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Rewards Policy Insider
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IRS Issues Guidance on ACA Reporting Relief

The IRS issued Notice 2025-15 to provide guidance on the alternative method of furnishing certain ACA information returns to participants, pursuant to the Paperwork Burden Reduction Act.

Background

As reported in [RPI 2025-01], the Paperwork Burden Reduction Act ("Act") gives health insurance issuers and "applicable large employers" or "ALEs" (i.e., employers with 50 or more full-time employees) the option to furnish Form 1095-B and 1095-C upon request, rather than automatically providing it directly to covered individuals and full-time employees. In order to take advantage of this option, the insurer or employer must post a notice to their website advising individuals of their right to be furnished the relevant notice upon request. Once the request is made, the Form 1095-B or 1095-C, as appropriate, generally must be furnished to the individual within 30 days.

Notice 2025-15

Prior to the Act, the IRS had already made this alternative method available with respect to the Form 1095-B. The Act made it applicable with respect to the Form 1095-C as well, and also made some minor modifications. Notice 2025-15 provides the following guidance:

- The alternative method for furnishing the Form 1095-B is available regardless of whether the individual shared responsibility penalty continues to be zero (note, the IRS originally issued regulations permitting the alternative method because the individual shared responsibility penalty had been reduced to zero, and thus individuals no longer needed the Form 1095-B to prove they had minimum essential coverage);
- The online notice of the availability of the Form 1095-B must be posted by the otherwise applicable deadline for furnishing the Form, which would be January 31 plus the automatic 30-day extension (i.e., March 3, 2025 for Forms 1095-B relating to 2024);
- Upon request, the Form must be furnished by the latter of January 31 or 30 days after the date of the request;
- The same rules apply with respect to the requirements for ALEs to furnish the Form 1095-C.

As indicated, the alternative method is available for Forms 1095-B and 1095-C relating to the 2024 tax year. However, because the Act was enacted late in 2024 and the IRS has only recently issued Notice 2025-15, it is unlikely that many ALEs have had the opportunity to implement it for their 2024 Forms 1095-C. Still, it might be an appealing option for 2025 and beyond.

Agencies Release Updated FAQs on Gag Clause Prohibition

The Departments of Labor, Health and Human Services, and Treasury (collectively, the "Agencies") released a new set of FAQs addressing the gag clause prohibition applicable to group health plans and group health insurance issuers. The FAQs address a number of key issues, including the applicability of the gag clause prohibition to downstream contracts.

Background

At the end of 2020, the Consolidated Appropriations Act, 2021 ("CAA 2021") amended various laws to prohibit group health plans and group health insurance issuers from entering into agreements with health care providers, a network of providers, third-party administrators ("TPAs"), or other service providers offering access to a network of providers that include certain "gag clauses."

A "gag clause" in this context means any direct or indirect restrictions on:

- The disclosure of provider-specific cost or quality of care information or data to referring providers, the plan sponsor, participants, beneficiaries, or enrollees, or individuals eligible to become participants, beneficiaries, or enrollees of the plan or coverage;
- Electronic access to de-identified claims and encounter information or data for each participant, beneficiary, or enrollee upon request and consistent with HIPAA and other privacy rules; and
- Sharing any information or data described above, or directing that such information or data be shared, with a "business associate" pursuant to the HIPAA privacy rule.

Group health plans and issuers must submit an attestation of compliance with these rules by December 31 of each year.

Updated FAQs

On January 14, 2025, the Agencies issued FAQs Part 69, the latest in a series of FAQs providing additional guidance on the gag clause prohibition. Key issues addressed in the FAQs include:

- Downstream Contracts. Q&A-6 clarifies that the gag clause prohibition applies to "downstream" contracts. For example, if a plan enters into an agreement with a TPA to provide network access, and the plan is restricted from providing, electronically accessing, or sharing the relevant information available to the TPA with participants, beneficiaries, enrollees, plan sponsors, referring providers, or a business associate (as applicable) due to the TPA having entered into a downstream agreement that restricts the use of such information, the plan's agreement with the TPA generally would be considered an indirect violation of the gag clause prohibition.

- De-identified Information. Q&A-8 explains that a limitation on the "scope, scale, or frequency" of electronic access to de-identified claims and encounter information or data is considered an impermissible gag clause prohibition, to the extent the provision places "unreasonable limits" on the ability of plans and issuers to access such information or data "upon request," as required by law. The FAQs also provide specific examples of impermissible gag clauses in this context, such as unreasonably limiting the frequency of claims review (e.g., no more than once per year).

- Attestation Required Even in Cases of a Knowing Violation. Q&A-9 states that the annual attestation requirement still applies even when a plan or issuer is aware they have entered into an agreement that would violate the gag clause prohibition. If a plan or issuer is aware of this fact but has been unable to remove the noncompliant provision from their agreement with a health care provider, network or association of providers, TPA, or other service provider offering access to a network of providers, the plan or issuer must identify the non-compliant provision as part of their attestation. The FAQs explain that they may use the Gag Clause Prohibition Compliance Attestation (GCPCA) webform system in the text box labelled "Additional Information," on Step 3 of the attestation for this purpose (see instructions here).

Maryland Proposes Delay of State Paid Leave Program

The Maryland Department of Labor ("DOL") has proposed to push back the start date of the state's Family and Medical Leave Insurance ("FAMLI") program. Under the proposal, which will require action by the state legislature to become effective, payroll deductions to fund the program would begin on January 1, 2027, and employees would become eligible for FAMLI leave beginning on January 1, 2028.

What is the Maryland FAMLI Program?

Once the Maryland FAMLI program goes into effect, most employees of Maryland employers will be eligible for paid leave of up to $1,000 a week for up to 12 weeks. Qualifying leave events include: (1) to care for the employee's serious health condition; (2) to care for a family member's serious health condition; (3) the birth, adoption, or fostering of a child; and (4) to make arrangements necessary for a family member's military deployment.

The law applies to all employers with at least one employee in Maryland. Both employers and employees (via payroll deductions) will be required to contribute to a fund administered by the state in order to fund the program. For employers, the rate of contribution depends on the employer's size – for example, employers with fewer than 15 employees will pay a lesser rate. As an alternative, an employer can apply to use a commercial or self-insured paid leave plan.

Currently, payroll deductions are scheduled to begin on July 1, 2025, and employers will remit the first payment to the state in October 2025. Benefits for workers are scheduled to start on July 1, 2026.

Thus far, the Maryland DOL has issued proposed regulations providing additional detail on the FAMLI program, but has yet to finalize those regulations.

Proposed Delay

On February 14, 2025, the Maryland DOL proposed delaying the implementation of the FAMLI program. Under the proposal, payroll deductions would begin on January 1, 2027, and benefits would become available on January 1, 2028.

Explaining its reasoning for the proposed delay, the Maryland DOL said that "[r]ecent sweeping, unprecedented changes at the federal level have given rise to a high degree of instability and uncertainty for Maryland employers and workers," and given this state of affairs, Maryland DOL and other state agencies are focusing on supporting Marylanders and responding to these changes.

Maryland DOL has said it is working closely with state legislators to implement the delay. A Maryland Senator introduced such a bill in January, but that bill has not yet passed. Therefore, until the state legislature enacts the proposed change, Maryland employers should be prepared for the original FAMLI program timeline.

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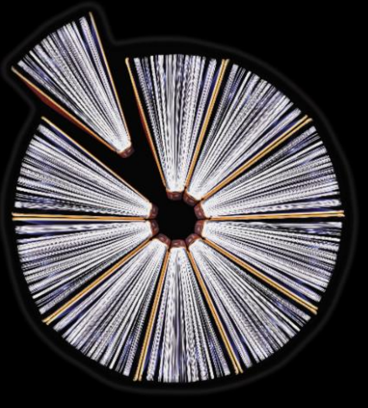

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