HEALTHCARE EXCHANGE

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California Update

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Agenda

- Review Outbreak period
- HEROES Act
- 2021 IRS contribution limits for HSA
- Section 125 Cafeteria Plans
- PPP Loan Forgiveness Application
- Employment Law with FordHarrison
- Safely Returning to the Workplace Solution with Kyla

Outbreak Period

- On May 4, 2020, in response to the Coronavirus Disease 2019 (COVID-19) pandemic, the Internal Revenue Service (IRS), Department of the Treasury, and the Employee Benefits Security Administration (EBSA), Department of Labor, issued rules extending deadlines for participants and beneficiaries of certain group health, disability, and welfare plans to make certain benefit elections, give certain notices, and make enrollment decisions.
- The rules are intended to prevent plan participants and beneficiaries – who may be facing unemployment, reduced employment, or other conditions affecting coverage during the COVID-19 pandemic – from losing coverage or being forced to find alternative coverage at a critical time.

Outbreak Period

- These extensions of time apply to several statutory periods under ERISA:
  - (1) the 30- or 60-day special enrollment period under HIPAA to enroll in a health care plan following a qualifying event;
  - (2) the 14-day period under COBRA for employers or plan administrators to provide COBRA election notices to qualified beneficiaries;
  - (3) the 60-day period under COBRA to elect continuation of coverage under a group health plan following loss of coverage;
  - (4) the deadlines for the plan participant or beneficiary to make premium payments under COBRA;
  - (5) the deadline to notify the plan administrator of a qualifying event for the extension of COBRA continuation coverage, such as divorce or disability determination;
  - (6) the period for filing benefit claims under the plan’s claim procedure;
  - (7) the period for filing appeals of an adverse benefit determination;
  - (8) the period for seeking an external review of an adverse benefit determination; and
  - (9) the period for filing information to perfect a request for external review after a finding that the request was not complete.

Outbreak Period - Duration of ‘Outbreak Period’

- The rule extends the foregoing ERISA deadlines by stopping the clock from running on these statutory time limitations during the “Outbreak Period.”
- The rule defines “Outbreak Period” as the period between March 1, 2020, and a future date that is 60 days after the announced end of the national emergency caused by COVID-19. The Trump administration’s Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease Outbreak was issued March 13, 2020, but no date has yet been announced for the end of this National Emergency.
- In addition, the administration may terminate the National Emergency with respect to certain parts of the country before others.
- In any case, under the new rule, if, for example, the National Emergency were to end in a particular jurisdiction on July 31, 2020, the Outbreak Period would end 60 days thereafter, on Sept. 29, 2020.

Outbreak Period - Planning for Longer Special Enrollment Periods

- Under HIPAA, plan administrators must allow employees to enroll themselves or their dependents in group health plans or insurance coverage outside of an open enrollment period if enrollment is requested within the plan's special enrollment period of at least 30 days following a qualifying event, provided that the employee or his or her dependents are otherwise eligible.
  - Common qualifying events include marriage, the birth or adoption of a child, and a dependent's loss of coverage.
  - Plans must also provide otherwise eligible employees or their dependents a special enrollment period of at least 60 days after the employee or a dependent loses health care coverage under Medicaid or CHIP.
- The administrative burden on employers associated with the extension of deadlines during the Outbreak Period may not be significant. However, plans limit enrollment periods to prevent employees from electing coverage and electing to pay health insurance premiums only after they become sick. Employers may face the risk of higher healthcare costs associated with employees or their dependents waiting to enroll in coverage until after they become sick.

Outbreak Period - Planning for Longer COBRA Election Periods

- Under COBRA, employees and their dependents may elect to continue health insurance coverage under an employer's plan after coverage terminates due to a qualifying event, such as termination of the employee's employment or the employee losing eligibility for coverage under the plan due to a reduction of the employee's hours.
- Plan Administrators must ordinarily provide a COBRA election notice to the plan beneficiaries within 14 days after the qualifying event; the notice must describe the beneficiaries' rights to continue coverage under COBRA.
- The DOL has provided an updated model COBRA notice that explains the interaction of Medicare and COBRA.
- However, the model notice does not address deadlines for making a COBRA continuation coverage election, and plan administrators must enter that information into the notice, keeping in mind the extension of deadlines during the Outbreak Period under the new rule.

Outbreak Period - Planning for Longer COBRA Election Periods

- A beneficiary who receives a COBRA election notice ordinarily has 60 days following receipt of the notice or other qualifying event, whichever is later, to elect COBRA continuation coverage.
- If the employer requires the COBRA beneficiary to pay a premium (which premium may not exceed 102% of the total premiums paid for or by other similarly situated plan beneficiaries), the beneficiary has an additional 45 days after electing coverage to pay the initial premium under COBRA.
- Thereafter, the beneficiary may elect to pay premiums in monthly installments.

Outbreak Period - Planning for Longer COBRA Election Periods

- Under the new rule, all COBRA elections and premium payments are postponed during the Outbreak Period.
- This change may cause administrative burdens for employers and their plan administrators.
- Following a COBRA qualifying event, but before a beneficiary has made a COBRA election and paid premiums, the beneficiary may not be denied coverage.
- Beneficiaries may accrue health care costs in the interim, and those claims will remain pending until coverage of such costs can be determined after the first COBRA premium is paid.
- Because the new rule extends the COBRA election period and postpones premium payments due after March 1, 2020, many of these coverage determinations will be postponed until 60 days after the termination of the National Emergency, whether such termination of emergency occurs locally or nationally.

HEROES Act – What is in it?

- Direct payments beyond the $1,200 check most Americans received under earlier legislation. The new bill offers another $1,200 payment for each family member in a household, up to $6,000.
- The bill allocates about $1 trillion to state, local and tribal governments for “honoring our heroes,” the legislation’s namesake.
- A “Heroes Fund” would be established, providing $200 billion to essential workers who worked during the pandemic as hazard pay.
- Businesses will receive a tax credit if they keep employees on their payroll, allowing 60 million to keep their paychecks and benefits. The credit is an expanded version of the one that Congress passed in March -- it would cover 80 percent of $45,000 of costs per employee, up from 50 percent of $10,000.
- The Paycheck Protection Program would be expanded “to ensure it reaches underserved communities” by providing $10 billion in COVID-19 emergency grants.
- Weekly $600 federal unemployment payments, additional to state benefits, would be extended until next January.
- The bill would create a special enrollment period in Affordable Care Act exchanges for the uninsured and would protect those losing their employer-provided health insurance with COBRA subsidies.
- There would also be $175 billion given to help families pay their mortgage, rent or utility costs. Maximum SNAP benefits, currently at $768 per month, would be increased by 15 percent.
- Another $75 billion would be provided to “ensure every American can access free coronavirus treatment,” and to expand testing and contact tracing measures.
- An unknown amount of resources would be allotted for elections safeguards, Census oversight and USPS funding.

2021 HSA Contribution Limits

- *HSA Contribution Limits.* The 2021 annual HSA contribution limit is $3,600 for individuals with self-only HDHP coverage (up from $3,550 in 2020), and $7,200 for individuals with family HDHP coverage (up from $7,100 in 2020).
- *HDHP Minimum Deductibles.* The 2021 minimum annual deductible is $1,400 for self-only HDHP coverage (unchanged from 2020) and $2,800 for family HDHP coverage (unchanged from 2020).
- *HDHP Out-of-Pocket Maximums.* The 2021 limit on out-of-pocket expenses (including items such as deductibles, copayments, and coinsurance, but not premiums) is $7,000 for self-only HDHP coverage (up from $6,900 in 2020), and $14,000 for family HDHP coverage (up from $13,800 in 2020).

Section 125 - Update

On May 12, 2020, the IRS issued two notices affecting employee elections under Code Section 125 cafeteria plans. The COVID-19 pandemic and large-scale "stay at home" orders left many employers facing questions relating to elections employees made with respect to their health and dependent care benefits long before the start of the pandemic. The two notices, Notice 2020-29 and Notice 2020-33 permit, but do not require, employers to make certain changes to their Section 125 cafeteria plan documents, retroactive to as early as January 1, 2020.

Section 125 – Notice 2020-29

- Under Notice 2020-29, employers are provided with increased flexibility regarding mid-year election changes made under a Section 125 cafeteria plan for calendar year 2020 as it relates to employer-sponsored health coverage, health flexible spending arrangements (FSAs), and dependent care assistance programs (DCAPs). Unlike most IRS relief granted for other programs, the relief granted under this notice is not limited to those directly affected by the pandemic.
- With respect to employer-sponsored health plan coverage, employers may amend their plans to permit employees to prospectively:
  - make a new election if the employee had initially declined coverage;
  - revoke an existing election for one type of coverage and elect a different coverage option available under the employer's plan; or
  - revoke an existing election without electing a different coverage option available through the employer’s plan, provided the employee attests in writing that they are enrolled, or will immediately enroll, in other health coverage not sponsored by the employer.
- For health FSAs and DCAPs, employers may amend their plans to permit employees to prospectively revoke an election, make a new election, or decrease/increase an existing election, regardless of whether such election is consistent with any change in status.
- In addition to the above, employers are permitted to allow employees with amounts in a health FSA or DCAP that will be forfeited as of the end of a grace period in 2020 or a plan year ending in 2020, to use those amounts for their designated purpose for expenses incurred through December 31, 2020.
  - For example, if an employee has amounts that were carried over until March 15, or if the employee has amounts that will be forfeited upon a plan year ending June 30, 2020, the employer can permit the employee to extend the use of those amounts through December 31, 2020.
- Lastly, the IRS also clarified that both the (1) exemption from the high-deductible health plan rules for use of telehealth services; and (2) coverage of expenses relating to testing and treatment of COVID-19 without a deductible by a high-deductible health plan, may be applied retroactively to January 1, 2020.

Section 125 – Notice 2020-33

- The IRS has modified Notice 2013-71 to increase the amount that may be carried over at the end of a plan year in a health FSA. Under the notice, the carry-over amount (currently $500) is increased by 20 percent to reflect the indexed amounts that can be contributed to health FSAs each year. For 2020, the amount that may be carried over into 2021 is $550 (20 percent of the $2,750 contribution limit). Under the Section 125 cafeteria plan rules, the carry-over limit must be adopted on or before the last day of the plan year from which amounts may be carried over in order to be effective retroactive to the first day of that plan year. Therefore, only those plans that incorporate the increase by reference or that are timely amended to set forth the increased amounts may begin applying the increased carry-over limit for a plan year beginning in 2020.
- Separately, under current rules health plans such as premium-reimbursement plans or individual coverage health reimbursement arrangements may not reimburse medical care expenses that were incurred before the beginning of the plan year and qualify for exclusion from income and wages. Such expenses are generally treated as incurred when the covered individual is provided with the medical care giving rise to the expense, not when it is billed or paid. Under this notice, premiums for health insurance coverage can be treated as medical care expenses on
    - (1) the first day of each month of coverage on a pro rata basis;
    - (2) the first day of the period of coverage; or
    - (3) the date the premium is paid. For example, an individual coverage health reimbursement account with a calendar year plan year may immediately reimburse a substantiated premium for health insurance coverage that begins on January 1, 2020, even if the covered individual paid the premium for the coverage on December 31, 2019.

PPP Loan Forgiveness Application

- The Small Business Administration (SBA) has released the Paycheck Protection Program (PPP) Loan Forgiveness Application along with detailed instructions. Employers that received money from the PPP must apply for loan forgiveness from their lender.
- The SBA will also issue regulations and guidance to assist borrowers in completing their applications and will provide lenders with guidance on their responsibilities.
- The form and instructions include measures to reduce compliance burdens and simplify the process for borrowers, including but not limited to:
  - Options for borrowers to calculate payroll costs using an "alternative payroll covered period" that aligns with borrowers' regular payroll cycles
  - Flexibility to include eligible payroll and non-payroll expenses paid or incurred during the eight-week period after receiving their PPP loan
  - Step-by-step instructions on how to perform the calculations required by the CARES Act to confirm eligibility for loan forgiveness
  - Addition of a new exemption from the loan forgiveness reduction for borrowers who have made a good-faith, written offer to rehire workers that were declined
- The application and instructions can be found here.

FordHarrison - Employment Practice Helpline

FordHarrison's **Employment Practice Helpline** is a toll-free advice line and dedicated email address which gives your clients access to some of the country's most prominent labor and employment attorneys who will guide your clients through the most effective means to resolving complicated employment issues. This program is **FREE** for BenefitMall broker clients. Group clients will receive up to one hour of support each month through the helpline.

- The Employment Practice Helpline is a toll-free advice line and dedicated email address which gives your clients access to some of the country's most preeminent labor and employment attorneys who will guide you through the most effective means to resolving complicated employment issues such as:
  - Family Medical Leave
  - EEOC Charges of Discrimination
  - Wage and Hour Compliance
  - ERISA
  - COBRA
  - Terminations/Reductions-In-Force
  - Disciplining Employees
  - Employee Benefits
  - Employment Related Concerns

How do my clients use the Employment Practice Helpline?

- Once you have completed the enrollment form and emailed it to FordHarrison, notify your client that they have access to the helpline and they may use it at their leisure by calling the toll-free number or utilizing the email address below. This is legal advice being offered, providing attorney/client privilege, so the communication must be direct to the client rather than through the broker.

(855) 769-6955 or benefitmallhelpline@fordharrison.com

Kyla - Get COVID-Covered

"Safely Returning to the Workplace" Solution with Kyla

Nurse Tests Everyone Onsite Weekly

- Molecular tests - nasal, oral & sputum options currently available (results in 48hrs to 96hrs)
- New to market tests and vaccines will be administered as they become available

App Monitors Symptoms and Vitals Daily

- Employee education on COVID & workplace safety for COVID prevention
- Daily symptoms & vitals checks
- Telemedicine access to doctors
- Infection contact tracing
- Clean Bill of Health from a Doctor to return to work
- Personalized Wellness Program to boost the immune system

Doctors Manage Positive Cases to Recovery

- 20 medical centers + telemedicine = 350,000+ patients treated
- Thousands of COVID tests performed at the first drive-thru in Santa Clara County
- Already working with large national chains on testing

- 5/19/20 BenefitMall-Kyla webinar recording
- Get COVID Covered

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COVID-19 Resources Page
California Specific COVID-19 Information
www.healthinsuranceexchange.com