

Insights, News & Events

WHEN SHOULD HEALTH PLAN SPONSORS PREPARE FOR THE REVISED 5500? RIGHT NOW!

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In July 2016, the U.S. Department of Labor (USDOL), the Internal Revenue Service, and the Pension Benefit Guaranty Corporation released proposed revisions to the Form 5500 Annual Return required for certain ERISA-covered employee benefit plans. While the proposed regulations garnered attention when they were released, the agencies have been relatively quiet about the changes to come. However, because the regulations target plan year 2019 and could include sweeping compliance changes for health plans, in particular, it's time to start planning.

Service Focus

Employee Benefits and Tax

BACKGROUND

The proposed revisions would affect both retirement plans and health plans. According to the agencies, they are intended to modernize the financial statements and investment information filed about employee benefit plans, update the reporting requirements for service provider fee and expense information, enhance accessibility and usability of data filed on the forms, and require reporting by all group health plans covered by Title I of ERISA. Finally, the agencies have hopes that the revisions will improve compliance under ERISA and the Internal Revenue Code through new questions

regarding plan operations, service provider relationships, and financial management of the plan.

THE AGENCIES' VISION FOR SELF-POLICING HEALTH PLANS

Although health plan audits have picked up in recent years, historically, they have been few and far between. To remedy this problem, the agencies have a plan. As the proposed revisions state, "the USDOL believes that the inclusion of...compliance questions will encourage plans to evaluate whether or not they meet the group health plan requirements of ERISA, potentially increasing the voluntary compliance by ERISA plans."

The proposed Schedule J (Group Health Plan Information) would ask health plan sponsors to certify under penalty of perjury that their health plan is compliant with a wide range of federal laws, including:

- ERISA's Summary Plan Description (SPD) requirement;
- ERISA's Summaries of Material Modification (SMM) requirement;
- the Affordable Care Act (ACA) generally;
- the ACA's Summary of Benefits and Coverage (SBC) requirement;
- HIPAA portability and nondiscrimination;
- the Genetic Information Nondiscrimination Act (GINA);
- the Mental Health Parity Act;
- the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act ;
- the Newborns' and Mothers' Health Protection Act;
- the Women's Health and Cancer Rights Act; and
- Michelle's Law.

The revised form would also ask detailed questions about the plan, including the approximate number of participants and beneficiaries covered under the plan; the number of persons offered and receiving COBRA; grandfathered status; whether the plan offers coverage for employees, spouses, children, and/or retirees; what type of group health benefits are offered under the plan; funding information; whether there were participant and/or employer contributions; and very detailed claims information including claim denials.

SMALL PLANS COULD BE REQUIRED TO FILE 5500S

The proposed regulations would also eliminate the current exemption from filing the Form 5500 for small, fully insured group health plans. Instead, these plans would need to file a limited Form 5500/Schedule J beginning with the 2019 plan year. Specifically, these small plans would be required to complete Lines 1-5 (basic identifying information) on the Form 5500 and Lines 1-8 on Schedule J (basic participation, coverage, insurance company, and benefits information).

It appears that at least part of the reason for the new filing requirement is to help the agencies identify small plans to audit. In the proposed revisions, the agencies report that because fully insured plans often use carrier documents, "the USDOL would be able to better identify those plans that may be affected by noncompliant provisions and better coordinate its enforcement efforts with affected service providers and other Federal and State agencies."

THE BOTTOM LINE

The time is now. Companies that sponsor health plans should begin auditing their health plan compliance now and through 2019 in preparation for the expected revisions to the Form 5500.

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