

What's New?
Unscrambling The New Legislative Requirements for Health Plans

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Topics to be Covered

- Implementation Timeline
- American Recovery and Reinvestment Act (ARRA)
- Children's Health Insurance Program Reauthorization Act (CHIPRA)
- Family and Medical Leave Act (FMLA) Final Regulations
- Mental Health Parity and Addiction Equity Act (MHPAEA)
- Genetic Information Nondiscrimination Act (GINA)

Topics to be Covered

- Michelle's Law
- Heroes Earnings Assistance and Relief Tax Act (HEART)
- Bicycle Commuter Benefit
- Medicare Secondary Payer (MSP) Reporting Requirement
- Newborns' & Mothers' Health Protection Act (NMHPA) Final Regulations
- Dependent Definition
- What's Around the Bend?
- Sample Compliance Plan

Implementation Timeline

Please see handout.

American Recovery and Reinvestment Act (ARRA)

- COBRA Subsidy
- Transportation Assistance
- HIPAA Privacy and Security

ARRA: COBRA Subsidy

- Provides COBRA premium subsidy and second COBRA election opportunity for Assistance Eligible Individuals (“AEIs”)
- Effective February 17, 2009 (March 1, 2009 for calendar month plans)
- DOL/HHS appeal of denials within 15 business days

ARRA: COBRA Subsidy

- Subsidy available:
 - “Involuntary” termination of employment September 1, 2008 through December 31, 2009
 - IRS Notice 2009-27
 - 65% subsidy for up to 9 months
 - Ends based upon eligibility for other group health plan or Medicare (COBRA may still continue)
- Subsidy payment process
 - Credit on federal income tax withholding and FICA
 - Employer in most cases
 - Revised Form 941
 - Adjustments for March and April

ARRA: COBRA Subsidy

- New extended election opportunity
 - Available to AEIs
 - Elected, but dropped COBRA
 - Did not elect COBRA
 - Must elect 60 days after new notice distributed
 - New “buy-down” option
 - Permissive, not mandatory
 - 90 days to elect
- New notice requirements
 - DOL model notices issued March 18

ARRA: COBRA Subsidy

- Action steps:
 - Identify all terminations since September 1, 2008
 - Determine involuntary terminations
 - Coordinate with COBRA administrator
 - Evaluate “buy-down” option
 - Send new notices
 - Revisions to insurance contracts and plan documents
 - Develop payment procedures

ARRA: Transportation Assistance

- Overview
 - Transit passes and van pooling increased from \$120 to \$230 per month
 - Annual indexing
 - Sunset on December 31, 2010
- Action steps:
 - Communicate to employees
 - Update employee elections (prospective only)



ARRA: HIPAA Privacy & Security

- Extension of certain HIPAA security requirements to “Business Associates” (e.g., TPAs, consultants, etc.)
 - Previously only had to sign BAA
 - Extension includes application of penalties
 - Effective one year from date of enactment (February 17, 2010)
- Adds notification of breach requirement
 - Notify each individual affected
 - Generally first class mail
 - Notification of breach to media if 500 or more affected
 - Effective 30 days after HHS issues regulations

ARRA: HIPAA Privacy & Security

- Request for Restriction of Disclosure of PHI
 - For payment, health care operations (not treatment)
 - Where health care provider paid out-of-pocket and in full
- Significant increase in civil monetary penalties
 - Increased ten times, from \$100 per violation to \$1,000 per violation
 - \$10,000 per violation where due to willful neglect (even if corrected)
 - \$50,000 if not corrected; tops out at \$1.5 million
 - Still no individual private cause of action
 - State AGs can now bring action
 - Effective immediately!

ARRA: HIPAA Privacy & Security

- No sale of PHI without individual's authorization
- Enforcement, audits
- Action steps:
 - Revise HIPAA policies and procedures
 - Train workforce
 - Identify Business Associates
 - Revise Business Associate Agreements
 - Review HIPAA forms

Children's Health Insurance Program Reauthorization Act (CHIPRA)

- New HIPAA Special Enrollment Rights
- General Notice to Employees
- Model State Disclosure Form



CHIPRA

- New Special Enrollment
 - Effective April 1, 2009
 - Loss of eligibility for Medicaid or CHIP
 - Gain eligibility for State premium assistance
 - 60 day election period

CHIPRA

- General notice and state disclosure forms
 - State-specific notices
 - State disclosure form
 - DOL & HHS developing models
 - To be issued by February 2010
 - Employers must use model notices in first plan year after models issued

CHIPRA

- Action steps:
 - Contact carriers
 - Contact stop loss
 - Confirm special enrollment procedures in place
 - Obtain any sample communications
 - Update insurance contract and plan document
 - Communicate to employees
 - Special Enrollment
 - Mailing
 - Annual Enrollment Materials
 - New Hire Packets

Family and Medical Leave Act (FMLA) Final Regulations

- Final Regulations
 - Final regulations issued November 17, 2008
 - Effective January 16, 2009
 - Clarification of “old” rules
 - Changes for the National Defense Authorization Act (NDAA)

FMLA

- NDAA
 - Amended the FMLA to include military family leave
 - “Qualifying exigencies”
 - Effective with final regulations (January 16, 2009)
 - Voluntary compliance encouraged
 - Care of servicemember leave
 - 26 weeks in a single 12-month period
 - Effective January 28, 2008
 - Poster Amendment (initially; now revised comprehensive FMLA poster)

FMLA

- Clarification of “old” rules:
 - Definition of “eligible employee”
 - Definition of “serious health condition”
 - Substitution of paid leave
 - Perfect attendance awards
 - Treatment of light duty
 - Employer notice obligations
 - Employee notice obligations
 - Medical certification process
 - Fitness-for-duty certifications
 - Retroactive designation of FMLA leave

FMLA

- New DOL poster, “Employee Rights and Responsibilities”
- New DOL model forms
- Department of Labor website
 - Go to <http://www.dol.gov/esa/whd/fmla/finalrule.htm>

Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)

- Group health plans are NOT required to provide mental health/substance abuse benefits
- Act covers both mental health AND substance abuse
- Prohibits less advantageous limits on deductibles, co-pays, out-of-pocket expenses, coinsurance, treatment limits, covered hospital stays, covered outpatient visits for mental health/substance abuse versus medical/surgical
- Requires parity between medical/surgical and mental health/substance abuse with respect to out-of-network benefits
- Criteria for medical necessity and reason for claim denials must be made available

MHPAEA

- Exemptions and exceptions
 - Cost exemption for one plan year if increase in actual total plan cost for the first plan year is 2% and 1% in each subsequent plan year
 - Employers with 50 or fewer employees exempt from Act
 - Self-funded non-federal governmental plans can opt-out on an annual basis
- Effective date:
 - Plan years beginning on or after October 3, 2009
 - E.g., January 1, 2010 for calendar year plans
 - Existing federal mental health parity rules in effect until new Act effective date
 - Government required to issue regulations by October 3, 2010

MHPAEA

- Action steps:
 - Discuss with insurer(s) – including stop loss
 - Evaluate design options
 - Amend contracts and plan document
 - Communicate (e.g., SMM)

Genetic Information Nondiscrimination Act (GINA)



- GINA: Genetic Information Nondiscrimination Act
- Establishes national and uniform practices to protect employees from genetic discrimination
- Rules apply to employment practices as well as insurers and group health plans
- Effective Date:
 - First day of the first plan year starting on or after May 21, 2009
 - E.g., January 1, 2010 for calendar year plans

GINA

- Prohibits group health plans from:
 - Adjusting contribution amounts on the basis of genetic information;
 - Requesting or requiring a participant or family member of a participant to undergo a genetic test;
 - Requesting, requiring or purchasing genetic information for underwriting purposes; and
 - Requesting, requiring, or purchasing genetic information about an individual prior to or in connection with an individual's enrollment under the plan

GINA

- Amends HIPAA to include genetic information in the definition of PHI
- EEOC Proposed Regulations issued February 25, 2009
- Effect on wellness programs?
- DOL issued RFI on October 10, 2008; Responses due December 9, 2008
- No health plan guidance yet

Michelle's Law

- Group health plans cannot terminate coverage of college students taking medical leave of absence before earlier of:
 - One year after leave begins; or
 - Date on which coverage would otherwise terminate
- Plans can require physician certification verifying illness or injury and that leave is medically necessary



Michelle's Law

- Notice describing continuation coverage must be provided with any notice requesting a certification of student status
- Effective date:
 - Plan years beginning on or after October 9, 2009 and medically necessary leaves of absence beginning during such years
 - E.g., January 1, 2010 for calendar year plans
- California state law effective January 1, 2009 (insured plans only)

Heroes Earnings Assistance and Relief Tax Act (HEART)



- May permit “qualified reservist distribution” (QRD) from unused health FSA balances
- Effective Date:
 - Effective for QRDs on or after June 18, 2008
 - Amend plan document by last day of plan year beginning in 2010
 - e.g., December 31, 2010 for calendar year plans

Bicycle Commuter Benefit



- Employer can reimburse employees up to \$20/month for cost of bike, improvements, repair, and storage
- Employee must regularly use a bicycle for substantial portion of commute between home and work
- Cannot use pre-tax salary reduction
- Effective date - January 1, 2009

Medicare Secondary Payer (MSP) Reporting Requirement

- Ensures proper coordination between Medicare and group health plans
- Applies to insurers, TPAs, and plan administrators of self-administered, self-funded health plans
- Action steps:
 - Work with insurer or TPA to determine what information they will be asked to provide
 - Review administrative service agreement to ensure it outlines who is responsible for compliance
 - Complete account registration and set-up (by April 30, 2009)
 - Start collecting employee, spouse and dependent SSNs at open enrollment
 - (Direct report only if self-adjudicate)

MSP Reporting Requirement

- Penalties:
 - \$1,000 per day per individual for whom required
 - CMS focused on compliance...not enforcement
- Effective Date - January 1, 2009
 - April 1, 2009 if no VDS arrangement with CMS
 - April 30, 2009 for account registration and set-up
 - 4th Quarter 2010 for HRAs
- Does not apply to FSAs
- <http://www.cms.hhs.gov/MandatoryInsRep/>

Newborns' & Mothers' Health Protection Act (NMHPA) Final Regulations

- Interim final regulations published October 1998
- Final regulations issued
- No major changes
- Clarify:
 - When coverage in connection with childbirth starts
 - Who is an attending provider
 - Notice requirements for nonfederal governmental plans
- Effective December 19, 2008, and apply to group health plans, insurers for plan years beginning on or after January 1, 2009

Definition of Dependent

- Former definition:
 - Qualifying child of a taxpayer generally must:
 - Live with the taxpayer for more than one half the taxable year
 - Be the taxpayer's child, stepchild, sibling or stepsibling or a descendent of such a relative
 - Be younger than a specified age
 - Not provide more than half of his or her own support for the year
 - Not be anyone else's dependent

Definition of Dependent

- New definitions:
 - HR 6893: A child or dependent must be younger than the taxpayer (unless the dependent is totally and permanently disabled) and unmarried
 - Effective beginning in 2009
 - Also:
 - IRS Notice 2008-5: Exception to no one else's dependent requirement
 - IRS Revenue Procedure 2008-48: Exception in case of divorce, separation

What's Around the Bend?

- House Bill 1253
 - Health Insurance Restrictions and Limitations Clarification Act of 2009
 - Passed the House of Representatives Tuesday by a vote of 422-3
- Final Cafeteria Plan Regulations expected by June 30, 2009

Sample Compliance Plan

Please see handout.

Questions and Answers

Thank you!

The intent of this presentation is to provide you with general information regarding the topic presented. It does not necessarily fully address specific issues with respect to your employee benefits environment. It should not be construed as, nor is it intended to provide, legal advice. Questions regarding specific issues should be addressed by your general counsel or an attorney who specializes in this practice area.