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Self-Insured Health Plans

What's New in the 1st Qtr. 2014 Edition

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Self-Insured Health Plans

This What's New section highlights the changes made in the last quarter to *Self-Insured Health Plans*-the authoritative guidebook for employers, administrators, and advisors.

Below are some highlights of the substantive changes.

- **Section V- Governing Law and ERISA Preemption.**
 - *V.D-Health Care Reform and Other Federal Laws.* The discussion of expatriate health plans has been updated to reflect additional FAQ guidance clarifying the scope of the temporary relief from certain health care reform mandates. (The relief remains limited to insured expatriate health plans.)
 - *V.E-ERISA Preemption and the Application of State Mandates.* We've added a discussion of a recent trial court case that questions the scope of ERISA's church plan exemption, and two federal circuit court cases addressing ERISA's preemption of the application of state laws (in Vermont and Georgia) to self-insured health plans and their third-party administrators.
- **Section VI- Federal Tax Treatment of Self-Insured Health Plans.**
 - *VI.G-Federal Tax Treatment of Welfare Benefit Funds.* We've noted the issuance of proposed regulations addressing the calculation of unrelated business taxable income (UBTI) for VEBAs. The proposed regulations respond to a Sixth Circuit decision that contradicted the position of the IRS.
 - *VI.H-Additional Taxes Under Health Care Reform.* The discussion of employer shared responsibility ("play or pay") penalties has been revised to reflect the agencies' final regulations.
- **Section IX- Written Plan Document.**
 - *IX.E-Recommended Plan Provisions.* Our list of recommended plan provisions now includes a reference to a plan-imposed limitations period, in light of a recent U.S. Supreme Court case that is discussed in Section XXVI.J.
 - *IX.F-Coordination With SPD, SBC, and Other Plan Materials.* We've updated this subsection to include a recent trial court case that enforced a subrogation-type provision in a self-insured health plan's SPD in the absence of an official plan document.

- **Section XIII- Covered Benefits.**
 - XIII.C-*Federally Mandated Benefits Must Be Covered.* The manual's coverage of the Mental Health Parity and Addiction Equity Act (MHPAEA) in subsection C.2 has been reworked to incorporate the final regulations that apply for plan years beginning on or after July 1, 2014. We've also expanded and updated the discussion of excepted benefits in light of the agencies' proposed regulations.
 - XIII.D-*Benefits Must Not Be Discriminatory.* In subsection D.2, we've noted the recent FAQ guidance on nondiscriminatory wellness programs, which include clarifications for reasonable alternative standards and midyear enrollment opportunities.
- **Section XIV- Eligibility.**
 - XIV.C-*Which Employees and Other Workers Will Be Allowed to Participate?* This discussion has been revised to reflect eligibility considerations associated with the employer shared responsibility ("play or pay") final regulations.
 - XIV.E-*Beneficiary Eligibility.* We've added a new subsection exploring design decisions, compliance issues, and practical challenges involving spousal coverage-including spousal surcharges, eligibility restrictions, and exclusions.
- **Section XV- Plan Costs, Cost-Sharing Features, and Participant Contributions.**
 - XV.D-*Designing Cost-Sharing Features.* This subsection has been updated to reflect FAQs on health care reform's out-of-pocket maximum limit (including a new example illustrating the FAQ) and cost-sharing in connection with mental health parity, as well as the final regulations under health care reform's employer shared responsibility ("play or pay") provisions.
- **Section XVI- Enrollment.**
 - XVI.B-*Waiting Periods for Eligible Individuals.* This new subsection addresses waiting periods as an aspect of self-insured health plan design and incorporates the final regulations on health care reform's 90-day waiting period limit.
- **Section XVII- Stop-Loss Insurance.**
 - XVII.D-*Regulation of Stop-Loss Insurance.* This discussion has been updated to note a recent Congressional hearing and pending bills in the U.S. Senate and House of Representatives aimed at protecting stop-loss from federal regulation.
- **Section XIX- VEBAs and Other Trusts.**
 - XIX.B-*Voluntary Employees' Beneficiary Association (VEBA).* The discussion of unrelated business taxable income (UBTI) for VEBAs has been relocated from this subsection to Section VI.G, where it has been updated as discussed above.
 - XIX.C-*Nonexempt Trusts.* We've added to the discussion of the tax treatment of nonexempt trusts, to note a case involving the interplay between grantor trust tax treatment and ERISA welfare benefit plan status.
- **Section XXI- ERISA's Trust, Exclusive Benefit, and Bonding Requirements.**
 - XXI.E-*ERISA's Fidelity Bond Requirement.* We've revised and expanded the manual's discussion of ERISA's requirement that every fiduciary of an employee benefit plan and every person who handles plan funds or other property be bonded under what is commonly referred to as a "fidelity bond."

- **Section XXV- Coordination of Benefits, Subrogation, and Escheat.**
 - XXV.E-*Subrogation and Reimbursement: Legal Rules and Plan Language.* This subsection has been updated to include two recent court decisions-one involving a self-insured health plan provision that sought to prevent a participant from "double-dipping" by recovering from both the plan and a third party, and one involving a self-insured health plan's unsuccessful attempt to recover an overpayment to a provider without contractual language.
- **Section XXVI- Claims and Appeals.**
 - XXVI.J-*Litigation Issues.* We've updated the subsection on limitations periods for commencing litigation with a discussion of the U.S Supreme Court's *Heimeshoff* case, which upheld a reasonable plan-imposed limitations period even though it preceded the plan's final appeal determination.
- **Section XXIX- Reporting Requirements for Self-Insured Health Plans.**
 - XXIX.B-*Annual Form 5500 Reporting.* This subsection has been revised throughout to reflect the 2013 Form 5500 and instructions. For example, effective with the 2013 Form 5500, plans that must file Form M-1 (generally MEWAs and certain other entities) can no longer take advantage of the Form 5500 filing exemption for small unfunded self-insured plans (or insured or combination unfunded/insured plans).
 - XXIX.D-*Other Reporting Requirements.* We've also updated the links in the Form M-1 discussion to reflect the 2013 Form M-1 (which is identical to the 2012 Form) and added references to more DOL resources for information and guidance on filing Form M-1.

Lots More to Come! From the feedback we've received, we know that our manuals are the premier resources in the courts and their areas of the law. But here at EBIA we're not satisfied. We are constantly striving to make the manuals even better. In future editions of this manual, look forward to complete coverage of all legal developments affecting self-insured health plans, a further analysis of existing law, with more examples and Q/As, etc.

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