IAA Legislative Ledger

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Health Care Reform: Q&A

This update is a little longer than I like, but it contains some good information to help with benefit planning and budgeting. The information is based on current information related to the Affordable Care Act. (This may change over the course of the next few months).

Will a plan lose grandfather status if the plan changes dollar limits to visit limits?
Answer: Generally, no.

Must non-grandfathered plans provide coverage for recommended preventive services delivered by out-of-network providers?
Answer: No

Will a plan lose grandfather status if the plan eliminates coverage for non-preferred providers?
Answer: No

Will a plan lose grandfather status if the plan is amended to impose a $3000 penalty on any participant who fails to access a particular facility for organ transplants?
Answer: Yes. This is an increase in a co-payment that would exceed the allowable amount. Potential workaround – only cover transplants at preferred facilities. Dropping coverage of non-preferred providers will not cause a loss of grandfather status.

If treatment results from a recommended preventive service may plans impose cost-sharing?
Answer: Yes.

Once a plan is subject to PPACA and makes a change that triggers loss of grandfather status, when do the non-grandfathered provisions take effect for the plan?
Answer: The non-grandfathered provisions take effect when the changes causing loss of grandfather status go into effect and not when the plan sponsor formally adopts the change.

Can a claimant file an appeal over co-insurance, co-payments or deductibles?
Answer: Yes

In 2014, a plan pays 80% of the first $500,000 of allowed hospital charges. The plan pays 50% of allowed hospital expenses from $500,000 to $1 million. The plan pays 20% of allowed hospital expenses over $1 million. Is this permissible?
Answer: Yes. This is a possible strategy to tame the impact of the prohibition on lifetime and annual limits.

Is the contribution employees must pay to participate in the plan considered a benefit that can be disputed, permitting the filing of a claim or appeal?
Answer: It depends. An employee's contribution toward premiums is not an adverse benefit determination that can be appealed. However, an employee's cost-sharing (e.g., co-insurance, co-payment or deductibles) can be a partial denial of a claim and may be appealed.

May a plan retroactively rescind coverage if the plan is not notified of a divorce until six months after the fact?
Answer: In a Q&A released jointly by the agencies in the fall of 2010, they stated that the "Departments do not consider a plan's termination of coverage retroactive to the divorce to be a rescission of coverage." (This actually conflicts with the current COBRA law)

True or False? Mental health parity provides an enforcement safe harbor for a plan or issuer that divides its benefits furnished on an outpatient basis into two sub-classifications—an office visit sub-classification and all other outpatient items

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or services?
Answer: True

Are eligibility determinations subject to the internal review process?
Answer: Yes, except for the initial eligibility determination.

Will the inclusion of diagnostic codes on a model notice of adverse benefit determination trigger a HIPAA privacy violation?
Answer: No, according to an HHS privacy official.

True or False? States have the option to either set up an exchange themselves by 2014 or to allow the Federal government to set up an exchange for them.
Answer: True

What is the first tax year that W-2 Forms must include a health care valuation amount?
Answer: Tax year 2012.

Does the prohibition on pre-existing condition exclusions for those under age 19 only apply to children, or does it also apply to spouses and employees under age 19?
Answer: It applies to spouses and employees as well.

May non-grandfathered plans impose penalties, such as reducing benefits, for participants who use the emergency services of a hospital for non-emergency situations?
Answer: Generally yes

If a plan covers grandchildren, may the plan limit the coverage based on the age of the grandchildren or their financial dependency?
Answer: Yes

Does the extension of dependent coverage rule impact only adult children? If there are non-adult children who lost eligibility status many years ago, must they be given an opportunity to enroll in the plan?
Answer: This rule does not only impact adult children. If there are non-adult children who lost eligibility status many years ago, they must be given an opportunity to enroll in the plan.

How is the Federal Government paying for ACA provisions? There are close to twenty (20) new taxes. The following are the top five revenue generators.

Medical Device Tax – ACA imposes a new 2.3 percent excise tax on gross sales. This tax is on "gross sales," to avoid loss of revenue if a manufacturer is unprofitable. Estimated value of tax is **$20 billion**

Flexible Spending Accounts: The 30-35 million Americans who use a Flexible Spending Account (FSA) at work to pay for their families basic medical needs will face a new government cap of $2,500 (currently the accounts are unlimited under federal law, though employers are allowed to set a cap) Estimated value of change: **$13 billion.**

Investment Income –This is a new, 3.8 percentage point surtax on investment income earned in households making at least $250,000 ($200,000 single). **$123 billion tax increase:**

	Capital Gains	Dividends	Other*
2012	15%	15%	35%
2013+ (current law)	23.8%	43.4%	43.4%

The table above also incorporates the scheduled hike in the capital gains rate from 15 to 20 percent, and the scheduled hike in dividends rate from 15 to 39.6 percent.

Medical Itemized Deductions Currently, those Americans facing high medical expenses are allowed a deduction to the extent that those expenses exceed 7.5 percent of adjusted gross

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income (AGI). This tax increase imposes a threshold of 10 percent of AGI. **$15.2 billion tax increase.**

Medicare Payroll Tax Hike: The Medicare payroll tax is currently 2.9 percent on all wages and self-employment profits. Under this tax hike, wages and profits exceeding $200,000 ($250,000 in the case of married couples) will face a 3.8 percent rate instead. This is a direct marginal income tax hike on small business owners, who are liable for self-employment tax in most cases. The table below compares current law vs. the ACA Medicare Payroll Tax Hike: **$86.8 billion tax increase.**

	First $200,000 ($250,000 Married) Employer/Employee	All Remaining Wages Employer/Employee
Current Law	1.45%/1.45% 2.9% self-employed	1.45%/1.45% 2.9% self-employed
ACA Tax Increase	1.45%/1.45% 2.9% self-employed	1.45%/2.35% 3.8% self-employed

These above taxes do not include the financial penalty on employers with 50 or more employees that cannot afford or chose not to provide a group health plan. The penalty in these cases is approximately $2,000 per employee working 30 hours or more.

Please contact IAA if you have questions or would like a current timeline of ACA.

Stay Healthy!

Paul Kelly, President

This information is not intended to be legal advice. Talk to your tax attorney for details on the laws impact on you or your business.

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