ACA Guidance: Where’s it Going for Governmental Plans?

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Principal
Overview

- Where Are We Now?
- Guidance, but Questions:
  - Employer Shared Responsibility
  - 6056 Reporting
  - Excepted Benefits
- Little or No Guidance:
  - Cadillac Tax
  - Automatic Enrollment
  - Nondiscrimination Requirements
- Potential Legislative Changes
- Litigation
Where Are We Now?

- Some provisions are fully (or nearly fully) implemented
  - E.g., market reforms, some taxes and fees
- Significant guidance has been issued for many provisions, but questions remain
  - E.g., employer shared responsibility, information reporting, excepted benefits
- Little or no guidance has been issued for many important ACA provisions
  - E.g., “Cadillac” tax, automatic enrollment, nondiscrimination
- In addition to regulatory guidance, starting to look to legislative changes and litigation
Guidance, but Questions: Employer Shared Responsibility

- Final regulations issued in February 2014
  - Effective NOW!
- Outstanding issues regarding:
  - Disability payments
  - TRICARE
  - Etc.
- Will more guidance be issued?
Guidance, but Questions: 6056 Reporting

- Information reporting for applicable large employers
  - Reporting is first required in early 2016 with respect to calendar year 2015
  - Need to be tracking hours of service
  - Need to be ready to send reports to employees in early 2016
- Draft forms and instructions have been issued
  - Waiting on final forms and instructions
Guidance, but Questions: Excepted Benefits

- New proposed rules on “limited wraparound coverage” as an excepted benefit issued December 23, 2014
  - Allows employers to provide limited supplemental coverage to certain employees with individual market coverage
  - Comments due this past week

- Outstanding issues
  - Limited pilot program
  - More favorable rules for MSP participation
  - Must offer meaningful additional benefits
Little/No Guidance: Cadillac Tax

- Code section 4980I imposes an excise tax on high-cost employer-sponsored health coverage
  - Effective in 2018... Not so far away!
- **No** guidance to date
  - Expect an RFI, then proposed rules, then final rules
- Outstanding issues
  - Valuation of self-funded coverage
  - How do adjustments to dollar limits work?
Little/No Guidance: Automatic Enrollment

- Section 18A of FLSA directs an employer to which the FLSA applies, and which has more than 200 FT employees, to automatically enroll new FT employees in one of the employer’s health plans.
  - DOL stated that, until regulations are issued, employers are not required to comply.
  - No guidance to date.
Little/No Guidance: Nondiscrimination Requirements

- Code section 105(h) imposes nondiscrimination rules on self-insured plans
  - Rules are out of date and difficult to apply
- ACA added nondiscrimination requirements for insured plans (PHSA section 2716)
  - Based on rules under Code section 105(h)
  - Compliance for insured plans not required until guidance has been issued
- Guidance is needed that (i) modernizes self-insured rules and (ii) provides insured rules
Potential Legislative Changes

- Potential legislation could affect many ACA provisions, including the definition of “full-time employee”
- Tax reform could impact the employer exclusion as a whole, and it could also affect many provisions of the ACA
Litigation

- King v. Burwell
  - Implications if subsidies on federally-facilitated exchanges are struck down
  - Could gut the employer shared responsibility requirement
  - Individuals may not be able to get subsidized coverage
  - Contingency plans?
- New litigation as provisions become effective
Questions?

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