

Briefly on Benefits (January 2010)

December 23, 2009

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2009 and Year End Changes Affecting Group Health Plans

This year is fast coming to a close. It has been a year of eventful developments and group health plans have not been exempt from these developments. Now is a time to think about the tasks that may still need to be done while bracing for new challenges in the upcoming year. One new challenge that begins now and extends into the new year is the extension of the COBRA subsidy provisions signed into law by President Obama on December 19, 2009 (see the last entry in the below chart).

The following chart is a brief summary of selected significant developments affecting group health plans.

Law	Highlights	Compliance Date	Action
Mental Health Parity and Addiction Equity Act of 2008	If a plan offers mental and/or substance abuse benefits, the plan cannot impose greater limitations or financial restrictions on those benefits than it imposes on other medical/surgical benefits. Guidance should have been issued by 10/3/2009, but it has been delayed.	Plan years beginning after 10/3/2009 (later date for some plans under collective bargaining agreements)	Plan amendment; SMM or SPD changes; and administrative changes
Michelle's Law	Covered college students remain in the plan during a medically necessary leave of absence for 1 year or when they would otherwise lose coverage, if earlier. Any certification of student status must include a description of these provisions.	Plan years beginning after 10/9/2009	Plan amendment; SMM or SPD changes; administrative changes
Genetic Information Nondiscrimination Act of 2008 ("GINA")	Prohibits using genetic information for plan premiums, underwriting and generally cannot request or require disclosure of genetic information. Genetic information is broadly defined, including family history to relatives of the 4 th degree. Will restrict the use/viability of many wellness programs that utilize health risk assessments.	Plan years after 5/21/2009; interim final regulations plan years after 12/31/2009; proposed HIPAA privacy rule changes 180 days after effective date	Plan amendment; SMM or SPD changes; review wellness programs and health risk assessments and employee materials; administrative changes; review HIPAA privacy policy and disclosures
HITECH HIPAA changes under ARRA	Increases penalties for HIPAA violations. New notice requirements associated with breaches of unsecured PHI. Expansion of certain privacy/security requirements to business associates.	Penalties - 2/17/2009; per regulation rules relating to breaches of unsecured PHI - 9/23/2009; expansion to business associates - 2/17/2010	Review HIPAA privacy/security policies and disclosures and make necessary changes; review business associate agreements; contact business associates to coordinate necessary changes; administrative changes
Final excise tax reporting/payment regulation	Requires self-reporting and payment of any excise tax for violation of COBRA, HIPAA portability/nondiscrimination, GINA, mental health/substance abuse parity, Newborns'	8928 forms due after 12/31/2009; file by time employer tax return due (without	Administrative changes

Law	Highlights	Compliance Date	Action
	and Mothers' Health Protection Act, Michelle's Law and comparable HSA and Archer medical savings account contributions rule. File on Form 8928.	considering extensions)	
HEART Act Health FSA Qualified Reservist Distribution ("QRD") (See Notice 2008-82)	Allows distribution to U.S. service members called to active duty for more than 179 days to receive QRD of unused health FSA amounts. This is an optional provision.	May adopt retroactive if done before 1/1/2010.	Written amendment to cafeteria plan/FSA; SMM or SPD changes; administrative changes
Medicare	Provide Medicare Part D Notice of creditable (or non-creditable) coverage. New model notices were issue for use after 1/1/2009.	Annual notice distributed before 11/15/2009	Distribute notice even if due date was missed
Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA")	Two new special enrollment periods for non-accepted group health plans for losing eligibility for Medicaid or CHIP or for gaining eligibility for state premium subsidy. Enrollment changes allowed within 60 days of the event. Notice requirement to employees about state premium assistance once HHS model published - due 2/4/2010.	4/1/2009	Plan amendment; SMM or SPD changes; update special enrollment notices; administrative changes
ARRA COBRA Premium Subsidy	If coverage lost due to involuntary termination from 9/1/2008 to 12/31/2009, the assistance eligible individuals only have to pay 35% of the COBRA premium for up to 9 months. Limits based on Medicare eligibility, other group health plan eligibility and income. (See changes below)	Generally, 3/1/2009; set to sunset 12/31/2009, but are proposals to extend (See Below)	Plan amendment; SMM or SPD changes; COBRA notice changes
2010 Defense Appropriations Act Extends COBRA Premium Subsidy (signed by President Obama 12/19/2009)	<ul style="list-style-type: none"> ▪ Extends period of application to involuntary terminations from 9/1/2008 to 2/28/2010 ▪ Extends period of subsidy to potentially 15 months. ▪ Modifies definition of assistance eligible individual to only require the occurrence of the involuntary termination within the period of application; COBRA eligibility related to the involuntary termination may actually arise after 2/28/2010 ▪ Imposes new notice requirements that must be met by 2/17/2010 (60 days from enactment) ▪ Retroactive re-elections for assistance eligible individuals whose premium subsidy expired and who thereafter let COBRA expire by the later of 60 days after enactment (2/17/2010) or 30 days from the new notice 	Sunset moved to 2/28/2010	Plan amendment; SMM or SPD changes; COBRA notice changes

If you have questions about any of these legal changes affecting group health plans, contact one of the attorneys in the Dinsmore & Shohl Compensation and Benefits Practice Group.