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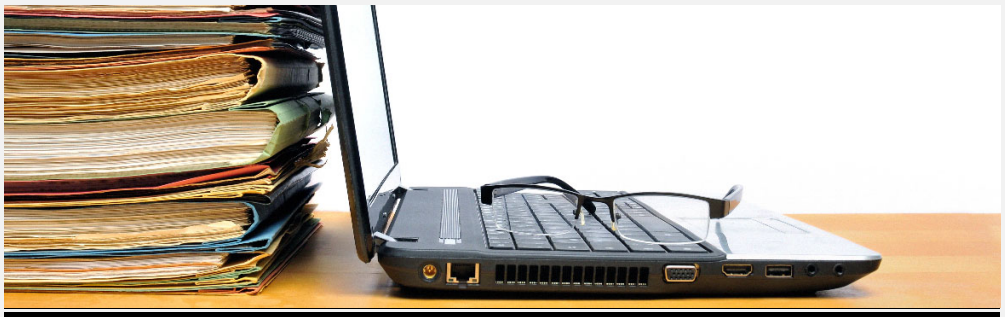

Rewards Policy Insider
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In this Issue:

Agencies Issue Reminder About ACA Contraceptive Coverage Requirements, Express Concerns about Noncompliance

Citing a need to preserve access to reproductive health care following the Supreme Court's decision in *Dobbs*, as well as "increasing complaints from women and covered dependents" about noncompliance by group health plans, the Departments of Health and Human Services, Labor, and Treasury recently issued a series of frequently asked questions (FAQs) to remind health plans of their responsibilities with respect to contraceptive coverage.

Background

In general, the Affordable Care Act (ACA) requires non-grandfathered group health plans to provide coverage for certain preventive services. (A grandfathered plan is one that was in existence when the ACA was enacted, and that has been changed only within certain parameters and satisfied certain other requirements since that time. According to Kaiser Family Foundation data, approximately 20% of employers still offer at least one grandfathered plan.) These include the "full range of female-controlled FDA-approved contraceptive methods, effective family planning practices, and sterilization procedures to prevent unintended pregnancy and improve birth outcomes." Additionally, the scope of this mandate covers "contraceptive counseling, initiation of contraceptive use, and follow-up care (for example, management and evaluation as well as changes to, and removal or discontinuation of, the contraceptive method)," among other things.

Pursuant to the mandate, these required preventive services also must be provided on a first-dollar basis. In other words, they may not be subject to any deductible, coinsurance, copay, or other cost-sharing requirement.

FAQs

The FAQs address a number of questions and issues relating to the preventive services coverage requirements and how they apply to reproductive services. But of particular interest in the post-*Dobbs* environment is Q/A-5, which reiterates that the preventive services mandate encompasses emergency contraception products – also known as "Plan B."

Specifically, the FAQs confirm that non-grandfathered group health plans must cover emergency contraception products – including those obtained over-the-counter – without cost-sharing if prescribed by the individual's attending physician. This includes situations where they are prescribed in advance.

Note that the mandate does not extend to over-the-counter emergency contraceptive products obtained without a prescription. However, the FAQs "encourage" group health plans to provide first-dollar coverage in these cases as well. Furthermore, the FAQs explain that health FSAs, HRAs, and HSAs can reimburse individuals for the cost of over-the-counter contraceptives to the extent not otherwise reimbursed or paid for by insurance.

The full text of the FAQs is available here.

Landscape of State-Run Retirement Programs Continues to Develop and Expand

Recent developments in the state-run retirement program sphere include mandatory IRA program legislation enacted in Delaware and Hawaii and the launch of Connecticut's mandatory IRA program.

The rapid development of state-run retirement programs for certain private-sector employees shows no signs of slowing down any time soon. With the recent enactment of laws in Hawaii and Delaware, there are now 12 states in the country that have enacted a state-run IRA program for private-sector employees that includes a participation mandate for certain employers. In addition, Connecticut has now joined three other states—California, Oregon, and Illinois—in officially launching its state-run retirement program.

Delaware

On August 18, 2022, Delaware Governor John Carney (D) signed into law the Delaware Expanding Access for Retirement and Necessary Saving ("EARNS") Act (H.B. 205). The law establishes the Delaware EARNS Program, which will generally require private employers to facilitate their employees' participation in an automatic enrollment payroll deduction Roth IRA program if they (1) employ at least five "covered employees," (defined below) (2) have been in business in Delaware for at least six months in the immediately preceding calendar year, and (3) do not maintain a "specified tax-favored retirement plan" (meaning a 401(a), 401(k), or 403(b), SEP or SIMPLE plan). Generally, a "covered employee" is a person age 18 or older who is employed by an employer that is subject to the employer mandate. How the program will apply to businesses that do not have operations in Delaware but have five or more employees working remotely from Delaware is not entirely clear.

Covered employees will be automatically enrolled in the program but may opt out if they so choose. The law does not, however, impose a universal mandate on Delaware employers—an employer that maintains a tax-favored retirement plan is not required to participate in the program.

Hawaii

On July 12, 2022, Hawaii Governor David Ige (D) signed into law the Hawaii Retirement Savings Act (S.B. 3289), which establishes a state-run IRA program for private-sector employees with an employer mandate. The law generally requires private sector employers in Hawaii that employ one or more employees and do not offer a tax-qualified retirement plan (meaning a 401(a), 401(k), 403(a), 403(b), SEP, or SIMPLE plan) "for all employees" (discussed more below) to facilitate their employees' participation in the program. Employees who are eligible to participate in the program are generally residents of Hawaii age 18 or older who are employed by an employer subject to the mandate. The Hawaii law includes two unique features that set it apart from mandatory IRA program laws that have been enacted in other states. First, the law has an employee "opt in" feature, meaning—unlike the Delaware law described above—it does not provide for the automatic enrollment of employees. Rather, employers subject to the mandate are required to "allow" a covered employee to enroll in the program if the employee chooses. Second, the mandate

exempts only employers that have been "maintaining for *all employees* during the preceding two years" a tax-qualified retirement plan. While the exact effect of this statutory language is not yet clear, this is potentially concerning for plan sponsors that impose age or service requirements or exclude other employees to the extent allowed under federal law. However, the law also provides that the program's governing board has the power and duty to avoid preemption of the program by federal law and to take any action the board deems reasonably necessary to carry out the purpose of the law.

Connecticut

With respect to states that already enacted state-run program laws, Connecticut's "My CT Savings," a mandatory auto-IRA program, officially launched on March 24, 2022, and registration opened to all eligible employers on April 1, 2022. The Connecticut program mandate generally applies to private sector employers in the state that have at least five employees, have been in existence at all times during the current calendar year and immediately preceding calendar year, and do not maintain a 401(a), 403(a), 403(b), SEP, SIMPLE, or government retirement plan. The program's first deadline, applicable to employers subject to the mandate with 100 or more employees, was June 30, 2022. The next deadline, applicable to employers subject to the mandate with 26 to 99 employees, is October 31, 2022.

Alabama Implements New Unpaid Family Leave Law

The Adoption Promotion Act, effective July 1, 2022, requires certain employers to provide employees with 12 weeks of unpaid family leave for the birth and care of a child or the adoption of a child during the first year after the child's birth or adoption.

Overview

In April 2022, Alabama Governor Kay Ivey (R) signed into law the Adoption Promotion Act (S.B. 31) (the "Act"), which generally requires employers to provide 12 weeks of unpaid family leave to an eligible employee for the birth and care of a child born to that employee during the first year after the child's birth, or for the care of a child placed with the employee in connection with an adoption within one year of the adoption of the child. The Act adopts the federal Family and Medical Leave Act's ("FMLA") definitions of both "eligible employee" and "employer." Eligible employees are those who have been employed (1) for at least 12 months by the employer; and (2) for at least 1,250 hours of service with the employer during the previous 12-month period. The Act is generally applicable to employers who employ 50 or more employees as well as public agencies.

With respect to leave taken on account of an adoption where the need for leave is foreseeable based on an expected placement of a child with an employee, the employee must generally provide his or her employer with at least 30 days' notice of his or her intention to take the leave. When that is not possible, the

employee must inform his or her employer as is practicable. While an employer is not required to provide more than 12 weeks of leave, the Act provides that requests for additional family leave due to the adoption of an ill or disabled child must be considered on the same basis as comparable cases of complications accompanying the birth of an employee's child.

Alabama's leave runs concurrently with any other leave provided by federal law. Employers are not required to provide additional family leave to an employee once the employee has exhausted the leave to which he or she is entitled under federal law.

Outlook

Alabama is not the only state to recently enact a family leave-related law. In May 2022, Delaware became the 11th state (plus the District of Columbia) to enact a paid family and medical leave law. Virginia also recently passed a law allowing employers in the state to voluntarily purchase family leave insurance for their employees. While Alabama's family leave law does not provide for paid leave, the Act is nevertheless a sign that both Democrat- and Republican-controlled states are considering family and medical leave issues.

Employers operating in Alabama should be aware of the Act's new requirements and the Act's effective date of July 1, 2022. Certain aspects of the Act are not entirely clear at this time (for example, what is meant by "additional leave" in the context of the adoption of an ill or disabled child, as described above), but the Act does require the state to adopt and implement administrative rules and procedures necessary to implement the law's requirements. Those rules and procedures may provide more clarity in the future.

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