

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

PERSONAL INSURANCE

RISK MANAGEMENT

SURETY



PARKER | SMITH | FEEK

Q&A FROM ASSUREX GLOBAL WEBINAR

EMPLOYEE BENEFITS COMPLIANCE UPDATE

MAY 24, 2018

Q. Do the new independent contractor rules only apply to minimum wage and meal periods/breaks? Concerned about other employee benefits that may have to be offered.

A. The recent rulings in regard to status of an independent contractor in California were focused primarily on minimum wage, maximum hours, and working conditions requirements, but provides some additional insight into how a determination may be made between employee and independent contractor. It is certainly possible that an individual determined to be an employee (rather than an independent contractor) under such analysis would then be considered an employee for benefit offering purposes as well.

Q. By offering a fully insured MEC that is paid entirely by the employer, can groups avoid the B penalty (or reduce it significantly)?

A. Offering only a MEC plan (not a plan that provides minimum value), even if paid 100% by the employer, will not necessarily protect the employer from the (b) penalty. For any full-time employee who waives the MEC and enrolls in subsidized coverage through a public Exchange, the employer would owe a (b) penalty for failure to offer a minimum value (60% or better actuarial value) plan that was affordable.

Q. Can you please clarify how telemedicine disqualifies participants from participating in a HSA?

A. There isn't clear guidance on telemedicine and HSAs, so the following is the conservative approach... If the telemedicine services provide something beyond basic screening or preventive care, and the employee is not required to pay fair market value for the services (e.g. employer-paid, or discounted copay), then it could be a problem regarding HSA-eligibility because the individual is receiving medical coverage prior to meeting the statutory HDHP deductible (\$1350/\$2700 in 2018).

Q. What about Tribal Governments that do not recognize transgender, and/or are not applicable to Title 7?

A. If an employer is not subject to Section 1557 or Title 9 (or 7), it may not be necessary to worry about offering coverage for transgender services. We are not familiar enough with general employment laws to advise, so it would be worthwhile to discuss with employment law counsel to fully understand any coverage requirements or risks in excluding.

Q. What does "conservative" mean, when considering how to handle incentives for a wellness program that currently requires medical testing or disability-related questions since the EEOC incentive limits are not clear?

A. Choose either not to tie an incentive to medical testing or disability-related questions, or choose to minimize the amount of the incentive (perhaps something less than 30%) until we get further clarification and guidance on what is considered "voluntary".



Q. When will the reporting requirements end for 1095/1094's?

A. As of right now, there is no end date. So long as the employer mandate remains in effect, at least all applicable large employers will continue to be required to report. That being the case, there is certainly a possibility of the employer reporting requirements being simplified.

Q. Do you have any information on what the penalties are when PCORI Fees and Transitional Reinsurance Fees are not reported or paid?

A. PCORI rules do not contain a specific penalty for failure to report or pay the PCORI fee; however, since this fee is an excise tax (Form 720), any related penalty for failure to file a return or pay a tax would seem to apply. Code § 6651 includes the penalties for failure to file a return or pay taxes: (i) 5% of the excise tax due for each month the return is late, capped at 25% of the unpaid tax. However, the minimum penalty for failure to file within 60 days of its due date, including extensions, is the lesser of \$100 or the amount of tax owed with the return; and (ii) the penalty for failing to pay the excise tax on time equal to .5% of any tax not paid by the due date for each month the tax remains unpaid, up to 25% of the unpaid tax. Additionally, interest can be charged on unpaid excise taxes.

Reinsurance Fees - the penalty for failure to pay the reinsurance fees is subject to federal debt collection rules. Additionally, reinsurance fees are considered federal funds subject to the False Claims Act.

Q. I send clients a reminder to do the CMS reporting. Employers do not have to go online and fill that out any more? Did I hear that correctly?

A. Employers who offer prescription coverage are still required to report whether coverage is creditable or not each year to CMS, and also provide a creditable coverage disclosure to Medicare-eligible individuals. The only thing that has changed is that CMS is no longer sending out data match letters to employees for individuals who have made Medicare claims to determine whether or not Medicare or the employer's group health plan should have been the primary payer.

Q. Individual Mandate - Penalty goes to zero, beginning in 2019...Is this 2019 tax year?

A. Because the individual mandate is still in effect for 2018, individuals must have coverage during 2018 or pay a penalty when filing their personal tax return early in 2019 (for the 2018 calendar year). Beginning Jan 1, 2019, individuals will no longer be penalized for not having medical coverage.

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