Acadia BENEFITS INC.

UBA ComplianceAdvisor

Compliance Recap

June 2017

June was an active month in the employee benefits world. The U.S. Senate released a draft of the Better Care Reconciliation Act of 2017 which would substitute the U.S. House Resolution 1628 that aimed to repeal and replace the Patient Protection and Affordable Care Act (ACA). The U.S. Supreme Court decided an ERISA church plan exemption case.

The U.S. Department of Labor, U.S. Department of Health and Human Services, and the U.S. Department of the Treasury issued a request for comments on a draft model form associated with the Mental Health Parity and Addiction Equity Act (MHPAEA) and provided a Frequently Asked Question document that addresses the MHPAEA and the 21st Century Cures Act (Cures Act). The Internal Revenue Service (IRS) released a letter to confirm high deductible health plan (HDHP) requirements for health savings account (HSA) eligibility. The U.S. Department of Health and Human Services Office for Civil Rights (HHS OCR) released a post-cyberattack checklist.

UBA Updates

UBA released three new Advisors in June:

- DOL Asks for MHPAEA Related Comments; Clarifies Eating Disorder Benefit Requirements
- Senate Releases Proposed Healthcare Bill; Differs from House AHCA
- Extension of Maximum COBRA Coverage Period

UBA updated existing guidance:

- The Play-or-Pay Penalty and Counting Employees under the ACA

Senate Releases Proposed Healthcare Bill

On June 22, 2017, the United States Senate released a "Discussion Draft" of the "Better Care Reconciliation Act of 2017" (BCRA), which would substitute the House's House Resolution 1628, a reconciliation bill aimed at "repealing and replacing" the Patient Protection and Affordable Care Act (ACA). The House bill was titled the "American Health Care Act of 2017" (AHCA).

Employers with group health plans should continue to monitor the progress in Washington, D.C., and should not stop adhering to any provisions of the ACA in the interim, or begin planning to comply with provisions in either the BCRA or the AHCA.

Read more about the BCRA.

U.S. Supreme Court Decides ERISA Church Plan Exemption Case

On June 5, 2017, the U.S. Supreme Court decided court case *Advocate Health Care Network v. Stapleton* and held that employee benefit plans established by church-affiliated organizations are church plans for purposes of ERISA's church plan exemption.

Agencies Seek MHPAEA-Related Comments

In June 2017, the U.S. Department of Labor, U.S. Department Health and Human Services, and the U.S. Department of the Treasury (collectively, the Departments) provided an informational FAQ relating to the Mental Health Parity and Addiction Equity Act (MHPAEA) and the 21st Century Cures Act (Cures Act). The Departments confirm that benefits for eating disorders must comply with the MHPAEA. The Departments request comments on a draft model form for participants to use to request information regarding nonquantitative treatment limitations. The comment submission deadline is September 13, 2017.

Read more about the Departments' FAQ.

IRS Releases Letter to Confirm the HDHP Requirements for HSA Eligibility

The Internal Revenue Service (IRS) released an information letter that describes the requirements of a health savings account (HSA) eligible qualifying high deductible health plan (HDHP). To qualify as an HDHP, a health plan must satisfy the minimum annual deductible and maximum out-of-pocket expense requirements for the year.

An HDHP may provide certain preventive care benefits below the deductible, but may not provide any other benefits below the minimum annual deductible. Practically speaking, a plan that has a deductible that meets the dollar amount for an HDHP isn't automatically a qualifying HDHP for HSA eligibility purposes.

HHS OCR Releases Post-Cyber Attack Checklist

The U.S. Department of Health and Human Services Office for Civil Rights (HHS OCR) released its Quick-Response Checklist that to explain the steps that a HIPAA-covered entity or business associate should take in response to a cyber-related security incident.

The steps include: (1) executing its response and mitigation procedures and contingency plans, (2) reporting the crime to law enforcement agencies, (3) reporting all cyber threat indicators to federal and information-sharing and analysis organizations, and (4) reporting the breach to OCR as soon as possible, but no later than 60 days after the discovery of a breach affecting 500 or more individuals.

Question of the Month

Q. If a health and welfare benefit plan has fewer than 100 participants, then does it need to file a Form 5500?

A. If a plan is self-funded and uses a trust, then it is required to file a Form 5500, no matter how many participants it has.

Whether the plan must file a Form 5500 depends on whether or not the plan is "unfunded" (where the money comes from to pay for the self-funded claims).

Currently, group welfare plans generally must file Form 5500 if:

- The plan is fully insured and had 100 or more participants on the first day of the plan year (dependents are not considered "participants" for this purpose unless they are covered because of a qualified medical child support order).
- The plan is self-funded and it uses a trust, no matter how many participants it has.
- The plan is self-funded and it relies on the Section 125 plan exemption, if it had 100 or more participants on the first day of the plan year.

There are several exemptions to Form 5500 filing. The most notable are:

- Church plans defined under ERISA Section 3(33)
- Governmental plans, including tribal governmental plans
- Top hat plans which are unfunded or insured and benefit only a select group of management or highly compensated employees
- Small insured or unfunded welfare plans. A welfare plan with fewer than 100 participants at the beginning of the plan year is not required to file an annual report if the plan is fully insured, entirely unfunded, or a combination of both.

A plan is considered unfunded if the employer pays the entire cost of the plan from its general accounts. A plan with a trust is considered funded.

For smaller groups that are self-funded or partially self-funded, you'd need to ask them whether the plan is funded or unfunded.

If the employer pays the cost of the plan from general assets, then it is considered unfunded and essentially there is no trust.

If the employer pays the cost of the plan from a specific account (in which plan participant contributions are segregated from general assets), then the plan is considered funded. For example, under ERISA, pre-tax salary reductions under a cafeteria plan are participant contributions and are considered plan assets which must generally be held in trust based on ERISA's exclusive benefit rule and other fiduciary duty rules.

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