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The Benefits Brief...

ACA Changes For Flexible Spending Accounts

The list of changes to flexible benefits that are rocketing toward us from the Affordable Care Act (ACA) could reach to the moon and back. This article covers just a few of those changes—changes that might have been overlooked, but are important to-do items to check off every employer's list.

Keeping Health FSAs as an Excepted Benefit

It used to be that assuring that a health flexible spending account (FSA) was classified as an excepted benefit was important for two primary reasons: so COBRA continuation was not offered when the account was "overspent" and to assure health FSA elections were not swept into the W-2 reporting requirements. In order for FSA plans to also be compliant with the new ACA requirements, they must meet the HIPAA excepted benefit rules beginning on January 1, 2014.

Generally, this means that only individuals eligible for employer-provided major medical coverage can be offered a health FSA. Employers who want to continue to offer cafeteria plans that contain health FSAs must have an underlying ACA.

In addition, a health FSA is considered an excepted benefit only if it limits the maximum payable to two times a participant's salary reduction or, if greater, a participant's salary reduction plus \$500. If a health FSA fails either of these conditions, it is subject to

ACA's market reforms, i.e., no cost sharing for preventive services and no annual or lifetime limits. By definition, a health FSA will not meet these ACA requirements.

In more understandable terms, all of the above means that employers can contribute to health FSAs, but can contribute no more than \$500 or, if more, a match of up to \$1 for every dollar elected by the participant.

Cafeteria Plans May No Longer Reimburse Individually Owned Insurance Policies

This may not be a big deal for most of your clients; however, for the few employers sponsoring cafeteria plans that allow for participants to pay their individually owned policy premiums with pre-tax dollars—the alert needs to be sounded.

I'll have more to say on the subject next month, but right now employers need to be aware that any reimbursement or payment of individual coverage inside or outside of an exchange cannot be made with untaxed dollars.

Amendment for Fiscal Year Cafeteria Plans

This may be one of the most misunderstood ACA provisions issued to date and applies only to employers with non-calendar year plans. Employees who wish to seek coverage on the exchange, but who would otherwise be prevented from doing so because their elections are generally

irrevocable for the plan year, can be allowed to make a change if their employer amends the company's plan to allow this additional change in status.

A couple of points to remember: Because of employer shared responsibility rules, the provision applies only to "applicable large" employers (i.e., at least 50 full-time employees, or full-time equivalents based on hours of service during the preceding calendar year). However, many industry experts believe that small employers may get relief and be allowed the same treatment.

This is also only applicable to cafeteria plans that began in 2013 and that run benefits on a fiscal plan year rather than a calendar year.

While the guidance came out before the delay (until 2015) of the "employer mandate" of shared responsibility or play or pay, it allows employers to amend their plans and allows employees who enroll for

exchange coverage to drop their employer coverage—essentially providing an additional qualified change in status reason.

Why would this be a critical amendment? ACA was written to assure that employees and individuals could purchase insurance coverage through state exchanges. Allowing employees to change cafeteria elections mid-year allows maximum flexibility for employees.

90-Day Waiting Period

Health plan years that start on or after January 1, 2014 may not contain a waiting period for entry into the plan that exceeds 90 days (60 days in California, plus other states may vary). In order for health FSAs to retain their status as an excepted benefit, they can only be made available to employees who are also eligible for underlying ACA-compliant health coverage. Thus, health FSAs must have waiting periods

that are no less than the underlying health coverage.

Therefore, the waiting period for the premium-only portion and the health FSA portion of employers' cafeteria plans should mirror the waiting periods for any underlying health insurance plans.

If a cafeteria plan document does not currently reflect these terms, a simple amendment to the cafeteria plan can be adopted and it must state that the eligibility and entry dates into the cafeteria plan are the same as the underlying health insurance plan. This ensures no disconnect if the waiting period changes in the health insurance plan. 🌐

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