Benefits BULLETIN

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IN THIS ISSUE 4th Quarter 2017

Medicare Part D Notices Due by Oct. 14, 2017

Each year, Medicare Part D requires group health plan sponsors to disclose to individuals eligible for Medicare Part D and to the Centers for Medicare and Medicaid Services (CMS) whether the health plan's prescription drug coverage is creditable. Plan sponsors must provide the annual disclosure notice to Medicare-eligible individuals before **Oct. 15, 2017**—the start date of the annual enrollment period for Medicare Part D. CMS has provided model disclosure notices for employers to use.

This notice is important because Medicare beneficiaries who are not covered by creditable prescription drug coverage and who choose not to enroll in Medicare Part D when first eligible will likely pay higher premiums if they enroll at a later date. Although there are no specific penalties associated with this notice requirement, failing to provide the notice may trigger adverse employee relations issues.

Employers should confirm whether their health plans' prescription drug coverage is creditable or non-creditable and prepare to send their Medicare Part D disclosure notices by Oct. 14, 2017. To make the process easier, employers who send out open enrollment packets prior to Oct. 15 often include the Medicare Part D notices in these packets.

Model Notices
CMS has provided two model notices for employers to use. One is a Model Creditable Coverage Disclosure Notice for when the health plan's prescription drug coverage is creditable and another for when it is not creditable.

Method of Delivering Notices
Plan sponsors have flexibility in how they must provide their creditable coverage disclosure notices. The disclosure notices can be provided separately, or if certain conditions are met, they can be provided with other plan participant materials, like annual open enrollment materials. The notices can also be sent electronically in some instances.

For more information on Medicare Part D notices, please contact your Touchstone Consulting Group representative.

New SBC Template Required for 2018 Open Enrollment

The updated template and related materials for the summary of benefits and coverage (SBC) are required for annual open enrollment periods beginning on or after April 1, 2017. For calendar year plans, this means that **the updated template must be used for the 2018 open enrollment period.**

Employers should do the following to prepare for the new SBC template and related materials for the 2018 open enrollment period.

- Self-funded plan sponsors should ensure that they are using the new template.
- Employers with insured plans should make sure the carrier is providing the correct version of the template.

Key Changes to the SBC Template and Instructions
The new template is five pages (two and one-half double-sided pages) long, which is shorter than the prior six-page version. The updated template and instructions also differ from the prior versions.

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New SBC Template

Here are some of the changes to the new SBC template and instructions:

- **Introduction**—The revised SBC contains a new introductory paragraph, which provides information about the purpose and structure of the SBC.
- **Important questions**—The "Important Questions" section was revised to include a question about services covered before the deductible is met.
- **Disclosures**—The SBC contains information regarding continuation coverage and grievance and appeal rights. These disclosures were revised in the updated template.
- **Coverage examples**—The updated template includes a new coverage example that addresses coverage for a foot fracture, to provide information about what a plan covers in an emergency scenario.
- **Instructions**—The instructions provide additional information regarding permissible font types and margin adjustments, and note that the SBC must not exceed four double-sided pages.

Contact Touchstone Consulting Group with any questions about preparing for your 2018 open enrollment period.

ACA Mandate Penalties Still Effective

The IRS Office of Chief Counsel has recently issued several information letters regarding the Affordable Care Act's (ACA) individual and employer mandate penalties. These letters clarify the following:

- Employer shared responsibility penalties continue to apply for applicable large employers (ALEs) that fail to offer acceptable health coverage to their full-time employees (and dependents).
- Individual mandate penalties continue to apply for individuals that do not obtain acceptable health coverage (if they do not qualify for an exemption).

These letters were issued in response to confusion over President Donald Trump's executive order directing federal agencies to provide relief from the burdens of the ACA.

According to these letters, the executive order does not change the law. The ACA's provisions are still effective until changed by Congress, **and taxpayers are still required to follow the law, including paying any applicable penalties.**

Background

The ACA's **employer shared responsibility rules** require ALEs to offer affordable, minimum value health coverage to their full-time employees or pay a penalty. These rules, also known as the "employer mandate" or "pay or play" rules, only apply to ALEs, which are employers with, on average, at least 50 full-time employees, including full-time equivalent employees, during the preceding calendar year. An ALE may be subject to a penalty only if one or more full-time employees obtain an Exchange subsidy (either because the ALE does not offer health coverage, or offers coverage that is unaffordable or does not provide minimum value).

The ACA's **individual mandate** requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. The individual mandate is enforced each year on individual federal tax returns. The IRS will then assess a penalty for each nonexempt family member who doesn't have coverage.

On Jan. 20, 2017, President Trump signed an executive order intended to "to minimize the unwarranted economic and regulatory burdens" of the ACA until the law can be repealed and eventually replaced. The executive order broadly directs the Department of Health and Human Services and other federal agencies to waive, delay or grant exemptions from ACA requirements that may impose a financial burden. However, the executive order does not include specific guidance regarding any particular ACA requirement or provision, and does not change any existing regulations.

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Court Orders EEOC to Reconsider Wellness Rules

The U.S. District Court for the District of Columbia has directed the Equal Employment Opportunity Commission (EEOC) to reconsider its final wellness rules under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA).

The final rules allow employers to offer wellness incentives of up to 30 percent of the cost of health plan coverage. The court held that the EEOC failed to provide a reasoned explanation for adopting the incentive limit. Rather than vacating the final rules, the court sent them back to the EEOC for reconsideration.

It is unclear how the EEOC will respond to the court's decision. Due to this new legal uncertainty, employers should carefully consider the level of incentives they use with their wellness programs. Employers should also monitor any developments related to the EEOC's rules.

Final Wellness Rules

Federal laws affect the design of wellness programs, including two laws that are enforced by the EEOC—the ADA and GINA.

- Under the ADA, an employer may make disability-related inquiries and require medical examinations after employment begins only if they are job-related and consistent with business necessity. However, these inquiries and exams are permitted if they are part of a voluntary wellness program.

- Under GINA, employers cannot request, require or purchase genetic information. This includes information about an employee's genetic tests, the genetic tests of family members, and the manifestation of a disease or disorder of a family member. Like the ADA, GINA includes an exception that permits employers to collect this information as part of a wellness program, as long as the provision of information is voluntary.

For many years, the EEOC did not definitively address whether incentives to participate in wellness programs are permissible under the ADA and, if so, in what amount. Earlier this year the EEOC issued long-awaited final rules, but the court has now remanded the final wellness rules back to the agency for reconsideration.

Touchstone Consulting Group will keep you updated with any developments on this matter. In the meantime, please contact your representative with any questions about how these rules may affect you.