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Important Updates for Health and Welfare Plans

In late 2022, the Internal Revenue Service issued guidance affecting most employers' group health plans. In addition, Congress extended the safe harbor allowing high deductible health plans to temporarily provide telehealth care without a deductible. We briefly summarize these changes in this Client Alert.

Automatic 30-Day Extensions for Furnishing ACA Forms to Individuals

Employers who provide minimum essential coverage are required to report certain information to the IRS and covered individuals. Small employers (fewer than 50 full-time employees) use Form 1095-B and large employers (50 or more full-time employees) use Form 1095-C. The reporting deadline is January 31 of the year following the calendar year in which the minimum essential coverage is provided. Recent guidance grants an automatic 30-day extension to furnish the statements to individuals, making the new deadline March 2. The automatic extension applies to 2021 and later calendar years.

The automatic extension applies only to furnishing statements to individuals and does not affect the deadlines for filing ACA reporting forms with the IRS.

Alternate Manner for Furnishing Forms 1095-B and 1095-C

The general or traditional reporting rule is that employers must furnish to individuals Form 1095-B or C on paper unless the individual affirmatively consents to receive the statement in an electronic format. Recent regulations allow employers to furnish Forms 1095-B to individuals using an alternate online posting method if they meet the following conditions:

- Post a clear and conspicuous notice on its website informing individuals that they may receive a copy of their 1095-B upon request and how to do so;
- Retain the notice on the website through October 15 of the following year; and
- Actually furnish the Form 1095-B to the individual within 30 days of a request.

Large employers that sponsor self-insured group health plans may also use this online posting method to furnish Form 1095-C to *non-full-time employees* and *non-employees* enrolled in their plan. Large employers must still furnish to their full-time employees Form 1095-C using the traditional method.

The new alternative furnishing method may be used for calendar years 2021 and beyond.

Fixing the "Family Glitch"

The IRS issued guidance in October that addressed the "family glitch." Beginning in 2023, employer-sponsored group health plan coverage is "affordable" for an employee's family members if the employee's required contribution toward that family coverage is less than 9.12% for 2023 (adjusted annually) of the

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employee's household income. If family coverage is not "affordable," family members may be eligible for a premium tax credit when purchasing health insurance through an Exchange.

Importantly, the new affordability test applies only to an employee's family member's ability to receive a premium tax credit. An employer will not be subject to an employer shared responsibility penalty if an employee's family member receives a premium tax credit for health insurance purchased from an Exchange, as long as the employee's coverage is affordable.

New Permissive Mid-Year Cafeteria Plan Election Changes

In conjunction with the fix of the "family glitch," the IRS now permits cafeteria plans to allow mid-year election changes consistent with an employee's family member's enrollment in health insurance through an Exchange. While cafeteria plans are not required to adopt this new mid-year election change, plan documents will need to be amended if an employer chooses to adopt it.

Departments Issue FAQs on Prescription Drug and Health Plan Reporting

In late December, the Departments of Labor, Health and Human Services, and the Treasury jointly released [FAQ guidance](#) relating to prescription drug and health plan reporting for 2020 and 2021 that was "due" on December 27, 2022.

The Departments are adopting a "good faith" approach to enforcement. The Departments will not take enforcement action with respect to any plan that uses a good faith, reasonable interpretation of the regulations and the reporting instructions in making its submission. The FAQs also provide a "grace period" until January 31, 2023 to file the prescription drug and healthcare spending reports for 2020 and 2021 that were previously due December 27, 2022.

The FAQs address some common questions about how to submit various reports and data elements including the following:

- Multiple submissions by the same reporting entity are allowed when the entity submits on behalf of more than one plan or issuer for a reference year.
- More than one reporting entity may submit the same data file on behalf of the same plan or issuer.
- Certain data aggregation requirements have been relaxed for 2020 and 2021 data reporting.
- Some plans and issuers may submit information by email instead of using the Health Insurance Oversight System module.
- Reporting entities are not required to include vaccine drugs in their data files.
- Reporting entities do not need to report the value of amounts not applied to the deductible or out-of-pocket maximum.

Telehealth Safe Harbor Extended

In late December, the Consolidated Appropriations Act, 2023 ("CAA") was enacted. The CAA temporarily extends the safe harbor that allows high deductible health plans to provide telehealth or other remote care services without a deductible. The extension is effective for plan years beginning after December 31, 2022, but before January 1, 2025. This extension builds on the telehealth safe harbor first set forth in the CARES Act and renewed in the Consolidated Appropriations Act, 2022.

If you have any questions about these new changes, please contact one of the members of Kutak Rock's [Employee Benefits and Executive Compensation practice group](#).

