

Employer-sponsored plans require legal updates

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Recently, Congress and several governmental agencies have enacted and/or amended various laws regarding employer-sponsored group health and welfare plans. This article provides an overview of those legal requirements that must generally be satisfied in the 2009-2010 timeframe, as well as highlights several other relevant issues for these plans. This summary is not exhaustive, and employers should consult with their legal advisors as to specific effective dates and individually-tailored strategies to ensure complete legal compliance.

Americans with Disabilities Act Amendments of 2008 (ADA). Revisions to the ADA provide that a condition that substantially limits a major life activity is considered a “disability,” even if the employee can offset/compensate with mitigating measures.

Health Insurance Portability and Accountability Act (HIPAA). HIPAA now provides (1) a breach notification requirement for unauthorized use or disclosure of protected health information; (2) changes regarding electronic health information and other new privacy and security standards; and (3) new, substantial criminal and civil penalties for violations. In addition, HIPAA now applies directly to “business associates,” who must implement their own HIPAA safeguards and adopt written policies and procedures for HIPAA compliance.

Medicare “Creditable Coverage.” Health plans must annually disclose to Center for Medicare Services whether prescription drug coverage is “creditable” for Medicare Part D purposes and provide annual participant notices regarding “creditable coverage” (due by November 15).

New COBRA Subsidy. Requires employer-provided subsidy of 65% (for 9 months) to pay for COBRA for employees (and families) who are involuntarily terminated between September 1, 2008 and December 31, 2009.

Children’s Health Insurance Program Reauthorization Act of 2009. Group health plans must provide employees and their dependents with special enrollment rights in the case of eligibility for or cessation of Medicaid or CHIP coverage. Employers should amend cafeteria plan and group health plan, as well as revise special enrollment procedures/forms.

Section 111 Mandatory Medicare Secondary Payer Reporting; Online Registration. New online registration is required for insurers and self-funded group health plans.

Group health plans are also required to submit information to Health and Human Services when group health plan coverage is primary to Medicare, “active covered individuals” and related social security numbers.

Genetic Information Nondiscrimination Act. Bans the use of genetic information for health insurance and employment purposes.

Mental Health Parity and Addiction Act of 2008. Requires full parity between mental health/substance abuse benefits (if offered) and the medical benefits offered under a group health plan for plans with over 50 participants.

Michelle’s Law. Requires group health plans to continue to provide health coverage to dependent college students on medical leave for up to one year, or if earlier, the date on which plan coverage would otherwise end.

“Dependent” definition. IRS defines “student” dependent as a full-time student between age 18 and 23. Employees must certify that a student dependent is a qualified dependent in order to reap “tax-free” benefits in the group health plan. Benefits provided to full-time students (who are not otherwise “dependents”) over age 23 are taxable to the employee.

“Retiree Benefits” Offered to Executives under Self-Funded Plans. Where an employer with a self-funded group health plan offers only a few highly paid employees post-retirement health benefits, this will likely be a taxable benefit, due to discrimination testing issues. As a taxable benefit, certain other deferred compensation restriction may become applicable.

COBRA for Small Employers. Generally, federal COBRA applies to employers with 20 or more employees. Recently, however, many states, including Virginia, have enacted “mini-COBRA” statutes that provide coverage for employees of employers with fewer than 20 employees, including eligibility for the COBRA subsidy described earlier.

Commuting Benefit. The IRS is providing tax-free reimbursement of employees’ bike commuting expenses, as well as a temporary increase in the exclusion for transit passes associated with vanpooling.

As a result of the many changes affecting health and welfare plans, employer plan sponsors and plan administrators of group health and welfare plans must review and amend legal plan documents and/or procedures, prepare governmental filings, update summary plan descriptions and participant communication materials/required notices, negotiate with service providers as to allocation of new duties, communicate with insurers and third party administrators regarding reviewed processes and/or train and retrain employees who participate in health plan administration.

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