

DON'T LOSE SIGHT OF THE FOREST FOR THE TREES: STRATEGIES FOR COMPLYING WITH THE "OTHER" HEALTH PLAN RULES

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Strategies for Complying with
the "Other" Health Plan Rules

Introduction

With so much focus on health care reform, it is easy to overlook the “other” but equally as important health and welfare plan rules



Introduction

- Today we are going to review a few of the “other” plan requirements
 - Plan documentation, reporting and disclosure
 - HIPAA/HITECH
 - Section 125 plans/Health FSA
 - COBRA
 - Repeal of DOMA - Definition of spouse



Plan Documentation

- Many “plan documents” are inadequate
 - Failure to include required provisions
 - Insurance policies are not always complete
 - ERISA wrap plans
- Failure to properly adopt/update a plan document
 - Board action/delegation
 - Amendment procedures



Plan Documentation

- Failure to follow plan document
 - It is just one exception....can set a precedent
- Fiduciary concerns
 - Include protections for employer and fiduciaries
 - Discretionary authority
 - Monitor third parties



Reporting

- Form 5500 for health and welfare plans
 - Generally required for each plan with more than 100 participants on the first day of the plan year
 - Determination of number of plans
 - ERISA wrap plans
 - Voluntary plans
 - Audit requirements
- Form M-1 for MEWAs
- Form 990 for VEBAAs



Participant Disclosures

- Summary Plan Description
 - Not replaced by the Summary of Benefits and Coverage
- Summary of Material Modifications
- Summary Annual Reports
- Medicare Part D



Participant Disclosures

- HIPAA Disclosures
 - Privacy notice
 - Preexisting condition exclusion
 - Special enrollment notices
 - State premium assistance
- COBRA Notices



Participant Disclosures - Electronic Delivery

- Documents that can be delivered electronically
 - SBCs, SPDs, SMMs and SARs
 - Documents requested by the participant
 - COBRA notifications
 - Privacy notices
 - Qualified medical child support order notices



Participant Disclosures - Electronic Delivery

- DOL Safe Harbor General Requirements
 - Ensure actual receipt
 - Materials must be prepared in accordance with otherwise applicable requirements
 - Notice must be provided of the significance of the document
 - Paper version of the electronic document must be available on request
 - When a disclosure includes personal information, there must be reasonable and appropriate steps to safeguard the confidentiality of the information



Participant Disclosures - Electronic Delivery

- DOL Safe Harbor -- Active employees with work related computer access
 - "where the participant is reasonably expected to perform his or her duties as an employee," but only if an integral part of the participant's duties is to access the employer's or plan sponsor's electronic information system
 - A kiosk in the work place not sufficient
 - Participant consent is not needed for this category



Participant Disclosures - Electronic Delivery

- DOL Safe Harbor -- Individuals with no work related computer access
 - Affirmative consent (electronic or non-electronic)
 - Affirmative or confirmed consent to the electronic form and an address for the receipt of documents to be furnished through the internet or other electronic network
 - The following information is provided prior to consent
 - The types of documents to which consent would apply
 - That consent can be withdrawn at any time
 - The procedures for withdrawing consent/updating address
 - The right to request a paper version
 - Upon changes in hardware or software requirements, the person receives notice which gives an opportunity to withdraw consent and the person again consents



Participant Disclosures - Electronic Delivery

- Certain exceptions to the safe harbor requirements
 - Summary of Benefits and Coverage
 - Privacy Notice



HIPAA/HITECH

- Final rules effective September 23, 2013
- Document updates required
 - Privacy notice
 - Business associate agreements
 - Policies and procedures
- Breach determination and notification
- Increased burdens on business associates and subcontractors
- Employee training



SECTION 125/HEALTH FSA

- Plan document is required
 - Amendments must generally be made before plan year
 - Summary plan descriptions
- Participant elections are generally irrevocable
 - Permitted change events
 - Limited exception applicable to decision to participate in the Exchange
 - Mistakes
- Coverage under the Exchange cannot be paid through Section 125 plan
- Individual insurance may not be eligible to be purchased through a Section 125 plan



SECTION 125/HEALTH FSA

- Nondiscrimination testing is required for Section 125, health FSAs and dependent care FSAs
- Interplay of health FSAs and health savings accounts
- Limitation on availability of health FSAs under health care reform
 - Annual limits
 - Excepted benefits
- Substantiation requirements



COBRA

- Notice requirements
 - Initial notice
 - Election notice
 - Notice of unavailability
 - Notice of termination
- Failure to provide required notices
- Late premium payments
- Health care reform does not affect the availability of COBRA



REPEAL OF DOMA --DEFINITION OF SPOUSE

- Supreme Court Decision – Marriage is not required to be defined as a man and a woman for Federal purposes
- States not required to recognize same sex marriage
- Definition for Federal tax purposes based on state of celebration



REPEAL OF DOMA --DEFINITION OF SPOUSE

- No requirement that spouses of same sex be recognized for purposes of health insurance plans under Federal law or as a result of the Supreme Court Decision
 - Insured plans subject to state law requirements
 - Risk of discrimination claims
- If benefits are available may be purchased on a pre-tax basis
- Effect on definition of dependents for health care reform



NEXT STEPS

- Review plan documents and SPDs
- Determine whether you are taking the proper steps to adopt and amend plans
- Analyze delivery methods with respect to participant disclosures
- Consult with your TPAs, brokers and attorneys regarding compliance issues
- Update HIPAA procedures and BAAs



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