Compliance Recap | November 2023

November brought an ACA FAQ from the Departments of Labor, Health and Human Services, and the Treasury ensuring that SBCs and claims and appeals notices are available when more than 10 percent of the population is literate only in a specific non-English language. UnitedHealth's pharmacy benefit manager announced $35 insulin price caps, while BlueCross BlueShield continues moving into direct-care delivery. California takes a step toward a single-payer system, while Chicago introduced a paid leave and paid sick and safe leave ordinance.

New ACA FAQs Released

The Affordable Care Act (ACA) Implementation FAQ Part 63, issued by the U.S. Departments of Labor, Health and Human Services, and the Treasury focuses on the Public Health Service Act, which mandates that non-grandfathered group health plans and health insurance issuers provide culturally and linguistically appropriate summaries of benefits and coverage (SBC) and claims and appeals notices.

The regulations stipulate accommodations for notices in counties where more than 10 percent of the population is literate only in a specific non-English language, as determined by American Community Survey (ACS) data. Plans and issuers must offer oral language services, provide notices in the relevant non-English language upon request, and include a statement in English notices indicating how to access language services (referred to as taglines).

Non-grandfathered group health plans and issuers must adhere to the guidance for plan or policy years beginning on or after January 1, 2025. This guidance ensures that the provision of SBC and claims and appeals notices aligns with cultural and linguistic competence standards.

Employer Considerations

Employers should be prepared to point out to applicable employees the tagline to access language services found in English language SBCs and notices.

Reduced Insulin Prices for Some

UnitedHealth's pharmacy benefit manager unit, Optum Rx, announced the inclusion of eight insulin products in its reimbursement list, limiting out-of-pocket expenses to $35 or less for enrollees. These products, including short- and rapid-acting insulin from Eli Lilly, Novo Nordisk, and Sanofi will be moved to tier one, the preferred status with the lowest prices, effective January 1, 2024. The move is part of an effort by these major insulin manufacturers, who collectively control 90 percent of the U.S. insulin market, to reduce list prices by 70 to 78 percent this year or in 2024. The Biden administration and lawmakers have been urging insulin makers and pharmacy benefit managers to address the high prices of this crucial medication.

Employer Considerations

Employers should check their insurers' Rx formulary as more carriers may follow suit to lower insulin prices. Self-funded plans may consider making this change to remain competitive with fully funded plans.

BlueCross BlueShield Moves into Direct Care Delivery

In 2023, various BlueCross BlueShield (BCBS) plans underwent reorganization, engaging in corporate restructuring, mergers and acquisitions, or establishing subsidiaries focused on healthcare delivery to enhance competitiveness with larger insurers.

BCBS plans have been expanding their presence in healthcare delivery by opening medical clinics exclusively serving their members. In Washington, Premera Blue Cross collaborated with Kinwell Medical Group in 2022 to establish primary care clinics for its members. BCBS Arizona took a similar approach in 2023, launching Prosano Health Solutions, a new primary care subsidiary, with plans to address specific geographic areas in Arizona to improve access to care.

BCBS North Carolina recently announced its intention to acquire 55 North Carolina locations of FastMed, a national chain offering preventive, telehealth, occupational health, primary care, and urgent care services. This move is aimed at enhancing healthcare services, particularly in rural areas with limited access to resources.

Employer Considerations

Employers covered by BCBS should ask their insurance broker whether the carrier provides a direct care option near them.

California Takes a Step Toward Single-Payer System

Governor Gavin Newsom signed Senate Bill 770, a significant step toward universal healthcare in California. The legislation directs the state's Health and Human Services Agency to collaborate with the federal government to create a unified health financing system for all Californians. This move could pave the way for a single-payer system, covering every resident and funded by state and federal resources, including Medicaid and Medicare funds.

Senate Bill 770 aims to establish a uniform standard of healthcare accessible to all individuals, irrespective of factors such as age, income status, employment status, immigration status, and other variables. As California undergoes modifications in its Medi-Cal system, Michael Lighty, president of Healthy California Now, emphasizes that certain persisting issues can only be effectively addressed through comprehensive reforms across the entire healthcare system.

The law requires California's health secretary to provide recommendations on crafting a federal waiver by June 1, 2024, potentially allowing the state to access federal financing for a universal healthcare system.

While the legislation faced opposition, including criticism from both the left and the right, it suggests an incremental approach to healthcare reform in California. The move aligns with Governor Newsom's 2018 campaign promise of supporting a single-payer system. Despite the diverse opinions, the signing of SB 770 underscores California's commitment to exploring avenues for achieving universal healthcare.

Employer Considerations

Employers interested in following the path of the legislation can log on to [California Legislative Information] for updates.

Chicago's Paid Leave Ordinance

On November 9, 2023, Chicago replaced its existing paid sick leave ordinance with the Chicago Paid Leave and Paid Sick and Safe Leave ordinance, effective December 31, 2023. The new ordinance modifies the accrual system, allowing employees to earn one hour of paid sick leave plus one hour of paid leave for every 35 hours worked, with a yearly maximum of 40 hours of each. Employees can carry over 16 hours of accrued paid leave and 80 hours of accrued sick leave to the next benefit year. Alternatively, employers can front-load 40 hours of each at the start of each benefit year.

Unlike the prior ordinance, the new law mandates that accrued, unused leave be paid to employees upon termination or when no longer covered by the ordinance, subject to a phased approach based on employer size. Any excess leave beyond annual carryover limits is forfeited. New employees become eligible for paid sick leave after 30 days and paid leave after 90 days of employment. Paid leave can be used for any purpose, and employers cannot compel employees to disclose the reason.

Employer Considerations

Employers must comply with various notice and posting requirements, including providing written notice of the paid-time-off policy at the start of employment and before any changes. A 14-day notice of policy changes affecting final compensation must be given, and information about leave accrual and usage must be provided with each wage payment. Employers with Chicago-based employees should carefully review and adjust their sick leave and paid leave policies to align with the new ordinance, considering its differences from the previous paid sick leave ordinance and the upcoming statewide Paid Leave for All Workers Act.

Question of the Month

Q. Can former employees who are on COBRA and paying monthly premiums to a TPA for COBRA deduct those premium amounts on their taxes? For example, if a person is on COBRA for three months in 2023, can they deduct COBRA premium payments from taxable income on their 2023 federal tax return?

A. Yes, COBRA premiums can be deducted on an individual's federal income taxes provided they itemize their taxes and the person's medical expenses (including COBRA premiums) exceed 7.5% of their adjusted gross income.