



Affordable Care Act Documentation and Compliance

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Why Do We Care About Health and Welfare Plan Compliance?

- Increased audit activities.
- Civil and criminal penalties.
- Multiple government agencies.

Plan Documentation and Disclosure Requirements

- Establishment of a plan – ERISA 402.
- Features of a plan.
- Welfare benefit defined.
- Written plan requirements.

Plan Documents

- ERISA and the Code require plan documents for health and welfare plans.
- Cafeteria plans must be in writing (includes Premium Only plans).
- Combine the plan document and the summary plan description in one document (Wrap document).

Required Features of a Plan

- Procedures for carrying out the funding policy and method.
- Procedures for the allocation of responsibilities for the operation and administration.
- Provide a procedure for amending the plan.

Welfare Benefit Plan Defined

A welfare benefit plan is defined by the DOL as:

Any plan providing medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services.

29 CFR §2510.3-1(a)(2).

Wrap Plan and Wrap SPD

- Wrap plan “wraps” together various plans into a single document.
- Wrap SPD.
- Combined Wrap Plan and SPD.

Wrap Plan and Wrap SPD

- Longer is not better.
- Certificate of Insurance as the SPD.
- Inaccurate SPD.

Fringe Benefits and Payroll Practices

Practices excluded from the definitions of Welfare benefits:

- Payment of normal compensation.
- Sick pay from employer's general assets.
- Payments out of employer's general assets for non-medical reasons.
- On-premises facilities.
- Voluntary group benefits.

Voluntary Group Benefits

- Offered by an insurer.
- No contributions by employer.
- Sole function of employer:
 - Permit insurer to publicize.
 - Collects premiums through payroll.
 - Remit proceeds to insurer.
- No consideration received by employer.

Note: ERISA coverage may provide benefits to employer.

Lack of a Written Plan

- Past practice may provide the basis for future claims.
- No retained right to modify or reduce benefits.
- No discretion retained in making eligibility and benefit determinations.
- Courts may ultimately determine benefits under the unwritten plan.

SPD Requirements

- Employer has the obligation and the liability.
- BCBSM imposes obligation on employer.
- 29 items to disclose.
- What is the purpose of the SPD?

Participant Disclosures - Timing

SPD:

- 90 days of first becoming eligible to participate.
- Restate SPD every 5 years.
- Revise SPD for benefit changes.

Participant Disclosures - Timing

SMM:

- Summarize changes in information that is included in SPD.
- Distribute within 210 days after close of plan year.
- Special rule for Health Care Plan:
 - Notice must be provided within 60 days of the adoption of the change for a reduction in covered benefits.

Participant Disclosures

- Getting Practical – New SPD or SMM
- New Participants v. Existing Participants

Disclosure Through Electronic Media

DOL regulations permit electronic distribution if:

- Distribution results in the actual receipt / use return receipt.
- Protects confidentiality of personal information.
- Participants and beneficiaries are notified of the significance of the document and right to receive a paper version.

Who May Receive Electronic Disclosures

- Employees with work-related computer access.
 - No consent needed.
 - Excludes common area computers.
- No work-related computer access requires consent.
- Recent life insurance case.

Major Health Care Laws

- Qualified Medical Child Support Order.
- Newborns' and Mothers' Health Protection Act.
- Women's Health and Cancer Rights Act.
- COBRA.
- Americans with Disabilities Act.
- Age Discrimination in Employment Act.
- HIPAA.

ACA Section 1557- Nondiscrimination

- 362 pages of regulations issued on May 18, 2016 by HHS.
- Group health plans must comply as of the first day of the 2017 plan year.
- Regulations implement ACA §1557.
- Prohibition on discrimination on the basis of race, color, national origin, sex, age or disability.

ACA Section 1557- Nondiscrimination

- Section 1557 is the first federal civil rights law to prohibit discrimination on the basis of sex, including gender identity.
- Rule applies to all health plans offered by issuers that participate in the Marketplace.
- Also applies to the issuer's individual, small group, large group, Medicare, Medicaid and TPA plans.

ACA Section 1557- Nondiscrimination

- Section 1557 provides a private right to enforce.
- Employer has liability only if employer receives federal financial assistance and its principal business is to provide health care or health services.
- HHS will refer employers that are not liable under Section 1557 to EEOC if it sees discrimination.

ACA Section 1557- Nondiscrimination

- New notice provisions are effective October 17, 2016.
- Insurance company should issue the notice.
- Self-insured plans may want to issue a notice even if not otherwise required due to EEOC concerns.

Form 5500 Filing and Correction Issues

Employer sponsored health and welfare plans covering 100 or more participants as of the beginning of the plan year must file a Form 5500.

Form 5500 – Under 100

- Proposed Form 5500 Regulations issued July 11, 2016 by IRS/DOL.
- Updated reporting for service provider fees and expenses.
- Requires Form 5500 reporting for all group health plans.
- New reporting to apply for plan years beginning on or after January 1, 2019.
- Proposed guidance – 900 pages.

Form 5500 – IRS Fringe Benefit Rules

- IRS Notice 2002-24 provided that section 125 cafeteria plans are not required to file Form 5500.
- This notice only applied to the requirements under the Code.
- ERISA may require a Form 5500 to be filed even if excluded under the Code (FSA with 100+).

Form 5500 for Welfare Plans

The following common welfare benefits that cover 100 or more employees as of the beginning of the plan year must file a Form 5500:

- Health.
- Dental.
- Vision.
- Short term and long term disability.
- Accidental death and dismemberment.

Note: Each separate welfare plan must file a Form 5500.

Using a Wrap Plan

- Wrap all welfare plans in a single “wrap” welfare plan.
- A single wrap plan permits a single Form 5500 for all included plans.
- Purpose is not to include all other SPDs in a single document.
- Use it for meeting reporting and disclosure requirements.

Sanctions for Failure to File a Form 5500

- Penalties of up to \$2,063 per day.
- Normal penalties are \$300 per day.
- Use DOL delinquent filer program (DFVC).

Delinquent Filer Voluntary Compliance Program

- No notification by DOL of filing problem.
- May file even after IRS late-filing notice.
- File with EBSA and DFVC program.
- Penalties, small plans under 100:
 - \$750 for 1 year.
 - \$1,500 for multiple years.

Delinquent Filer Voluntary Compliance Program

- Penalties, large plans 100 or more:
 - \$2,000 for 1 year.
 - \$4,000 for multiple years.
- No IRS penalties will apply.

IRS W-2 Reporting

- Which employers must report?
- What is required to be reported?
- What about controlled groups?
- How do you calculate the cost of coverage?

THANK YOU

Please contact me with any questions:

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