Compliance Talking Points

Plan Documents

Do you have the following plan documents?

1) **Premium Only Plan (POP) or Cafeteria Plan Document**
Required when employees can pay for benefits with pre-tax dollars.

2) **ERISA Summary Plan Description (a.k.a. Wrap Document)**
Required by all employers offering health and welfare benefits and subject to ERISA. Almost every employer offering benefits is subject to ERISA, except for churches exempt under Code Section 501 and governmental entities.

Notification Requirements

Are you distributing the following notices and at the appropriate times?

1) **Upon Eligibility for Coverage**

- ✓ **Notice of Special Enrollment Rights**
  Describes when someone can enroll in coverage at a later date if waiving benefits.

- ✓ **Notice of Grandfathered Status**
  Must be provided if plan is considered grandfathered under the Affordable Care Act (ACA).

- ✓ **Medicare Part D Creditable Coverage Notice**
  Describes whether prescription drug coverage offered by an employer is at least as good as the standard Medicare Part D plan. Must be provided to persons who are Medicare-eligible.

- ✓ **Notice of Patient Protections for Non-Grandfathered Plans**
  Describes the rights covered individuals have when a primary care physician or pediatrician must be designated under the plan.

- ✓ **Notice of Wellness Incentives**
  Describes the ability to waive participation in a wellness program or describes alternative way(s) employees can receive a wellness incentive if they are unable to participate in the standard wellness program offered by the employer.

- ✓ **Summary of Benefits and Coverage (SBC)**
  Plan summary document required to be distributed under the ACA.

2) **Upon Initial Enrollment**

- ✓ **Notice of Women's Health and Cancer Rights Act (WHCRA)**
  Describes medical and surgical benefits that must be provided for mastectomies.

- ✓ **COBRA General (Initial) Notice**
  Describes continuation coverage rights under COBRA.

- ✓ **Notice of Privacy Practices**
  Employers with self-insured plans must provide a notice of their privacy practices relative to the Health Insurance Portability and Accountability Act (HIPAA).

- ✓ **Notice of Grandfathered Status**
  Must be provided if plan is considered grandfathered under the Affordable Care Act (ACA).

- ✓ **Notice of Patient Protections for Non-Grandfathered Plans**
  Describes the rights covered individuals have when a primary care physician or pediatrician must be designated under the plan.

- ✓ **Notice of Wellness Incentives**
  Describes the ability to waive participation in a wellness program or describes alternative way(s) employees can receive a wellness incentive if they are unable to participate in the standard wellness program offered by the employer.

3) **Annual Notices**

- ✓ **Notice of Children's Health Insurance Program (CHIP)**
  Describes special enrollment rights to employees and their dependents who reside in a state where a premium assistance subsidy may be available under a Medicaid or CHIP program and applied to the group health plan.

- ✓ **Medicare Part D Creditable Coverage Notice**
  Must be provided each year prior to October 15th and describes whether prescription drug coverage offered by an employer is at least as good as the standard Medicare Part D plan. Must be provided to persons who are Medicare-eligible.

- ✓ **Notice of Women's Health and Cancer Rights Act (WHCRA)**
  Describes medical and surgical benefits that must be provided for mastectomies.

Annual Notices (cont'd)

✓ **Summary of Benefits and Coverage (SBC)**
Plan summary document required to be distributed under the ACA.

✓ **Summary Annual Report (SAR)**
Employers who are required to file Form 5500 must provide a summary of the financial information that was disclosed in the reporting. Must be provided within 2 months after the filing due date.

4) **Upon Certain Events**

✓ **Notice of Health Insurance Marketplace for New Hires**
All new hires must be provided information about the Health Insurance Marketplace within 14 days of their start date. Employers not subject to the Fair Labor Standards Act (FLSA) are exempt.

✓ **Summary of Material Modifications (SMM)**
Describes any material modifications to the content within the ERISA Summary Plan Description. Must be provided within 210 days after the plan year in which the change occurred.

✓ **Notice of Modifications to SBC**
Describes material modifications to the content of the SBC that occur during the plan year. Must be provided at least 60 days prior to the change.

✓ **Notice of Qualified Medical Child Support Orders (QMSCO)**
Notifies the participant and any named alternative recipient of the receipt of a Medical Child Support Order and the procedures that will be used to determine whether it is Qualified.

✓ **Notice of Recission of Coverage**
Must provide written notification whenever coverage will be retroactively terminated due to fraud, material misrepresentations or failure to pay premiums.

✓ **COBRA Election Notice**
Notifies qualified beneficiaries of their right to continue coverage under the COBRA law. Generally, must provide notification within 14 days of the qualifying event.

✓ **Notice of Changes to HIPAA Privacy Practices**
Employers with self-insured plans must describe in writing any changes to their privacy practices relative to the HIPAA law.

Upon Certain Events (cont'd)

✓ **Breach Notification**
Employers with self-insured plans must provide written notification of any breach of unsecured protected health information. Notification must be made within 60 days of the breach discovery. Other requirements may also apply.

Delivery Methods

Pursuant to Department of Labor and Department of Treasury regulations, to deliver plan documents and notices electronically, employees must have 1) readily available access to an employer's information systems, 2) computer access must be in the same area where the employees perform their work functions, and 3) computer access must be an integral part of the employee's work functions.

Plan Sponsors may also provide documents electronically to employees who fail to meet the guidelines above provided 1) the employees complete a consent form to receive documents electronically, and 2) the employees specify an email address where documents can be sent. Otherwise a printed copy must be provided.

Continuation Coverage and Leaves of Absence

Do you have policies and procedures in place to administer and comply with continuation coverage laws and leaves of absence?

✓ **State continuation of coverage laws**
Most states have continuation coverage laws that apply to fully insured plans and HMOs that are issued in their state.

✓ **Consolidated Omnibus Budget Reconciliation Act (COBRA)**
Employers with 20 or more employees are subject to continuation coverage rules under COBRA. Coverage typically must be offered for 18, 29 or 36 months after qualifying events.

✓ **Uniformed Services Employment and Reemployment Rights Act (USERRA)**
Individuals who leave their existing job to perform military service must be given the ability to continue the group health plan for up to 24 months.

✓ **Family and Medical Leave Act (FMLA)**
Employers subject to FMLA will need to establish policies and procedures on how premiums will be collected from an employee during an FMLA-leave.

✓ **Other types of leaves of absence permitted by the employer**
Employers will need to establish policies and procedures on how premiums will be collected from an employee during other leaves of absence which are permitted but not required by law.

Compliance Talking Points

Annual Reporting

Are you completing required government reporting?

- ✓ **Medicare Part D Creditable Coverage Status Reporting**
  Employers must report the creditable coverage status of their prescription drug plan within 60 days of the start of the plan year. Reporting is also required within 30 days of any change in creditable coverage status or termination of the prescription drug plan.

- ✓ **Section 6055 Reporting for Self-Insured Plans**
  Employers with self-insured plans must report the months that participants and beneficiaries were enrolled in minimum essential coverage. Reporting is due each year by February 28th if filing manually and March 31st if filing electronically. Copies of the reporting forms must be provided to participants and beneficiaries by January 31st.

- ✓ **Section 6056 Reporting for Applicable Large Employers**
  Applicable large employers subject to the Employer Mandate must report information about the coverage that was offered to employees. Reporting is due each year by February 28th if filing manually and March 31st if filing electronically. Copies of the reporting forms must be provided to participants and beneficiaries by January 31st.

- ✓ **Form 5500 Reporting**
  Generally, must be completed by employers with plans that have 100 or more participants and/or self-insured plans regardless of employer size where funds are held in a separate trust or custodial account. Reporting is due the last day of the seventh month after the plan year ends (e.g. July 31st for calendar year plans).

Testing

Are you performing the required IRS non-discrimination testing for these plans?

- ✓ **Premium only Plan (POP) or Cafeteria Plan**
- ✓ **Self-Insured Medical Plans**
- ✓ **Health Reimbursement Arrangements (HRA)**
- ✓ **Health Flexible Spending Accounts (FSA)**
- ✓ **Dependent Care Assistance Program (DCAP)**

Testing (cont'd)

✓ **Group Term Life Insurance**

The IRS requires employers with the plans shown above to perform non-discrimination testing so that highly compensated and/or key employees are not eligible for or receiving more favorable tax-free benefits than the rest of the employee population.

Other Compliance Considerations

✓ **Does your health plan have a waiting period of 90 calendar days or less?**
Required under the ACA for medical plans and HRAs integrated with those medical plans.

✓ **If you issue 250 or more Form W-2s, are you reporting the value of coverage?**
Required under the ACA for employers issuing 250 or more Form W-2s. Optional for smaller employers.

✓ **Are fiduciaries of your health plan required to be bonded?**
Refer to https://www.dol.gov/ebsa/regs/fab2008-4.html

✓ **Are you subject to and paying PCORI fees for any of the plans you offer?**
Employers with self-insured plans, including some HRAs, must pay this fee by July 31st each year.