

NEWS & VIEWS

An Insider's Perspective on HOT Health & Welfare Benefit Topics
WINTER/SPRING 2010

Tips for Conducting a Successful Compliance Review

For most benefit managers, the New Year means more than uncorked champagne and party hats; it also marks the end of the employee open enrollment period for benefit plans. Complying



with government regulations is a serious and potentially costly issue for employers. It's crucial that managers know the nuts and bolts for a successful compliance review of these plans.

With most 2010 plans in place, now is the ideal time to identify areas where some benefit plans may not be in compliance with federal government regulations. Managers are mandated to take appropriate action to correct all guideline deficiencies. In addition, with rules/regulations constantly in flux, it's always a good idea to do an overall general checkup on plans at least once a year. An annual checkup is also important since representatives of the Internal Revenue Service (IRS), Department of Labor (DOL) and/or Department of Health and

Human Services (DHHS) can audit plans at any time. If this occurs, companies have only a short time to produce required documents.

Common problems with health and welfare plans

- The terms of the plan are ambiguous.
- The Summary Plan Descriptions (SPDs) do not match plan documents and/or insurance contracts.
- Notices are missing requisite content.
- Deadlines are missed.

Documents that the IRS, DOL or DHHS might request

Plan policies and procedures (used in COBRA administration), minutes of benefit committee meetings, Cafeteria Plan documents, insurance plan documents, and contracts. Other requests might include SPDs, Form 5500 Annual Reports, Summary Annual Reports (SARs), and HIPAA notices and procedures. Documentation that service providers produce might also be requested.

Key questions to ask when reviewing documentation

1. Are plan documents consistent, complete, and up to date?

2. For insured plans, what constitutes the plan documents?
3. Is there an SPD for each plan?
4. Do plan documents and SPDs include all content required by ERISA?
5. Are all plan design changes reflected in the plan documents, SPDs, and Summary of Material Modifications (SMM)?
6. Is there a written plan document for the Cafeteria Plan?
7. Have SPDs been furnished to participants within the time prescribed by law?

The list of required contents for an SPD is long and detailed. Most insurance plan SPD information almost always needs a wrap plan document, a wrap SPD, or both.

MCG provides our clients with extensive compliance reviews including the four major areas of document review. Please contact us at 805-239-9242 or email us at info@mcgteam.com for more information.



Four major areas for document review

1. Review the following notices for content and distribution procedures.

- Pre-existing Condition Exclusion (PCE) (only if your plan has a PCE) - Initial notice, initial notice of special enrollment rights, and individual notice of PCE determination.
- HIPAA - Certificate of creditable coverage, special enrollment notices, notice of privacy practices, annual notice to DHHS (**new for 2010**).
- Medicare Part D (two annual notices) – Notice to eligible individuals and notices to the Centers for Medicare and Medicaid Services (CMS).
- COBRA - Initial notice of premium short by an insignificant amount, and notice of change in premium.
- USERRA - Notice of rights and obligations and continuation of health plan coverage.
- WHCRA - Enrollment notice and annual notice.
- NMHPA - Statement in SPD.

2. Review service provider selection, monitoring, and contracts.

The choice of a plan service provider is a fiduciary function. Companies have an ongoing obligation to monitor the performance of plan service providers, as well as documenting this monitoring. To do this, ensure that service provider agreements are up-to-date and accurate. In addition, if Protected Health Information is disclosed to a service plan provider, make sure that a HIPAA business associate contract has been obtained.

3. Review Form 5500 filing status and accuracy.

Identify all plans that require Form 5500 filing - and ensure that they were filed. Review these plans for consistency from year-to-year. Verify items like same employer tax identification number, plan numbers, and plan names. The Form 5500 and SAR data should be consistent.



4. Identify and talk with key players about how the plans operate.

Key players might include human resources and payroll personnel, as well as those familiar with HRIS, COBRA, FSA policies, and the administrator vendor. Remember that actual operations often differ from plan documents. Lastly, review copies of any forms that were used. If any plan terms have recently changed, make sure that operations have also changed in order to comply with the newest terms.

After conducting a compliance review, benefit managers will now have the needed evidence that demonstrates that their plan is operating in accordance to its terms.

A thorough compliance review will also confirm that benefit managers are taking the role of plan sponsor seriously.

MCG can assist your company in performing any part of the compliance review. Please contact us at info@mcgteam.com or call us at 805-239-9242. Visit our website at www.mcgteam.com for additional information on our services.

At a Glance: Annual Health and Welfare Plan Compliance Tasks/Dates

Annual Online Notice to the CMS on status of your Medicare Part D Creditable Coverage – The annual CMS notice must be given online, at the [CMS Web Site](#) within (1) 60 days after the first day of the plan year; (2) 30 days after the termination of a prescription drug plan, and/or (3) 30 days after any change in the “creditable coverage status” of a prescription drug plan.

HIPAA Privacy Notice – HIPAA requires that privacy notices to be issued to ALL employees: (1) when they first become covered by the plan, (2) upon request, and (3) each time the privacy policy is revised. In addition, at least once every three years (beginning three years after the notice is first provided), employees must be informed (in writing) that the notice is available and include the procedure to request a copy of the notice. Alternatively, group health plans may distribute a new notice every three years.

Form 5500 Annual Report with Appropriate Schedules - Due seven months after each plan year end (07/31/10, for plan years ending on 12/31/09) if no extension is filed. If extension is filed, the Form 5500 annual report is due by 10/15/10.

Summary Annual Report (SAR) - These must be distributed to participants and beneficiaries no later than nine months after each plan year end (09/30/10, for plan years ending 12/31/09) if there is no extension of Form 5500 due date. If an extension is filed, the SAR is due three months after the Form 5500 due date (12/15/10).

Summary of Material Modifications (SMM) - The SMM (detailing material changes in covered services or benefits) must be sent no later than 210 days after the end of the plan year in which the change was adopted. To avoid litigation, a prudent employer should send this notice out as soon as possible. For plan year ending on 12/31/09, the SMM is due no later than 07/29/10.

Summary Plan Descriptions (SPDs) - Distribute SPDs within 90 days for new participants and within 120 days for new plans. If there are any material changes the minimum update requirement is every five years. If no material changes, SPDs should be provided at least every 10 years.

Annual Medicare Part D Notice to Employees - Due by 11/15/10

Cafeteria Plan Flexible Spending Account (FSA) Discrimination Testing - The IRS requires that Section 125 Cafeteria/FSA and Premium Only plans pass a series of discrimination tests every year. Work with your benefits administrator to schedule when these should be done.

Annual Notice to DHHS – The new annual notice requirement requires Covered Entities to maintain a log of any breaches that involve unsecured PHI and to report breaches to DHHS within 60 days after the end of each calendar year. For 2009, Covered Entities will only be required to report on breaches that occurred on or after 09/23/09.