Weekly Digest

• *November 7, 2023* •

Agencies Propose Extensive Modifications to Regulations Implementing Surprise Billing IDR

"Several provisions of both the interim final and final regulations, as well as related agency guidance, have been vacated in a series of cases brought by an association of health care providers. In response, the agencies recently issued proposed regulations addressing IDR fee issues raised by the litigation and, among other things, partially shut down and reopened the federal IDR portal multiple times. The agencies now propose additional regulations to adjust the IDR process and change the fee structure. Here are highlights." **Full Article**

Thomson Reuters / EBIA

Reminder: Gag Clause Attestations Due by Year-End

"[1] Review applicable contracts to ensure that they do not contain prohibited gag clauses. [2] If the group health plan is fully insured, confirm that the insurer will make the Attestation on behalf of the plan. [3] If the group health plan is self-insured, it may be possible to delegate the responsibility for completing the Attestation to the plan's TPA. [4] Review existing agreements with insurers/ TPAs to ensure that the agreement includes a 'compliance with applicable law' provision." **Full Article**

Faegre Drinker Biddle & Reath LLP

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By, Wage and Hour Division, U.S. Department of Labor

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By, Winston & Strawn LLP

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Simplify Compliance

Self-Funded Plan's Guide to Gender-Affirming Coverage

"Whether or how a group health plan (GHP) should cover gender-affirming care is a complex and evolving legal issue. This is especially true of self-funded GHPs, which are generally not subject to the nondiscrimination provisions of the Affordable Care Act (ACA). Both state and federal law are still unsettled. Self-funded GHP sponsors must carefully consider numerous legal factors." **Full Article**

Hall Benefits Law

Fact Sheet #66e: The Davis-Bacon and Related Acts — Compliance with Fringe Benefit Requirements

"The following practices may lead to violations under the DBRA, resulting in failure to pay the applicable prevailing wage rate: [1] Misclassifying laborers and mechanics for the type of work performed; [2] Failing to obtain prior approval from the DOL for unfunded fringe benefit plans; [3] Failing to annualize (or incorrectly annualizing) the hourly equivalent of fringe benefit amounts. [4] Paying hourly rates and/or fringe benefit amounts pursuant to a Collective Bargaining Agreement (CBA), where the CBA specifies rates lower than those required in the applicable wage determination; and [5] Improperly taking credit towards fringe benefit obligations for certain expenses." **Full Article**

Wage and Hour Division, U.S. Department of Labor

Benefits BRIEF

2023 ACA Reporting

• November 2023 •

The reporting requirements under the Affordable Care Act (ACA) have been in effect since 2015. Many employers are already familiar with the rules. However, some employers, particularly those that have grown in size, may lack clarity regarding their reporting obligations under the law. As the deadlines for the 2023 ACA reporting roll near, it is important to review the basics of reporting, including any changes that may be applicable for the 2023 reporting year.

Basics of Reporting

The ACA created two federal reporting requirements under Internal Revenue Code (Code) Sections 6055 and 6056.

CODE SECTION 6055. Under Code Section 6055, ***insurance carriers and self-funded employers*** must report to the IRS and to covered individuals that the persons were covered by minimum essential coverage. These entities use Form 1094-B and Form 1095-B (B Forms) to report this information.

CODE SECTION 6056. Code Section 6056 applies to ***applicable large employers (ALEs)***[1]

ACA Reporting Benefits Brief — Download a Copy

Winston & Strawn LLP: Benefits Bulletin — IRS Increases PCORI Fees Payable in 2024

"The new Patient Centered Outcomes Research Institution (PCORI) fee for policy and plan years that end on or after October 1, 2023 and before October 1, 2024 is $3.22; an increase of $0.22 per covered life as compared to the PCORI fee assessed on or after October 1, 2022 and before October 1, 2023." **Full Article**

Winston & Stawn LLP

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