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Prepare for insurance rebate checks under PPACA

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We are pleased to share the following article written by Frank Palmieri, July 19, 2012:

Now that the U.S. Supreme Court has upheld the Patient Protection and Affordable Care Act (PPACA), employers must pay close attention to insurance "rebates" that may be issued to health plan participants beginning next month.

Under PPACA, insurance carriers are required to spend at least 80% of their premium income on health care claims and quality improvement efforts, only permitting a reserve of 20% or less for administrative expenses. The Medical Loss Ratio (MLR) threshold for large group plans with generally more than 50 participants require insurance carriers to spend 85% of their premium income, with only 15% permitted for administrative expenses. The rules do not apply to self-insured health plans.

Insurance carriers who fail to comply with the MLR rules that became effective on January 1, 2011 are required to issue "rebates" to participants. The Kaiser Family Foundation has estimated rebates for various states based on an analysis of insurance filings to the National Association of Insurance Commissioners in 2011, which are calculated in an April 2012 "Focus on Health Reform" issue brief.

The issuance of insurance rebates must be monitored by most employers, since insurance carriers will notify participants of rebates. Even large employers sponsoring self-insured medical plans frequently also maintain some insured health plans. Thus, all employers maintaining any insured health plans must determine whether their insurance carriers will be paying rebates.

It is important to prepare a response to employee questions and take appropriate action. For example, most employees pay a portion of the cost for health insured coverage on a pretax basis under Flexible Benefit Plans. If an employer receives a rebate check, decisions must be made as to whether or not the rebate should be shared with employees. This decision will depend upon the amount of the rebate and number of employees who may participate in a health plan.

Assuming the average rebate will be about $75 per participant, issues to consider are as follows:

- The rebates will be paid for the 2011 calendar year this summer. It is important to realize that insurance carriers will notify all participants, including former employees who participated in health plans in 2011, of the rebates. Accordingly, employers must be prepared to respond to former employees' questions regarding their entitlement to refunds.
- Employers may use the 2011 refunds for either employees in a health plan in "both" 2011 and 2012; or only those employees in a health plan in 2012. Most employers will probably only use the rebates for active employees in health plans in 2012. Once again, employers must be prepared to respond to former employees' questions.
- Employers will have 90 days from receipt of a check to make payments to participants.
- Payments to participants will be taxable income according to Frequently Asked Questions issued by the IRS in April 2012. Accordingly, rebates will be wages for purposes of withholding taxes and compensation under most retirement plans.
- As an alternative to issuing a check to participants, employers may reduce an employee's salary reduction contributions for a payroll period. Thus, if an employee would normally pay $150 for their portion of the cost of health insurance, only $75 may be withheld from an employee's salary for a given payroll period. This approach has the same effect as the issuance of a check, resulting in an additional $75 of compensation for withholding and retirement plan purposes.
- Employers must decide whether to issue checks to employees or to use the offset approach.
- Payroll must be aware of the need to make payments to participants since such payments could result in the need for manual payroll adjustments for all or a small portion of an employer's population, depending upon the health plans being sponsored by an employer.
- If the amount of a premium rebate is *de minimis*, an employer may determine that the cost of issuing checks will exceed the amount of the checks. In these situations, employers must determine the manner in which to use rebates, such as for wellness or other programs.
- Remember, in Technical Release No. 2011-04 the DOL announced the rebate checks may be "plan assets" subject to the ERISA fiduciary rules. Therefore, all decisions regarding the use of rebates should be carefully documented.

As a practical matter, if a rebate check is for $75, and an employee pays 20% of the cost for health coverage with pretax dollars under a flex plan, then only $15 would be returned to the employee. Since this amount may be determined to be *de minimis*, an employer may determine a check is not required to be issued.

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Compliance Support Services

Preparing to implement these new requirements during the next 18 months will be challenging and time consuming, so we urge you to begin preparing and coordinating with your insurers now. Additional regulatory guidance will be issued as well, potentially making compliance even more complex.

Contact the Benefits Department at Sisk & Co. for all of your Health Reform Questions.

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