependents.

The DOL determined that the program is not a MEWA because it is not an arrangement established or maintained to provide welfare benefits to employees of two or more employers. Further, the DOL determined that the program does not operate as a MEWA because no component of the program underwrites or guarantees welfare benefits, provides welfare benefits through group insurance contracts covering more than one employer, pools welfare benefit risk among participating employers, or provides similar insurance or risk spreading functions.

Question of the Month

Q. What obligations does an employer have when it receives returned Form 1095-Bs marked as undeliverable by the U.S. postal service?

A. Under IRS guidance, the employer fulfills its responsibility to furnish the statement to an individual if it mails the statement to the recipient's last known permanent address (unless the recipient affirmatively consented to receive the statement in electronic format).

Practically speaking, the employer should keep the mailing which shows that the employer sent the statement to the recipient's last known permanent address and that the statement was returned undeliverable. That way, the employer has proof that it mailed the statement to the recipient's last known permanent address.

4/5/2017