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PBCG News Alert

Health Care Reform

EEOC Finalizes Wellness Rules

The Equal Employment Opportunity Commission (EEOC) issued final rules that describe how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply to employer-sponsored wellness programs.

The final ADA rule does not apply to wellness programs that do not obtain medical information but simply require employees to engage in an activity (such as walking a certain amount every week) in order to earn an incentive. However, employers must provide reasonable accommodations to allow employees with disabilities to earn the incentive.

The final ADA rule provides that incentives offered to an employee who answers disability-related questions or undergoes medical examinations as part of a wellness program are limited to the following:

- When the wellness program is available only to employees who are enrolled in a specific group health plan, the incentive may not exceed 30 percent of the total cost for self-only coverage of the health plan in which the employee is enrolled.
- When an employer offers only one group health plan, and does not require employees to be enrolled in the health plan in order to participate in the wellness program, the incentive may not exceed 30 percent of the total cost for self-only coverage under the health plan.
- When an employer offers more than one group health plan, and does not require employees to be enrolled in a health plan in order to participate in the wellness program, the incentive may not exceed 30 percent of the total cost of the lowest cost self-only coverage under a major medical group health plan offered by the employer.
- When an employer does not offer a group health plan, and offers a wellness program that is open to employees, the incentive may not exceed 30 percent of the total cost to a 40-year-old nonsmoker purchasing self-only coverage under the second lowest cost Silver Plan available on the state or federal Exchange in the location that the employer identifies as its principal place of business.

In addition, the final GINA rule provides that the value of the maximum incentive attributable to a spouse's participation may not exceed 30 percent of the total cost of self-only coverage, which is the same incentive allowed for the employee. Employers may offer children the opportunity to participate in wellness programs, but may not offer inducements in exchange for current or past health status information about children. Inducements in exchange for genetic information about spouses and children (such as a spouse's or child's family medical history) are also prohibited.

The provisions of the final rules related to the incentive limits and the ADA notice requirement will apply only prospectively to employer-sponsored wellness programs as of the first day of the first plan year that begins on or after Jan. 1, 2017, for the health plan used to determine the level of inducement. According to the EEOC, other wellness program provisions (such as the reasonable design and confidentiality requirements) are clarifications of existing obligations.

HHS Finalizes Anti-Discrimination Rule

The Department of Health and Human Services (HHS) issued a final rule implementing Section 1557 of the Affordable Care Act (ACA) regarding nondiscrimination in federally funded health programs. The final rule:

- Prohibits discrimination in health care on the basis of race, color, national origin, age, disability and gender (including discrimination based on pregnancy, gender identity and gender stereotyping);
- Enhances language assistance for people with limited English proficiency; and
- Helps to ensure effective communication for individuals with disabilities.

These nondiscrimination protections apply to all health programs and activities that receive federal funding from HHS or that are administered by HHS, including both federally facilitated and state-based exchanges. While the rule goes into effect July 18, the provisions affecting insurers and the design of health plan benefits begin Jan. 1, 2017.

Appealing Subsidy Notifications Under ACA

Under the ACA, applicable large employers (ALE) may be subject to employer shared responsibility payments if they do not offer affordable, minimum value health coverage to their full-time employees. The Internal Revenue Service (IRS) will assess these penalties if a full-time employee receives subsidies to help pay for the cost of health insurance purchased in the health insurance exchange.

An exchange will determine whether an individual is eligible for these subsidies when he or she applies for coverage. This determination does not establish whether the individual's employer is liable for shared responsibility penalties, but it may provide a basis for the IRS to assess penalties against an ALE.

For this reason, as well as to help ensure that individuals do not mistakenly receive health insurance subsidies, the ACA gives all employers the right to appeal exchange eligibility determinations. An appeal will allow an employer to correct any inaccurate information the exchange may have about the health coverage it offered to an employee who was deemed eligible for subsidies.

Once an exchange determines that an individual is eligible for subsidies, it must send notification to the individual's employer. This notification must identify the employee; indicate that the employee has been determined eligible for advance payments of the premium tax credit; indicate that, if the employer has 50 or more full-time employees, the employer may be liable for the payment assessed under Section 4980H of the Code; and inform the employer of the right to appeal the determination.

If the employer wishes to appeal the determination, it must file an appeal request within 90 days from the date the notice was sent.

Exchanges and any other appeals entities must provide assistance if an employer asks for help with the filing. Employers may include evidence supporting their appeal along with the initial request, but they will have an opportunity to present this after filing the request as well.

When the exchange or other appeals entity receives a request for appeal, it will send the employer an acknowledgment of the appeal and an explanation of the appeals process. If the entity determines that an appeal request is not valid, it must send written notification to the employer and include instructions for curing the defects. The entity will also send notice of an employer's appeal and an explanation of the appeals process to the employee.

During the appeals process, the appeals entity must give the employer an opportunity to review the information the exchange used to make the eligibility determination. An appeals entity must make, and send written notice of, an appeal decision within 90 days after the date it received the appeal request. If the appeals decision affects the employee's eligibility, the exchange must promptly make a redetermination. Employees and their household members, if applicable, will have a right to appeal an exchange redetermination that occurs as a result of an appeals decision.

Individual Coverage

New Rules For Special Enrollments

The Centers for Medicare and Medicaid Services (CMS) are continuing to tighten the special enrollment periods (SEP) for individuals seeking health coverage outside open enrollment. The new rule focuses on those permanently moving to a new area and gaining access to new plans through a health insurance exchange or marketplace.

According to CMS, "individuals requesting a 'permanent move' SEP must have minimum essential coverage for one or more days in the 60 days preceding the permanent move, unless they were living outside of the United States or in a United States territory prior to the permanent move. This ensures that individuals are not moving for the sole purpose of obtaining health coverage outside of the open enrollment period."

The rules will be modified to ensure that individuals "who were incarcerated, or were previously in the coverage gap in a non-Medicaid expansion state and have moved and become newly eligible for advance payments of the premium tax credit (both of whom would previously have qualified for the permanent move SEP) may continue to qualify for a special enrollment period." In addition, the rule removes a January 1, 2017, implementation date by which exchanges "would otherwise have had to provide advance availability of the permanent move SEP and provide a SEP for loss of a dependent, or for no longer being considered a dependent due to divorce, legal separation, or death. Marketplaces can still provide either SEP, but implementation and the timing of that implementation are at the option of the Marketplace."

With the SEP changes, there are six primary life events that qualify for enrollment outside open enrollment, including (1) losing other qualified coverage, such as losing employer sponsored coverage; (2) changes in household size like marriage, birth, or adoption; (3) changes in residence, with significant limitations; (4) changes in eligibility for financial help, with significant limitations; (5) defined types of errors made by Marketplaces or plans, and (6) other specific cases like cycling between Medicaid and Marketplace or leaving Americorps coverage.

Wellness

Staying Cool In The Summer Sun

Summer vacations are in full swing across the country for kids and adults alike. How can you protect your family from the sun's harmful rays while still enjoying the great outdoors? The Centers for Disease Control and Prevention (CDC) have a few helpful reminders:

- **Seek shade:** UV rays are strongest and most harmful during midday, so it's best to plan indoor activities then. If this is not possible, seek shade under a tree, an umbrella, or a pop-up tent. Use these options to prevent sunburn, not to seek relief after it's happened.
- **Cover up:** When possible, long-sleeved shirts and long pants and skirts can provide protection from UV rays. Clothes made from tightly woven fabric offer the best protection. A wet T-shirt offers much less UV protection than a dry one, and darker colors may offer more protection than lighter colors. Some clothing certified under international standards comes with information on its ultraviolet protection factor.
- **Get a hat:** Hats that shade the face, scalp, ears, and neck are easy to use and give great protection. Baseball caps are popular among kids, but they don't protect their ears and neck. If your child chooses a cap, be sure to protect exposed areas with sunscreen.
- **Wear sunglasses:** They protect your child's eyes from UV rays, which can lead to cataracts later in life. Look for sunglasses that wrap around and block as close to 100% of both UVA and UVB rays as possible.
- **Apply sunscreen:** Use sunscreen with at least SPF 15 and UVA and UVB protection every time your child goes outside. For the best protection, apply sunscreen generously 30 minutes before going outdoors. Don't forget to protect ears, noses, lips, and the tops of feet.