

HO HO HO & BAH HUMBUG: IRS DELIVERS MIXED BAG FOR EMPLOYERS

The IRS Gives Employers Limited Extension, Relief for 2019 ACA Reporting, But Proposes New, Potentially Burdensome Transparency Requirements Regarding Group Health Plan Coverage

The IRS is giving employers, insurers, and other coverage providers two gifts this holiday season, but one may seem more like a lump of coal. First, the IRS has extended the deadline for employers to furnish Affordable Care Act (“ACA”) reporting forms to employees. Second, the IRS and other agencies have proposed a new rule requiring group health plans and insurers to disclose health coverage cost information to health plan participants. As detailed below, the ACA reporting extension guidance also extended the “good faith relief” standard for reporting errors; alternatively, however, the proposed transparency rule would place potentially costly disclosure requirements on coverage providers, including some employers with self-insured plans.

2019 ACA Reporting Deadlines

To the disappointment of many employers, the IRS has not cancelled the requirements to distribute ACA reporting forms to employees, even though the Individual Mandate penalty no longer applies. The IRS did, however, issue Notice 2019-63, which provides employers and other coverage providers with an additional 30 days (until March 2, 2020) to prepare and furnish the 2019 Forms 1095-B and Forms 1095-C to employees and other covered individuals. The IRS did not extend the deadline to file 2019 ACA reporting forms with the IRS. Accordingly, employers are still required to file their 2019 forms with the IRS by February 28, 2020 (for paper submission) or March 31, 2020 (for electronic submission) and may still seek an extension to file said forms as permitted under the regulations.

For Forms 1095-B—but not Forms 1095-C—Notice 2019-63 also provides that the IRS will not enforce the corresponding penalties against coverage providers for failing to furnish a Form 1095-B where the employer posts a notice on its website that said document is available by request, and provides the Form 1095-B within 30 days of any request. This penalty relief will primarily benefit smaller self-funded employers and insurance carriers. Again, the Notice does not provide similar relief from penalties associated with the requirement to provide Forms 1095-C to employees, or with respect to requirement or deadline to file 2019 Forms 1094-B, 1095-B, 1094-C, or 1095-C with the IRS.

The Notice also extends “good faith effort” relief for incorrect or incomplete information on the 2019 forms. This relief applies to incorrect or incomplete information such as a missing or inaccurate taxpayer identification number, date of birth, or other required information. The employer will be deemed to have made a “good-faith effort” if it made reasonable efforts to complete, file, and furnish the forms, such as gathering and transmitting the necessary data to the appropriate parties. This relief is not available for delinquent filings to the IRS or missed deadlines to furnish forms to employees.

Despite this relief, employers should try to furnish and file forms containing complete and accurate information by the applicable deadlines. Getting it correct the first time will help employers avoid penalties and a future assessment of an Employer Shared Responsibility Payment through IRS Letter 226J, in addition to any other costs to correct forms and defend a penalty.

Proposed Transparency Rule

The IRS, Department of Health and Human Services, and the Department of Labor (the “Departments”) were not as generous to coverage providers with the second holiday gift, the “Transparency in Coverage” proposed rule. The proposed rule requires group health plans, including self-insured health plans, and health insurers to provide plan participants with information regarding coverage and pricing for services prior to participants obtaining such services. The proposed rule is designed

to provide consumers with more information regarding their health care costs and enable them to make better and less-expensive health care decisions.

If finalized, this rule would require group health plans and health insurers to provide, upon request, cost-sharing information to participants through an online self-service tool (and in paper form, if necessary) prior to participants' receipt of health care services. Required cost-sharing information would include an estimate of an individual's cost-sharing liability for covered health services (including tests, procedures, equipment, and drugs), and individualized accumulated deductible amounts, out-of-pocket maximums, and treatment limitations. Group health plans and health insurers will be required to develop a new or utilize an existing internet-based tool like a cost-estimator on a website or mobile application, to provide this information to participants.

Additionally, group health plans and health insurers would have to disclose negotiated rates for in-network providers for covered items or services, historical out-of-network allowed amounts, a list of all of the covered items and services reflected in the cost-sharing estimate for a bundled payment, and any coverage pre-requisites. Specifically, they would be required to release two machine-readable files with information related to negotiated rates for in-network providers and historical out-of-network allowed amounts on their website, which must be updated monthly and publicly available free of charge.

The rule would not apply to grandfathered health plans, excepted benefits, short-term limited duration insurance, or health reimbursement arrangements or other account-based group health plans.

It will be difficult for employers to comply with this rule if finalized. It will require employers to coordinate with their third-party administrators, pharmacy benefit managers, and other specialty vendors, as applicable, to obtain the necessary information to disclose to plan participants. Additionally, it will be costly to set up the required internet-based tool to make these disclosures. Employers who self-insure their health plans could enter into a service agreement with third parties to provide these disclosures to participants on their behalf, which might help decrease employer's compliance costs and efforts. To ease these efforts, the Departments have provided a model disclosure notice, proposed negotiated rate, and allowed amount data elements, which can be utilized to comply with the rule. These models are linked below and can be found on the Department of Labor's website:

- <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/transparency-in-coverage-draft-model-disclosure.pdf>
- <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/transparency-in-coverage-negotiated-rate-file.pdf>
- <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/transparency-in-coverage-allowed-amounts-file.pdf>

While the proposed rule's requirements placed on coverage providers might seem daunting (and far from what they wanted this holiday season), the Departments are hopeful that this rule will lower health care costs in the long run for providers. This proposed rule will go into effect one year after it is finalized, which will likely not be until sometime in 2020. In the meantime, the Departments are soliciting comments to the proposed rule, which are due by January 14, 2020.