

Group Health Plan Compliance Notes - Fall 2017

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Mental Health Parity

The Departments of Labor, Health and Human Services, and Treasury (Departments) released a draft of a model form for health plan participants, health insurance enrollees, or authorized representatives to use to request information from a health plan or insurer about the nonquantitative treatment limitations that apply to mental health/substance use disorder benefits under a health plan or insurance policy. The model form also could be used to request information about a denial of a specific claim for mental health/substance use disorder benefits under a health plan or insurance policy. The model form was prepared in response to comments received by the Departments requesting guidance on how to streamline and simplify both the process for requesting disclosures about mental health/substance use disorder benefits and the process for responding to disclosure requests. The Departments solicited comments on the draft model form and comments on ways to reduce the burden of mental health parity disclosures, with the comment period closing September 13, 2017. Employers can anticipate that the Departments will issue additional guidance on complying with the mental health parity disclosure requirements, and in the meantime employers should review their medical plan terms for compliance with mental health parity.

SBC Templates for 2017

For calendar year plans, revised Summary of Benefits and Coverage (SBC) templates, instructions, and a uniform glossary that should be used for the 2018 plan year are [available on the Department of Labor website](#). The SBC revisions include both substantive changes (e.g., a new coverage example has been added based on treatment in the emergency room for a simple fracture) and formatting changes (e.g., additional emphasis on standard plan terms that are defined in the uniform glossary, space-saving changes). Employers should confirm that the SBCs for their medical plans use the revised templates – this may require reaching out to a plan's third-party administrators and/or insurers for confirmation. Employers also should review when and how they distribute the SBCs, to ensure that all employees offered coverage and enrolled in coverage are provided with the SBCs to which they are entitled.

IRS Forms 1094-C and 1095-C and Instructions

The IRS has released the forms for 2017 reporting of offers of coverage as required by the Affordable Care Act, along with instructions for the forms. The 2017 forms are substantially similar to the 2016 forms; however, there are a few changes and clarifications – including clarifications in the instructions that incorrect dollar amounts reported on Line 15 (the employee required contribution) could fall under the *de minimis* error safe harbor for errors where the amount reported differs from the correct amount by \$100 or less, and that there is no specific code to enter on Line 16 to reflect the situation in which an employee was offered coverage but did not enroll (or waived coverage). Employers should review Forms 1094-C and 1095-C and instructions and discuss any questions or concerns with their third-party administrators or legal counsel.

Year-End Notices for Calendar Year Group Health Plans

Many employers are coming up on their annual enrollment periods for health and welfare benefits. To ensure that the various required annual health and welfare notices are distributed, many employers include the following in their annual enrollment materials:

- Summaries of Benefits and Coverage (SBCs)
- Women’s Health and Cancer Rights Act Notice
- Children’s Health Insurance Program Reauthorization Act (CHIPRA) Notice
- Newborns’ and Mothers’ Health Protection Act Notice
- Wellness Disclosures for HIPAA and ADA
- Medicare Part D Notice of Creditable Coverage (if annual enrollment materials are distributed prior to October 15)
- Notice of Nondiscrimination under Section 1557 of the Affordable Care Act (applicable to group health plans that accept federal funding – including the Retiree Drug Subsidy)
- Notice of Right to Designate Primary Care Provider (if applicable)
- Notice of Grandfathered Plan Status (if applicable)

Employers should confirm that they have procedures in place to ensure distribution of each notice listed above (if applicable) and should periodically review the content of legally required notices with legal counsel.

Possible 90-Day Delay to Changes to Disability Claims Procedures

The Department of Labor has proposed a 90-day delay in the effective date of the final regulations that amend the claim and appeal procedure requirements for ERISA plans that provide disability benefits. A benefit is a disability benefit if the plan conditions the benefit’s availability to the claimant upon a showing of disability. The proposed delay would mean that the additional requirements for disability claims and appeals that were added by DOL regulations adopted in December 2016 would apply to disability claims filed under an ERISA benefit plan on or after April 1, 2018 (rather than to

disability claims filed on or after January 1, 2018). The DOL's proposed rule to delay the effective date of the final regulations is set to be published in the Federal Register on October 12, 2017, and the comment period will be open for 15 days after the date of publication.

The new rules, among other things, require additional disclosures to be made for disability claims and apply to all ERISA plans that provide for a disability benefit, if the disability determination is made under the plan – this includes disability plans, as well as 401(k) plans, pension plans, nonqualified plans, ERISA-covered severance plans, and health and welfare plans. The new rules do not apply if an ERISA plan provides for a disability benefit, but the disability determination is made by a third party such as the Social Security Administration or the employer's long-term disability plan (e.g., if the employer's retirement plan simply relies on the long-term disability plan decision as proof of disability).

Year-End Notices for Calendar Year 401(k) Plans

As the end of 2017 approaches, keep in mind the various notices and disclosures that should be provided prior to year-end (to the extent each notice applies to your plan):

- Participant Fee Disclosure Annual Notice (ERISA 404(a))
- 401(k) Plan Safe Harbor Notice
- Automatic Enrollment Notice
- Qualified Default Investment Alternative (QDIA) Notice

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