MARSH & McLENNAN AGENCY

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2018 Employee Benefits Webinar Series
Compliance Foundations: Group Health Plan Notice Requirements

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Agenda

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Notice Requirements for Group Health Plans

- Special Enrollment
- Wellness Program Disclosure
- Newborns’ and Mothers’ Health Protection Act
- Women’s Health and Cancer Rights Act
- Employer CHIP Notice
- Michelle’s Law
- MHPAEA Criteria for Medically Necessary Determination Notice
- MHPAEA Claims Denial Notice
- MHPAEA Increased Cost Exemption
- Grandfathered Plan Disclosure/Notice
- Summary of Benefits and Coverage (SBC) and Uniform Glossary
- SBC 60-Day Advance Notice of Modification
- Notice Regarding Designation of a Primary Care Provider
- Employer Notice to Employees of Coverage Options
- Medicare Part D Notice of Creditable/Non-Creditable Coverage
- ACA Section 1557 Disclosures for Covered Entities
- HIPAA Notice of Privacy Practices & Reminder Notice

Notice Requirements Group Health Plans subject to ERISA

- <u>Notice of special enrollment rights</u>
- Applies to all group health plans
- Contains a summary of individuals' special enrollment rights
  - Explains that if they (or spouse or dependents) waive due to other coverage, they may enroll if coverage is lost, if requested within 30 days
  - Also explains that new dependents through birth, marriage, adoption, may be added within 30 days of the event
  - Provides employees and their families 60 days to enroll after losing eligibility for Medicaid or becoming eligible for premium assistance
- **Timing**: At or before the time an employee is initially offered the opportunity to enroll in a group health plan

Notice Requirements
Group Health Plans subject to ERISA

- Wellness program disclosure
  - Applies to group health plans offering a health contingent wellness program
  - The notice must disclose the availability of a reasonable alternative standard (or possibility that the standard may be waived)
- Disclosure must include contact information for obtaining the alternative standard and a statement that recommendations of an individual’s personal physician will be accommodated
- **Timing:** In all plan materials that describe the terms of a health contingent wellness program (both activity-only and outcome-based wellness programs)
  - If the plan materials mention that a program is available, without describing its terms, this disclosure is not required
  - For outcome-based wellness programs, this notice must also be included in any disclosure that an individual did not satisfy an initial outcome-based standard

Notice Requirements
Group Health Plans subject to ERISA

- DOL model wellness program disclosure
  - Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.
- EEOC model wellness program disclosure
  - https://www.eeoc.gov/laws/regulations/ada-wellness-notice.cfm
  - When employers collect employee health information under a wellness program they must notify employees regarding:
    1. What information will be collected;
    2. How it will be used;
    3. Who will receive it; and
    4. What will be done to keep it confidential

Notice Requirements
Group Health Plans subject to ERISA

- Newborns' and Mothers' Health Protection Act (NMHPA) Notice
  - Applies to group health plans that provide maternity or newborn infant coverage
  - The plan's SPD must include a statement describing any requirements under Federal or State law applicable to the plan, and any health insurance coverage offered under the plan, relating to any hospital length of stay in connection with childbirth for a mother or newborn child. If the Federal law applies in some areas in which the plan operates and State law applies in other areas, the SPD should describe the different areas and the Federal or State requirements applicable in each.
- **Timing:** Include in SPD (not an annual requirement)

Notice Requirements
Group Health Plans subject to ERISA

- Model NMHPA notice
  - Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the insurance issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

Notice Requirements
Group Health Plans subject to ERISA

- Women's Health and Cancer Rights Act (WHCRA) Notice
  - Applies to group health plans that provide coverage for mastectomy benefits
    - Plan must provide a statement that for participants and beneficiaries who are receiving mastectomy-related benefits, coverage will be provided in a manner determined in consultation with the attending physician and the patient, for:

      1. All stages of reconstruction of the breast on which the mastectomy was performed;
      2. Surgery and reconstruction of the other breast to produce a symmetrical appearance;
      3. Prostheses; and
      4. Treatment of physical complications of the mastectomy, including lymphedema

    - Plan must also provide a description of any annual deductibles and coinsurance limitations applicable to such coverage
- Timing: Upon enrollment and annually thereafter (a simplified disclosure may be used to satisfy the annual notice requirement)

Notice Requirements
Group Health Plans subject to ERISA

- Model WHCRA notice **(simplified annual notice)**
  - Do you know that your plan, as required by the Women's Health and Cancer Rights Act of 1998, provides benefits for mastectomy-related services including all stages of reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy, including lymphedema? Call your plan administrator at [insert phone number] for more information.

Notice Requirements
Group Health Plans subject to ERISA

- Employer Notice regarding Premium Assistance under Medicaid or CHIP
  - Employers that maintain a group health plan in a state with a CHIP or Medicaid program that provides for premium assistance for group health plan coverage must provide this notice to all employees
- **Timing:** May be provided with enrollment packets or the Summary Plan Description

- Employers should always download a fresh copy of the notice before sending to employees:

  https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/chipra/model-notice.doc

- Information on most recent version is current as of 7/31/18
- The date by the OMB control code is not a “good through” date for the information in the notice – it’s used for government accounting purposes

Notice Requirements
Group Health Plans subject to ERISA

- Michelle's Law notice
  - Applies to all group health plans, but has limited application post-ACA
  - Plans must include a description of the Michelle's law provision for continued coverage during medically necessary leaves of absence
- **Timing:** Notice must be included with any notice regarding a requirement for certification of student status for coverage under the plan
- **Note:** Under the ACA, plans cannot deny or restrict coverage for a child under the age of 26 based on student status
- Therefore, Michelle's law will not apply unless:
  - The plan is subject to a state law mandate requiring it to cover a child over the age of 26 who is a full-time student; or
  - The plan otherwise covers children over age 26 who are full-time students

Notice Requirements
Group Health Plans subject to MHPAEA

- Mental Health Parity and Addiction Equity Act (MHPAEA) Criteria for Medically Necessary Determination Notice
  - Applies to all group health plans subject to MHPAEA
  - Notice must provide the criteria for medically necessary determinations with respect to mental health/substance use disorder benefits
  - Form: https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/mental-health-parity/mhpaea-disclosure-template-draft-revised.pdf
- **Timing:** Notice must be provided to any current or potential participant, beneficiary, or contracting provider upon request

Notice Requirements
Group Health Plans subject to MHPAEA

- MHPAEA Claims Denial Notice
  - Applies to all group health plans subject to MHPAEA
  - Notice must provide the reason for any denial of reimbursement or payment for services with respect to mental health/substance use disorder benefits
- **Timing:** Notice must be provided to participants and beneficiaries upon request
- MHPAEA Increased Cost Exemption
  - A plan claiming the increased cost exemption from MHPAEA must notify participants and beneficiaries, the DOL, and the appropriate State agencies of the plan's exemption from the parity requirements
- **Timing:** Notice must be provided if using the cost exemption

Notice Requirements
Group Health Plans Claiming Grandfathered Status

- Grandfathered Plan Disclosure/Notice
  - Applies to group health plans claiming grandfathered status
  - Notice must disclose that the plan is grandfathered and must include contact information
- **Timing:** Notice must be included in any plan materials describing benefits

Notice Requirements
Group Health Plans subject to ERISA or the ACA

- Summary of Benefits and Coverage (SBC) and Uniform Glossary
  - Applies to all group health plans
  - Describes benefits available under the plan
  - SBC must include an internet address where an individual can review the Uniform Glossary and contact information for obtaining a paper copy
- **Timing:**
  1. Must be provided with enrollment materials and at renewal
  2. SBC must be provided to special enrollees within 90 days
  3. SBC must be provided upon request within 7 days
- Electronic delivery of SBC permitted for those enrolling online or who are eligible but not enrolled
  - Employees who are enrolled and who are not re-enrolling online may be provided the SBC electronically in accordance with ERISA's electronic disclosure rules
- Failure to comply may result in $1,128 fine per occurrence

Notice Requirements
Group Health Plans subject to ERISA or the ACA

- SBC – Advance notice of modification
  - If a plan makes a material modification in any of the plan terms that would affect the content of the SBC that is not reflected in the most recently provided SBC, the plan must provide notice of such change
  - Advance notice requirement does not apply to changes that occur in connection with a renewal or reissuance
- **Timing:** Notice must be provided no later than 60 days prior to the date on which the modification will become effective

Notice Requirements
Non-Grandfathered Plans subject to ERISA or the ACA

- <u>Notice Regarding Designation of a Primary Care Provider (PCP)</u>
  - If a plan requires designation of a PCP, the plan must notify participants of their right to designate any participating PCP who is available
    - For children, any participating physician who specializes in pediatrics may be designated
    - Women may designate a participating OB/GYN professional without authorization or referral
- **Timing:** Must be provided with SPD or any other similar description of benefits

Notice Requirements
Non-Grandfathered Plans subject to ERISA or the ACA

- <u>Notice Regarding Designation of a Primary Care Provider (PCP)</u>
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    - For children, any participating physician who specializes in pediatrics may be designated
    - Women may designate a participating OB/GYN professional without authorization or referral
- **Timing:** Must be provided with SPD or any other similar description of benefits

Notice Requirements
Employers subject to the Fair Labor Standards Act

- Employer Notice to Employees of Coverage Options
  - Employers subject to the FLSA must notify all new employees of the existence of the Marketplace, the potential availability of a tax credit and that an employee may lose the employer contribution if the employee purchases a qualified health plan
  - Model notices are available at

    https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice
- **Timing:** Provide to all new employees within 14 days of hire
  - Only provided at time of hire – not an annual requirement for existing employees

Notice Requirements
Employers that offer Prescription Drug Coverage

- <u>Notice of Medicare Part D Creditable or Non-Creditable Coverage</u>
- **Timing:**
  1. Prior to an individual's initial enrollment period for Part D,
  2. Prior to the effective date of coverage for any Medicare-eligible individual that joins the plan,
  3. Whenever prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable, or
  4. Upon the request of the individual
- 1 & 2 may be satisfied by providing notice to all eligible employees annually before Oct. 15.
- Many employers choose this approach since it can be difficult for employers to identify all individuals (including dependents) who may be eligible for Medicare
- Notice may be included in enrollment materials or in separate mailings provided to all employees who participate in the plan

Notice Requirements
For Covered Entities under ACA Section 1557

ACA Section 1557 Final Regulations

- Effective for Plan Years beginning on or after January 1, 2017
- Rule prohibits discrimination on the basis of race, color, national origin, sex, age, or disability under a health programs or activities receiving federal funds
- Covered plans are prohibited from excluding all services related to gender dysphoria or gender transition (although TX judge has issued a nationwide injunction preventing HHS from enforcing this aspect of Section 1557)
  – For example, a plan subject to these requirements must cover a hysterectomy that is considered medically necessary to treat gender dysphoria if the plan otherwise covers hysterectomies

ACA Section 1557 Final Regulations

- Applies to most employer plans through their carrier or TPA
  - Carriers (or TPAs that are also carriers) that offer Exchange, Medicare Advantage, or Medicaid plans are subject to these rules and must comply with respect to employer plans they insure (or administer)
- Also applies to plans sponsored by hospitals, nursing homes, and other health care providers receiving funds under Medicare Part A or Medicaid
- Does not apply to most self-insured plans directly unless receiving Retiree Drug Subsidy or sponsoring certain Medicare plans
  - Can apply to the TPA, as described above
  - If a self-insured plan is discriminatory due to the employer's design, OCR can refer the matter to the EEOC to pursue a discrimination claim against the employer

Notice Requirements
For Covered Entities under ACA Section 1557

Notice Requirement for Covered Entities

- Final rule requires covered entities (CE) to take initial and continuing steps to notify beneficiaries, enrollees, applicants:
  - That CE does not discriminate on basis of race, color, national origin, sex, age, or disability in health activities
  - That CE provides appropriate auxiliary aids/services where necessary and free of charge
  - That CE provides language assistance services for LEP (limited English proficiency)
  - CE's compliance coordinator and how to file a grievance
  - How to file a discrimination complaint with OCR
- Model Notice is provided
- Post with significant communications, in physical locations, on websites

Privacy Notice Requirements For HIPAA Covered Entities

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Notice Requirement for HIPAA Covered Entities

- NPP should be provided within 60 days of enrollment and re-issued within 60 days after a material change to its contents
- Participants must be notified every three years that the NPP exists, and how they may obtain a copy
- Model Notices are provided: https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/model-notices-privacy-practices/index.html
- Carriers send the NPP on behalf of fully insured plans
  - Fully insured plans may have limited obligations under HIPAA's Privacy rule depending on the amount of PHI the plan receives

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Questions?

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