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November 2014 Benefits Spotlight

Halloween is over, Thanksgiving and the holidays are just around the corner, open enrollment is at full throttle for many organizations, and you are facing multiple year end tasks. It's really a busy season--on both the professional and personal levels for many of us--so this edition of *Spotlight* tries to make things a little easier for you by highlighting important benefits developments and issues.

Healthcare - Compliance Delays, Checklists and Trends

First of all, some good news about something you *don't* have to do right now--and hopefully have not already put a lot of effort into! The November 5, 2014, deadline for obtaining a Health Plan Identifier (HPID) under HIPAA has **been placed on indefinite hold**. On October 31, the Department of Health & Human Services (HHS) announced an enforcement delay on the deadline so that the Department can review two recommendations from the National Committee on Vital and Health Statistics (NCVS), an advisory body to HHS. The NCVS' specific recommendations are:

1. HHS should rectify in rulemaking that all covered entities (current and future health plans, providers and clearinghouses, and their business associates) will not use HPID in administrative transactions, and that the current payer ID will not be replaced with HPID.
2. HHS should further clarify in the Certification of Compliance final rule, when and how the HPID would be used in health plan compliance certification and if there will be a connection with the federally-facilitated marketplace.

Next, if you like checklists, we have two for you. The October 13, 2014, edition of *News & Insights* from law firm Sidley Austin LLP outlines year end **compliance tasks** for health and welfare plans beyond the ACA's employer mandate. Among the key dates included in this list are the November 15, 2014, deadline for submitting counts for the 2014 Transitional Reinsurance Fee (the fee itself is due January 15, 2015) and the December 31, 2014, deadline for amending Section 125 Cafeteria plans to reflect the \$2,500 limit (indexed for inflation) on an employee's annual salary reduction contributions to a healthcare FSA.

The second checklist, **from Bryan Cave LLP**, includes a separate "refresher" checklist for the ACA's mandates. Included in this list is the requirement that non-grandfathered plans ensure that cost-sharing limits are not above certain thresholds for 2015 on January 1, 2015, or later, depending on the start of the plan year. You will also find information on existing notice and filing requirements.

An October 14, 2014, news article by Michelle Andrews in *Kaiser Health News** titled "**Modest Premium Hikes, Higher Consumer Costs Likely For Job-Based Plans**" reports that most experts anticipate a modest 4% rise in premiums for 2015, but greater out of pocket costs for employees. Citing preliminary data from Mercer's annual employer benefits survey, the article says that more than

two-thirds (68%) of employers plan to implement cost-saving strategies, up from 55% two years ago. There also appears to be greater interest in high deductible plans as employers seek ways to avoid the ACA's Cadillac Tax in 2018. The author also points to data from a Towers Watson/National Business Group on Health survey indicating that employers are also increasing employees' share of coverage for dependents and spouses and, in some instances, slapping a surcharge on spousal coverage.

*[Kaiser Health News](#) (KHN) is a nonprofit national health policy news service.

Retirement - Expanded Use of Income Annuities in 401(k) Plans

On October 24, 2014, the U. S. Department of Treasury and the Internal Revenue service issued [guidance \(IRS Guidance Notice 2014-66\)](#) to expand the use of income annuities in 401(k) plans. Recognizing the need to help retirees manage their savings and to have a steady stream of regular income throughout retirement, the guidance makes clear that plan sponsors can include deferred income annuities in target date funds used as default investments but stressed that the option is voluntary for both plan sponsors and participants.

The Department of Labor also weighed in with an "[explanatory letter](#)" that concluded that target date funds (TDF) that include unallocated deferred annuity contracts as fixed income investments are not disqualified as a default investment alternative provided that the designated investment manager satisfies each of the conditions of the annuity selection safe harbor. The DOL letter also cautions that plan sponsors have the responsibility to prudently select and monitor the investment manager at reasonable intervals.

[Thompson Reuters' Practical Law](#) provides analysis and explanation of the guidance and discusses the specific question answered by IRS Notice 2014-66. Briefly, the question is whether target date funds that include deferred annuities that are only available to older participants are discriminatory and thus not in compliance with IRC Section 401(a)(4). The IRS guidance and DOL letter make clear that when the conditions and requirements outlined in IRS 2014-66 are followed, the annuities are not discriminatory and are in compliance.

The Last Word

The drama that is the Affordable Care Act continues. The Supreme Court will hear a lawsuit contending that the law's subsidies cannot be extended to people in states that have not set up their own exchanges. If SCOTUS rules in favor of the plaintiffs, it could effectively gut the subsidies going to people who enrolled for healthcare via a federally operated exchange and severely limit the number of people the law serves. Will this, ultimately, be the demise of the ACA? Stay tuned for the next act, which is expected to take place in June of 2015.