Sweeping Changes Proposed to Form 5500 to Impact ALL Group Health Plans

The Department of Labor ("DOL") is proposing to overhaul the regulations governing the annual reporting (Form 5500) requirements under Title I of ERISA. The changes being proposed would greatly expand the information group health plans¹ would need to report and would require all employers with group health plans to file Form 5500, even those employers with fewer than 100 participants at the beginning of the plan year who are currently exempt from filing for plans that are insured, unfunded² or a combination of the two.

Employers should monitor the progress of the proposed Form 5500 changes in anticipation of needing to either begin to file Form 5500 (smaller employers) and/or report a significant amount of additional information. Employers may wish to establish a "wrap document" that creates a single ERISA plan when multiple benefits and lines of coverage are offered (if not already in existence) to minimize the number of Forms 5500 an employer may need to file. Insurance carriers and claim payers will need to gather and report a significant amount of plan-level participant and financial data, as well.

The DOL anticipates the changes to become effective for plan years that begin on and after January 1, 2019. The public may submit comments through October 4, 2016. More information may be found on the DOL’s website.

Proposed Changes

Among the proposed changes, the revised Form 5500 would include a new Schedule J to report group health plan information in five general categories:

- Part I: Group Health Plan Characteristics
- Part II: Service Provider and Stop Loss Insurance Information
- Part III: Financial Information
- Part IV: Health Benefit Claims Processing and Payment
- Part V: Compliance Information

Fully insured group health plans with less than 100 participants would only report Part I basic participation, coverage, benefit and insurance company information. Plans must complete one Schedule J for all health benefit coverages they provide. Specific information reported on Schedule J would include the following:

Part I: Group Health Plan Characteristics

- Number of persons covered under the plan at the end of the plan year.
- To whom coverage is offered during the year; employees, spouses, children, retirees, and/or retirees only.
- Type of benefits the plan provides; medical/surgical benefits, mental health/substance use disorder benefits, pharmacy or prescription drug benefits, wellness program, preventive care services, emergency services, pregnancy benefits, vision, and dental.
- Funding and benefit arrangements that apply.

Background

Under Titles I and IV of ERISA and the Internal Revenue Code (the “Code”), pension and other employee benefit plans are generally required to file annual returns (Form 5500 and appropriate attached schedules) to report the financial condition and operations of the plan. Form 5500 serves a number of purposes including:

- Source of information to plan participants and beneficiaries,
- Critical enforcement, compliance, and research tool for the DOL and the IRS, and
- Provides information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

The changes are being proposed as the information on Form 5500 “has not kept pace with market developments and changes in the laws covering employee benefit plans.” The DOL aims to collect substantially more financial and claims information from group health plans as well as remove the 5500 small employer filing exemption to enable better oversight of these arrangements. According to the proposed rule “The current lack of information collected on Form 5500 Annual Return/Report from group health plans impairs the effectiveness of EBSA’s [Employee Benefits Security Administration] ability to develop health care regulations and complicates DOL’s ability to enforce such regulations and educate plan administrators regarding compliance.”
How premiums and/or benefits are paid; employer and/or employee contributions.

Indicate whether any benefit/plan is grandfathered, a high deductible health plan, health flexible spending account (“FSA”) or health reimbursement arrangement (“HRA”).

COBRA statistics; how many persons were offered, elected, and are receiving COBRA during the plan year.

Rebates received during the plan year; vendor information, date and amount of the rebate, and how the rebate was used.

Premium payment delinquencies, if any.

**Part II: Service Provider and Stop Loss Insurance Information**

Identify service providers such as Third Party Administrators (“TPA”s) and stop loss carriers for self-funded arrangements, pharmacy benefit managers, wellness vendors, etc. not reported on other Form 5500 schedules.

Stop-loss details for the policy year; premiums paid, attachment points (individual and aggregate), and claim limits (if applicable).

**Part III: Financial Information**

Employer and employee contributions received during the plan year or receivable as of end of plan year.

Report contributions not timely remitted.

**Part IV: Health Benefit Claims Processing and Payment**

Number of claims submitted during the plan year; approved, denied and pending.

Number of claim denials appealed; how many were upheld and overturned during the plan year.

Number of claims and appeals not adjudicated within the required timeframes.

Whether the plan paid claims in a timely manner.

Total dollar amount of benefits paid pursuant to claims during the plan year.

**Part V: Compliance Information**


Attest that the plan’s summary plan description (“SPD”), including any summary descriptions of modifications, and summary of benefits and coverage (“SBC”) is in compliance with applicable content requirements.

Indicate whether the plan is a Multiple Employer Welfare Arrangement (“MEWA”) subject to the Form M-1 filing requirements during the plan year.

**ADDITIONAL INFORMATION**

1Under the proposed changes, all “group health plans” that meet the definition in 733(a) of the Act, including plans that claim “grandfathered” status under 29 CFR 2950.715–1251, are required to file some or all of the Form 5500 Annual Return/Report and applicable schedules, including the Schedule J, regardless of whether such plans are exempt from certain market reform requirements under ERISA § 732(a) (exemption for certain small group health plans that have less than two participants who are current employees) or ERISA § 733(c) (group health plans consisting solely of excepted benefits). Employee welfare benefit plans as defined in ERISA § 3(1) that do not meet the definition of “group health plan” under 733 of the Act (i.e., they do not provide benefits for medical care) are not subject to the proposed enhanced reporting requirements applicable to group health plans.

2An unfunded plan pays benefits solely from the employer’s general assets although, a plan funded by participant contributions under a section 125 cafeteria plan may be deemed to be unfunded, for purposes of the Form 5500 exemption in accordance with DOL Technical Release 92-01.