Compliance Recap | February 2023

March 5, 2023

February saw the start of Affordable Care Act (ACA) reporting for health coverage provided in 2022. The ACA reporting deadlines range from February 28 to March 31, 2023, and the state deadlines range from January 31,2023 to April 30, 2023.

Preparing for the end of the COVID-19 National Emergency and Public Health Emergency

President Biden has announced the administration's plan to end the COVID-19 National Emergency and Public Health Emergency on May 11, 2023. This will trigger the end of the COVID-19 outbreak period, set to end on July 10 (60 days after the end of the National Emergency). The end of these periods will also bring an end to certain IRS and ERISA temporary rules, and employers are called upon to work with their broker, vendors, and carriers to update plan documents and employee communications.

Some deadlines and coverages that will be affected include coverage for COVID-19 tests, COBRA election period and payment due date, timeframes for special enrollment periods, claims submission and internal/external appeals for adverse benefit determinations.

IRS Releases Publications 502, 503, and 969

The IRS has updated and released its Publication 502 Medical and Dental Expenses. The publication answers questions about eligible contributors and defines qualified dependents and spouse. The main content identifies expenses that may be reimbursed or paid by health flexible spending arrangements (FSAs), health savings accounts (HSAs), or health reimbursement arrangements (HRAs), or covered on a tax-favored basis under other group health plans (e.g., employer-sponsored medical plans).

While IRS Publication 502 provides a list of qualifying expenses under tax-favored accounts, IRS Publication 969 Health Savings Accounts and Other Tax-Favored Health Plans dives deep into the mechanics of these plans. Here you will find information on how new regulations impact these accounts, annual limits and maximums, eligibility, and coordination of benefits.

IRS Publication 503 Child and Dependent Care Expenses has also been updated and released. The publication explains the requirements that taxpayers must meet to claim the dependent care tax credit (DCTC) for child and dependent care expenses. Details on dependent eligibility and income testing eligibility are included.

Updated National Medical Support Notice and Instructions Released

A National Medical Support Notice (NMSN) is a standardized medical child support order that is used by state child support enforcement agencies to obtain group health coverage for children. NMSNs consist of two parts.

Part A (Notice to Withhold for Health Care Coverage) is sent to the employer stating that its employee is legally bound to provide coverage to the children listed and contribute according to the plan documents.

Part B (Medical Support Notice to Plan Administrator) is sent by the employer to its plan administrator/carrier if the child is eligible for enrollment in a group health plan. A properly completed NMSN is considered a Qualified Medical Child Support Order (QMCSO) for ERISA purposes.

The updates include a sample Part A, standalone instructions, and a new addendum to Part B to be completed by the plan administrator. The addendum is used to provide information about the medical, dental, vision, prescription drug, mental health, or other coverage in which a child is enrolled, and to list any children who are at or above the age at which dependents are no longer eligible for coverage under the plan. States have until November 1, 2023, to implement the revised NMSNs.

The U.S. Department of Health and Human Services (HHS) has provided Medical Support FAQs with answers to employers' common questions and a Medical Support Matrix that provides state-by-state information about medical support requirements.

Question of the Month

Q: What is the Gag Clause Prohibition Compliance Attestation?

A: Under the transparency provisions of the Consolidated Appropriations Act, 2021 (CAA), group health plans and health insurance issuers must annually submit to the U.S. Departments of Labor, Health and Human Services, and the Treasury an attestation that the plan or issuer is in compliance with IRS Code section 9824, ERISA section 724, and Public Health Service (PHS) Act section 2799A-9, as applicable (Gag Clause Prohibition Compliance Attestation).

These provisions generally prohibit plans and issuers from entering into agreements that would prevent disclosure of cost or quality of care information, or that would restrict the plan or issuer from sharing that information with a business associate.

The Centers for Medicare & Medicaid Services FAQ Part 57 is available now addressing the gag clause prohibition.