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INSURANCE BRIEF

INSIDE THIS ISSUE:

Medicare Part D Notice Reminder

It's that time of year again!! The Centers for Medicare and Medicaid Services (CMS) requires entities to provide an annual notice to Part D eligible individuals before October 15 indicating whether its plan's coverage is creditable or non-creditable. The Disclosure Notice requirement applies to Part D eligible individuals who are *active or retired* employees, as well as those who are covered as spouses or dependents under active or retiree coverage.

If your plan data does not include dependent data in the detail necessary to identify eligible dependents who may be Medicare Beneficiaries, you may choose to provide the notice to all eligible employees to assure proper notice to all Medicare Beneficiaries. Notice to the employee will constitute notice to dependents unless you have a separate address for a non-resident spouse/dependent.

Plan Sponsors must also provide a Medicare Part-D notice:

a. Prior to an individual's Initial Enrollment Period for Part-D;
b. Prior to the effective date of coverage for any Medicare eligible individual that joins the Plan;
c. Whenever the entity no longer offers prescription drug coverage or changes the coverage offered so that it is no longer creditable or becomes creditable; and,
d. Upon the request by the individual.

"Prior to" means that the individual must have received the Disclosure Notice within the past twelve months. So, plans that issue the Part-D notice at time of policy renewals do not need to provide another notice.

The notices have not changed since April 2011. Therefore, if the status of your plans is the same you can use the last year's notice. The notices are provided in English and Spanish at http://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Model-Notice-Letters.html

You can also contact your SML Account Team to request a copy be emailed to you.

Disclosure to CMS Form. Don't forget that you must also disclose to CMS whether your plans' coverage is creditable or non-creditable. This is done online at www.cms.hhs.gov/CreditableCoverage/45_CCDisclosureForm.asp

This disclosure must be made within 60 days following the start of the plan year, within 30 days after termination of a prescription drug plan, and within 30 days after any change in the plan's creditable coverage status.

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Guidance on HRAs and FSAs

On September 12, the Department of Labor (DOL) and the Internal Revenue Service (IRS) issued Technical Release 2013-03 clarifying how the Patient Protection and Affordable Care Act (PPACA) applies to Health Reimbursement Arrangements (HRAs), health care Flexible Spending Accounts (FSAs) and certain other types of plans. This guidance confirms and clarifies prior guidance.

Key Provisions:

- Confirms HRAs which are integrated with coverage meeting PPACA's requirements will be in compliance.
- Confirms that stand-alone HRA's are subject to the prohibition on annual and lifetime limits for essential health benefits. These arrangements fail to comply with the annual limit prohibition because (1) they are considered to impose an annual limit up to the cost of the individual market coverage purchased through the arrangement, and (2) an employer payment plan cannot be integrated with any individual health insurance policy purchased under the arrangement. Therefore, employers hoping to use stand-alone HRA's to reimburse employee's premiums for non-employer sponsored medical insurance will not be able to do so.
- For plan years beginning in 2014 employers can only offer stand-alone HRA's which cover excepted benefits such as dental and vision.
- An HRA can be integrated with a group health plan sponsored either by the employer or the spouse's employer.
- Clarifies that an HRA integrated with a group health plan cannot be used to reimburse essential health benefits that are not covered by the group health plan
- A health FSA with only employee contributions will be treated as an excepted benefit as long as the employer also offers group health plan coverage that is not limited to excepted benefits.
- A health FSA that does not qualify as excepted benefits is subject to the preventive services requirements. Because a health FSA that is not excepted benefits is not integrated with a group health plan it will fail to meet the preventive services requirement.
- The Departments intend to amend the code to provide that benefits under an employee assistance plan or EAP are considered excepted benefits, but only if the program does not provide significant benefits in the nature of medical care or treatment. Until rulemaking is finalized, through at least 2014, the Departments will consider an employee assistance program or EAP to constitute excepted benefits only if the employee assistance program or EAP does not provide significant benefits in the nature of medical care or treatment. For this purpose, employers may use a reasonable, good faith interpretation of whether an employee assistance program or EAP provides significant benefits in the nature of medical care or treatment.

This guidance makes it clear that employers will not be able to meet pay or play coverage requirements by providing a stand-alone HRA for payment of individual premiums. Employers who choose to stop offering a group health plan will not be able to use a stand-alone HRA for anything but excepted benefits such as dental and vision.

What's Next:

SML will continue to keep our clients up to date on any changes!

Federally Facilitated Exchange Delays

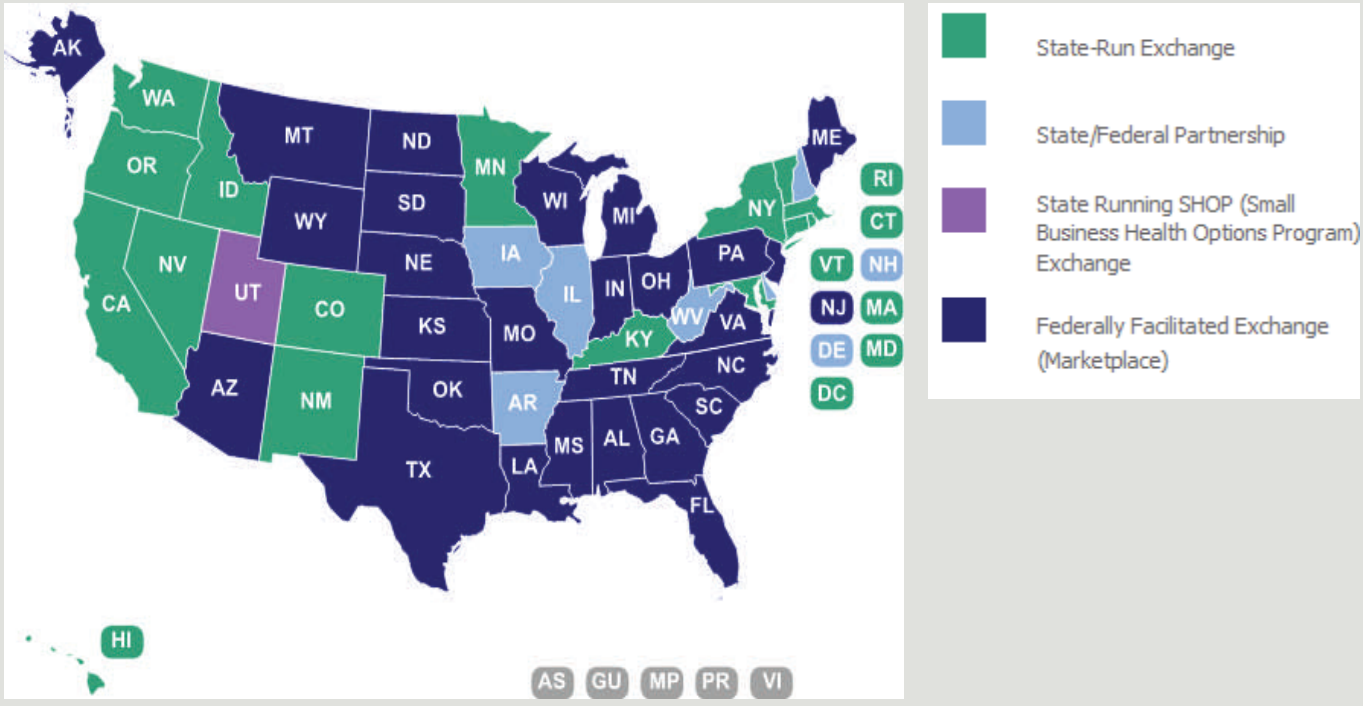
Online Spanish Enrollment: On September 26th the Department of Health and Human Services (HHS) announced that Spanish-language online enrollment services would not be available on October 1st. They are estimating that the Spanish-language online enrollment services will be available sometime between October 21 and October 28. Spanish speakers will still be able to enroll through a call center or enrollment specialists known as "navigators."

Federal SHOP Exchanges: On September 26th HHS also announced it is delaying online enrollment for the federal Small Business Health Options Program (SHOP exchange) until November 1, 2013. The SHOP exchange will still accept mailed, paper enrollments on October 1, however, HHS says that the online functionality for the SHOP exchanges, including the ability to price and compare plan options, will not be available until November 1st.

This is the second delay related to the federal SHOP exchanges. The first announcement was back in March when HHS's proposed rule delayed until 2015 the ability of a small employer that purchases coverage through the federal SHOP exchange to choose multiple health plans to offer its employees. Until 2015, the federal SHOP exchanges will assist small employers in choosing a single qualified health plan. HHS expects that small employers will have the ability to choose multiple qualified health plans through the federal SHOP exchange beginning in 2015.

The delay of the employee choice model in the federal SHOP exchange does not delay the requirement that a small employer obtain coverage through the SHOP exchange in order to be eligible to the small business healthcare tax credit for taxable years beginning on or after January 1, 2014.

Below is a map showing which type of Exchange has been established in each State and U.S. Territory.



Source: http://www.ncsl.org/issues-research/health/state-actions-to-implement-the-health-benefit.aspx

State-Run and State/Federal partnership Exchanges are not impacted by the above delays.

Same-Sex Spouse Tax Adjustments

The IRS has issued simplified procedures that employers may use to correct employment tax (FICA and federal income tax withholding) overpayments for 2013 and prior years resulting from the change in tax treatment for health and certain other benefits provided to employees' same-sex spouses due to the Supreme Court's partial invalidation of DOMA in the *Windsor* decision. (See IRS Notice 2013-61) These optional procedures, which are intended to reduce the filing and reporting burdens associated with retroactive correction, follow up on earlier post-*Windsor* guidance announcing that the IRS will recognize for federal tax purposes all legal same-sex marriages, even if a couple resides in a state that does not recognize same-sex marriage (see our SML Update *IRS Ruling on Same-Sex Spouses*).

Background: Employment taxes are reported quarterly on Form 941. Overpayments are normally corrected by taking a credit against taxes due in a later quarter (or, in some cases, claiming a refund) and filing Form 941-X for each quarter being corrected. If the overpayment includes excess amounts withheld from employees' wages, the employer generally must repay the excess withholding to the employees before claiming an adjustment. The correction deadline is the later of three years after the filing date for the Form 941 being adjusted or two years from the date the taxes were paid.

Key Provisions: The simplified procedures apply to overpayments with respect to same-sex spouse benefits that were treated as taxable to employees and after-tax employee contributions for same-sex spouse health coverage from employees who also made pre-tax elections for health coverage under a cafeteria plan. The available procedures are:

- *Correction Within Third Quarter*. For overpayments relating to the third quarter of 2013, an employer may adjust within this quarter without making any special filing, provided any amounts required to be returned to employees are repaid by September 30.

- *Other Adjustments for 2013*. Two alternatives are available for employers that overpaid taxes during the first three quarters of 2013.

  - If any over-withholding is repaid to employees by December 31, 2013, the employer can use its fourth quarter Form 941 to correct overpayments for all of 2013-avoiding the need to file separate Forms 941-X for the prior three quarters.

  - If the employer does not repay the over-withholding to employees by December 31 (and, consequently, does not use the fourth quarter Form 941 to correct 2013 overpayments), the employer can make adjustments by filing a single Form 941-X for the fourth quarter to correct overpayments for all of 2013. This alternative applies only to FICA tax, since over-withholding of income tax not repaid by December 31 will have to be adjusted by employees on their individual tax returns.

- *Adjustments Before 2013*. The employer may file a Form 941-X for the fourth quarter of any prior year for which the correction period has not expired, and that single form will apply to all four quarters of that year. Forms W-2c for the adjusted years must be filed to correct information previously reported on Forms W-2. Again, this alternative does not apply to over-withheld income tax, since those adjustments will be made by employees (using information on the Form W-2c) on their individual tax returns.

Employers should consult with their tax advisors to determine the best procedures to follow.