Compliance Recap

March 2015

Coming off a busy February, regulatory agencies were noticeably quiet during the month of March. This allowed the Supreme Court to take the spotlight with oral arguments in the Patient Protection and Affordable Care Act (PPACA) related case, *King v. Burwell*. A clarifying FAQ was issued regarding cost-sharing limits for individuals, which was originally announced in February's Final Rule on standards for insurers and Marketplaces in 2016. A Final Rule announcing two pilot programs for employers to provide wraparound excepted benefits was also released. Both Congressional houses have been busy voting on a variety of topics, although nothing has made its way to the President for signature.

The Department of Labor (DOL) also issued an FAQ regarding the time frame during which it intends to finalize changes to regulations regarding summary of benefits and coverage (SBC) requirements. The FAQ confirmed it intends “to finalize changes to the regulations in the near future” which, according to the FAQ, were intended to apply in connection with coverage that would renew or begin on the first day of the first year that begins on or after January 1, 2016. The new SBCs will apply to coverage that would renew or begin on the first day of the first plan year (or, in the individual market, policy year) that begins on or after January 1, 2017 (including open season periods that occur in the fall of 2016 for coverage beginning on or after January 1, 2017).

In February the Department of Labor issued an updated definition of "spouse" under the Family and Medical Leave Act (FMLA) to make compliance easier, and defined "spouse" as a husband or wife, which refers to a person "with whom an individual entered into marriage as defined or recognized by state law." The governing state law is that of the celebration state or where the marriage took place. This definition was set to go into effect on March 27, 2015. A federal judge in Texas has issued a temporary injunction blocking the ruling from going into effect after the attorneys general in several states that do not recognize same-sex marriage challenged it. The final outcome of the injunction remains to be seen, and might be affected by an anticipated Supreme Court ruling in one of the same-sex marriage cases pending before it. In the meantime employers in all states should apply the old rule (that the law of the state in which the person lives determines whether FMLA must be granted to care for a same-sex spouse).

not be subject to penalties for 2014 or from January 1 through June 30 of 2015. The Notice also addressed reimbursement for Medicare premiums, TRICARE premiums, and premiums of 2-percent shareholders.

King v. Burwell

On March 4, 2015, the U.S. Supreme Court heard oral arguments in *King v. Burwell*, a case that centers on the meaning of statutory language regarding premium subsidies in the Patient Protection and Affordable Care Act (PPACA). This PPACA Advisor will give you an overview of the case and the arguments that were made before the Court. A ruling is anticipated from the Court in late May to early June 2015. As we await the decision, employees will still receive premium subsidies and employers should continue preparations to meet the employer-shared responsibility/play or pay requirements.

Read more about the oral arguments in King v. Burwell.

Cost-Sharing Limits for Individuals

In the Benefit and Payment Parameters for 2016 Final Rule issued in February 2015, federal agencies included a clarification that annual cost-sharing limitations for self-only coverage apply to all individuals, regardless of whether the individual is covered by a self-only plan or a non-self-only plan. After initial uncertainty over the information, which was not included in the Final Rule's regulatory language, a "Cost-Sharing FAQ" was issued confirming that the self-only limitation will apply to each individual, regardless of the type of plan the individual is enrolled in, beginning in 2016.

Read more about cost sharing limits for individuals, regardless of plan design.

Wraparound Excepted Benefits

Health plan sponsors would be permitted to offer wraparound coverage to employees purchasing individual health insurance in the private market, including the Marketplace, in limited circumstances, under a new Final Rule issued by the Department of Labor and other federal agencies. The Final Rule, published March 18, 2015, sets forth two narrow pilot programs for the limited wraparound coverage. One pilot program allows wraparound benefits only for multi-state plans (MSPs) in the Health Insurance Marketplace. The second pilot program allows wraparound benefits for part-time workers who enroll in an individual policy or in Basic Health Plan coverage for low-income individuals, which was established under the Patient Protection and Affordable Care Act (PPACA).

Read more about wraparound excepted benefits.

Question of the Month

Q. How should employers count the hours of substitute teachers?

A. Substitute teachers are a difficult kind of employee to track for purposes of play or pay. There are no special rules for counting the hours of substitute teachers. Generally speaking, employers should disregard the term of employment they anticipate a substitute teacher will have, and instead focus on how many hours per week they anticipate the substitute teacher will work.

If an employer anticipates a substitute teacher will work 30 hours or more a week by virtue of the position or based on the hours of the teacher they are substituting for, they should track their hours on a monthly basis and offer coverage no later than the first 90 days of employment.

If the employer anticipates a substitute teacher will work part-time, or is unsure of how many hours the substitute will work, they can use the variable hour look-back option. The employer will set an initial measurement period of three to 12 months, during which they track the employee's hours, but do not need to offer coverage. Following the initial measurement period, employers have an option to use an administrative period (of no more than 90 days), or they can move the employee straight into the stability period. The combined administrative period and initial measurement period cannot be longer than the last day of the first calendar month beginning on or after the first anniversary of the employee's start date, which in plain terms means the calculation period cannot be more than 13 months plus a fraction of a month.

The substitute teacher's status during the stability period as full or part time will be determined by the hours they worked in the measurement period.

3/31/2015