

COMPLIANCE RECAP

FEBRUARY 2020

What every HR leader should know about compliance.



February was a busy month in the employee benefits world.

The Centers for Medicare and Medicaid Services (CMS) released an updated Premium Assistance Under Medicaid and the Children's Health Insurance Program (CHIP) model notice. CMS also issued frequently asked questions (FAQs) regarding its recently issued summary of benefits and coverage (SBC) template for plan years beginning on or after January 1, 2021.

The Department of Health and Human Services (HHS) released a bulletin that allows grandfathered plans to be extended through 2021. The Internal Revenue Service (IRS) released an opinion letter stating that collection of employer shared responsibility penalties under the Patient Protection and Affordable Care Act (ACA) is not subject to a statute of limitations. The IRS also released an information letter confirming that a cafeteria plan is not required to recognize the permitted election change events under the cafeteria plan regulations.

The Department of Labor (DOL) issued an opinion letter addressing whether a general partner's limited partnership programs constitute ERISA employee welfare benefit plans. CMS issued a proposed rule on calculating and imposing civil monetary penalties when a group health plan fails to comply with Section 111 Medicare Secondary Payer (MSP) reporting requirements. CMS published a bulletin regarding states seeking to restrict excepted benefit health reimbursement arrangements (EBHRAs) from reimbursing short-term, limited-duration insurance (STLDI) premiums.

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Question of the Month

CMS Releases Updated Premium Assistance under Medicaid and the Children's Health Insurance Program (CHIP) Model Notice

The Centers for Medicare and Medicaid Services (CMS) released an updated Premium Assistance Under Medicaid and the Children's Health Insurance Program (CHIP) [model notice](#). The model notice includes updated contact information regarding certain states' Medicaid / CHIP programs including updated contact information for specific states' Medicaid offices.

CMS Issues FAQs on the Updated SBC Template

The Centers for Medicare and Medicaid Services (CMS) issued [frequently asked questions](#) (FAQs) regarding its recently issued summary of benefits and coverage (SBC) template, calculator, guide and narratives for coverage examples, and instructions for plan years beginning on or after January 1, 2021. The FAQ describes what updates were made to the SBC materials and notes that insurers and plans are not required to use the template calculator. Plans and insurers can use their own methodology when providing required cost estimates in its SBC.

Read more about the updated SBC materials in our SSG Compliance Advisors "[Highlights of the Summary of Benefits and Coverage Requirement](#)" and "[Summary of Benefits and Coverage \(SBC\) Frequently Asked Questions](#)."

HHS Releases Bulletin that Extends Grandmothered Plans Through 2021

As background, in the fall of 2013, the Department of Health and Human Services (HHS) announced a [transitional relief program](#) that allowed state insurance departments to permit early renewal at the end of 2013 of individual and small group policies that do not meet the "market reform" requirements of the Patient Protection and Affordable Care Act (ACA) and for the policies to remain in force until their new renewal date in late 2014.

Since 2013, HHS has re-extended transitional relief each year. Most recently, HHS released a [Bulletin](#) in which it re-extended its transitional relief policy to permit renewals with a termination date no later than December 31, 2021, provided that all such coverage comes into compliance with the specified requirements by January 1, 2022.

[Read more](#) about the transitional relief.

IRS Releases an Opinion Letter on the Collection of Employer Shared Responsibility Penalties

The Internal Revenue Service (IRS) released an [opinion letter](#) addressing whether the employer shared responsibility penalties (ESRPs) under the Patient Protection and Affordable Care Act (ACA) are subject to a statute of limitations regarding IRS collection of the penalty amounts. In the opinion letter, the IRS states that ESRPs are not subject to a statute of limitations.

[Read more](#) about the ESRPs.

IRS Releases Information Letter on Cafeteria Plan Permitted Election Change Events

The Internal Revenue [Service \(IRS\) released an information letter](#) confirming that a cafeteria plan may recognize permitted election change events provided in the cafeteria plan regulations. However, a cafeteria plan is not required to recognize permitted election change events.

[Read more](#) about cafeteria plan permitted election change events.

DOL Releases an Opinion Letter on Limited Partnership Employee Welfare Benefit Plans

The Department of Labor (DOL) issued an [opinion letter](#) addressing whether a general partner's limited partnership programs constitute ERISA employee welfare benefit plans and whether they would be single-employer group health plans under ERISA that are sponsored by the limited partnerships. The sole service of the limited partners that join the partnerships is to install software on their personal electronic devices that capture data as they use their devices. The limited partners would not have any meaningful equity interest in the limited partnership or receive any financial benefit other than health coverage. Apart from allowing the software to track the use of their personal devices, the limited partners would not perform any work for the partnership.

The DOL concluded that there is no employer-employee relationship between the partnership and the limited partners. The DOL noted that under ERISA, an employee welfare benefit plan must be established or maintained by an employer for its employees and former employees. Given the absence of work performed or services provided by the limited partners, the DOL also found that the limited partners do not qualify as working owners or bona fide partners for purposes of ERISA's provisions allowing these individuals to participate in ERISA plans. Therefore, the partnership programs are not ERISA employee welfare benefit plans.

CMS Releases Proposed Rule on Civil Monetary Penalties for Medicare Secondary Payer Reporting Failures

The Centers for Medicare and Medicaid Services (CMS) released a [proposed rule](#) and [fact sheet](#) on calculating and imposing civil monetary penalties (CMPs) when a group health plan fails to comply with Section 111 Medicare Secondary Payer (MSP) reporting requirements. CMS identifies the circumstances in which CMPs may be imposed including failure to report, reporting and/or maintaining inaccurate information, and making errors in reporting that exceed a certain threshold.

Public comments on the proposed rule are due by April 20, 2020.

CMS Publishes Bulletin on State Restrictions on EBHRAs

The Centers for Medicare and Medicaid Services (CMS) published a [bulletin](#) that instructs states how they can submit a written recommendation to restrict excepted benefit health reimbursement arrangements (EBHRAs) from reimbursing short-term, limited-duration insurance (STLDI) premiums.

[Read more](#) about EBHRAs.



QUESTION OF THE MONTH

Q: When must IRS reporting Forms 1094-C, 1095-C, 1094-B, and 1095-B be electronically filed for the 2019 calendar year?

A: If filing electronically, Forms 1094-C, 1095-C, 1094-B, and 1095-B must be filed by March 31, 2020. Employers may file [Form 8809](#) to receive an automatic 30-day extension of this due date for forms due to the IRS. Form 8809 must be filed by March 31, 2020 for employers that are filing electronically.

3/1/2020

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