Subject: **IRS Pronouncements: 1) Cafeteria Plan Status Change Events, 2) Employment Status Change Proposals to Employer Shared Responsibility Rules, 3) Increase in PCOR Fees; and Final Excepted Benefit Regulations**
Date: October 6, 2014

The Internal Revenue Service recently released three pronouncements relating to the Affordable Care Act (ACA). In addition, final regulations have been issued relating to certain excepted benefits.

NEW CAFETERIA PLAN STATUS CHANGE EVENTS

Generally, a cafeteria plan election is binding for a 12-month period. A cafeteria plan election can only be changed if certain status change events occur and only as long as the cafeteria plan document allows for the relevant status change event and only as long as the change being made is consistent with that status change. The newly released guidance, IRS Notice 2014-55, provides for two new cafeteria plan status change events.

Thus far, the ACA marketplace open enrollment period has not been a status change event. This creates challenges for non-calendar year cafeteria plans. The IRS guidance indicates that the cafeteria plan regulations will be amended to allow a status change event both for the marketplace open enrollment time, as well as for the marketplace special enrollment events that permit enrollment upon certain events such as moving to a new state, a change in income or family events such as marriage or birth of a child.

Further, this Notice provides that a cafeteria plan can include, as a status change event, a reduction in hours to less than 30 hours per week, even if that does not cause a loss of eligibility under the health plan. Without this permissible status change event, an individual would be ineligible to make a change because it would not meet the consistency rule.

Effective date. This guidance can be relied upon prior to the regulations being amended.

Amending the Cafeteria Plan Document. If an employer wants to add these status change events to its Section 125 cafeteria plan, then the cafeteria plan document must be amended to adopt the changes. The amendment would need to be adopted before the last day of the plan year in which the elections are allowed and can be made effective retroactively to the beginning of the plan year. A plan can be amended to adopt the new election changes for the 2014 cafeteria plan year as long as the amendment is made before the last day of the 2015 plan year. However, no elections to revoke coverage are allowed to be made on a retroactive basis. In addition, once the cafeteria plan is amended, then plan participants must be notified of the changes.

EMPLOYER SHARED RESPONSIBILITY – CHANGE IN EMPLOYMENT STATUS PROPOSALS

IRS Notice 2014-49 provides additional guidance on changes in employment status, particularly relevant as it relates to the ACA employer shared responsibility requirement and use of measurement periods.

As a reminder, for purposes of the employer shared responsibility provisions, an employee is deemed full-time if the employee works, on average, 30 or more hours per week. In many situations, an employee's status upon hire is not clear. To this end, the regulations provide two methods: a monthly method and a look-back method that can be used for determining full-time status as it relates to the potential assessment of an employer shared responsibility penalty (see CBIZ Health Reform Bulletin, *Exploring the Final Employer Shared Responsibility Regulations* (3/10/14).

The monthly method looks at hours worked in a month to determine full-time status for that month. The look-back method uses a look-back period, known as a measurement period, to assess hours worked. Based on hours worked during the look-back (measurement) period, an individual's status as full-time, or not full-time, is set for an entire stability period.

One of the challenges exists when the measurement standard changes. This can occur in several ways; for example, where one moves from a monthly method to a look-back method or vice versa. This Notice provides additional guidance specifically as it relates to, for example, the types of measurement period that is used for a class of employees. For example, if an employer uses a 12-month look-back period for its employees covered by collective bargaining agreement (CBA) and a 6-month look-back period for its hourly employees, and if the employer wants to move the hourly measurement methodology to mirror the CBA methodology, this Notice provides guidance on how to accomplish this (see Example 7 in the *CBIZ Examples of Change in Measurement Period from Monthly to Look-back and Vice Versa*).

Corporate Transactions. In the event of a business acquisition, the government continues to look at ways to best accommodate business transactions. Until future guidance is issued, at least through the end of 2016, in the event of a business reorganization, an employer can use the methodologies described in the Notice.

Effective date. The information contained in the Notice can be relied upon until future guidance is provided.

PCOR FEE – ADJUSTED AMOUNT

IRS Notice 2014-56 relates to the Patient Centered Outcomes Research (PCOR) fee. The PCOR fee was $1 for the first year; $2 for the second year; and, is tied to inflation thereafter. This guidance indicates that the PCOR fee will be $2.08 for plan years ending between October 1, 2014 and October 1, 2015.

EXCEPTED BENEFITS – FINAL REGULATIONS

On October 1, 2014, the three ACA governing agencies (HHS, IRS and DOL) issued final regulations relating to certain excepted benefit plans; specifically, limited scope dental and vision plans, and employee assistance programs. Generally, these types of excepted benefit plans are exempt from many aspects of the ACA, as well as HIPAA.

The final regulations generally adopt the requirements of the proposed regulations issued in December, 2013 (see CBIZ HRB, *Excepted Benefit Proposed Regulations*, 1/6/14), with a few clarifications as follows.

Insured limited-scope dental benefits, limited-scope vision benefits, or long-term care benefits are excepted from the ACA (and HIPAA) if the benefits are provided under a separate policy, certificate, or contract, or are otherwise not an integral part of a group health plan which means:

1. Participants can decline and/or opt out of the coverage regardless of whether a participant contribution is required for the coverage; and
2. The claims for benefits are administered under a separate contract from the claims administered by the group plan.

To be "*limited scope*", the plan must specifically, and only provide benefits for, in the case of dental plans, issues relating to the function and structure of the mouth, and for vision coverage, issues relating to the function and structure of the eye.

Generally, an employee assistance program (EAP) would be subject to the ACA if it provides *significant* medical care. The regulations indicate that short-term limited counseling would not be considered significant medical care whereas long-term services. such as disease management. would be. As a side note, this appears to be a bit in contravention of the standard used for COBRA purposes. Hopefully, clarifying guidance will be issued at some point.

An EAP would be exempt from the ACA if:

1. The program does not provide significant medical care benefits; and
2. The benefits under the EAP are not coordinated with benefits under another group health plan. This means that:
   - Participants in the other group health plan are not required to use and exhaust benefits under the EAP as a gatekeeper before an individual is eligible for benefits under the other group health plan;
   - Participant eligibility for benefits under the EAP cannot be dependent upon participation in another group health plan;
   - No employee premiums or contributions are required as a condition of participation in the EAP; and
   - There is no cost share requirement by the EAP.

The proposed regulations suggested a third type of excepted benefit known as a limited "wraparound" benefit. The premise behind the wraparound coverage is that if the employer coverage is unaffordable to certain employees, the employee could forego the employer coverage and obtain individual coverage together with the wraparound coverage. These final regulations do not further address this concept but it is indicated that future guidance will.

Effective date. The final regulations apply to group health plan years beginning on or after January 1, 2015. Until then, either the proposed or final regulations may be relied upon.