




Employee Benefits Broadcast
The Benefits News You Need in 60 Minutes or Less

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1

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Employee Benefits Broadcast

**“The Benefits News You Need
in 60 Minutes or Less”**

**Tuesday, November 8, 2011
12:00 p.m. – 1:00 p.m. CST**

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2

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Housekeeping Issues

- Call 866.493.2825 for technology assistance
- Dial *0 (star/zero) for audio assistance
- To ask questions, use the pull down Q&A menu
- We encourage you to Maximize the PowerPoint to Full Screen Usage:
 - Hit F5 on your keyboard
- To print a copy of this presentation:
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3

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Employee Benefits Broadcast

Today's Topics

- **Headline News:** Health Care Reform Summary of Benefits Coverage and Uniform Glossary
- **Fiduciary Fundamentals:** Year-End Amendments and Actions
- **Brave New World:** Proposed Benefits Legislation



4

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Headline News



Health Care Reform Summary of Benefits Coverage and Uniform Glossary

Katherine L. Aizawa



5

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Headline News

Why?

- To help employers and employees more easily understand a plan's benefits and costs



6

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Headline News

Who?

- Insured and self insured plans (plan administrator or insurance carrier)
- ERISA and non-ERISA plans
- Grandfathered and non-grandfathered plans
- Individual policies



Headline News

What – SBC Content Requirements

- Must use uniform definitions
- Description of coverage
- Description of any exceptions, reductions and limitations



Headline News

SBC Contents

- Renewability and continuation of coverage provisions
- Cost sharing provisions, e.g.,
 - Deductibles
 - Coinsurance, and
 - Copayments



Headline News

SBC Contents

- Statement that the SBC is only a summary and that the Plan, policy or certificate of insurance should be reviewed to determine plan's terms
- Telephone or email address to request copy of Plan or certificate of insurance
- If multiple provider networks or drug formulary, email address or contact information for list of network providers or formulary



Headline News

SBC Contents

- Uniform Glossary email address
<http://www.dol.gov/ebsa/healthreform/index.html#2715>.
- Premium amounts



Headline News

SBC Contents

- Coverage Examples
 - Whether the service is covered, and applicable cost sharing
 - Pregnancy, breast cancer treatment (except for individual policies), diabetes treatment
 - Agencies may require additional examples in the future



Headline News

SBC Contents

- Effective January 1, 2014, a statement on whether the Plan provides minimum essential coverage (generally, coverage that meets the individual responsibility requirement under ACA); and
- Plan's share of total allowed costs of benefits meets applicable requirements



Headline News

SBC Appearance

- Cannot be more than 4 double-sided pages
- Must be at least 12 point font
- SBC template and Uniform Glossary available at <http://www.dol.gov/ebsa/healthreform/index.html#2715>.



Headline News

Who Created Templates

- National Association of Insurance Commissioners (NAIC)
- Stakeholders from
 - Consumer advocacy organizations
 - Health insurance companies
 - Health care professionals
 - Patient advocates, including those representing individuals who are more comfortable speaking a foreign language



Headline News

Foreign Language Assistance

- ACA claims appeals rules apply
- Foreign language assistance required if employees reside in a county where more than 10% of the population speaks the same foreign language
- Oral assistance must be available; written translations available upon request



Headline News

When

- March 23, 2012 (?)
- Public comment period ended October 21, 2011
- Agencies to revise templates per comments
- But many requests for comments on many issues



Headline News

When — Renewals

- Open enrollment: must be included in open enrollment packet
- If automatic renewal (or no written materials distributed): no later than 30 days before the first day of new policy year



Headline News

When — No later than 7 days following request

- Upon application or request for information
- HIPAA Special Enrollees



Headline News

When — Enrollment After Initial Request

- Second SBC automatically sent if SBC information has changed after initial request



Headline News

When — Restrictions Intended to Prevent Unnecessary Duplication of SBCs

- If employee and dependents live at same address, only one SBC is needed
- But if dependents live at a different address, a second SBC must be sent to the second address
- Renewals: only need to provide an SBC with respect to benefit package individual is **enrolled**
- Individual can request SBC for any benefit package he is eligible



Headline News

When — 60 Day Advance Notice if Material Modification After SBC Distributed

- If any change in SBC contents, then notice must be provided at least 60 days in advance of change
- “Material” is any change a participant would consider to be an important change



Headline News

How — Acceptable Distribution Methods

- SBCs always provided free of charge
- Paper always acceptable
- Include in open enrollment materials
- ERISA plans must comply with DOL's electronic disclosure safe harbor



Headline News

Coordination with State Laws

- Does not preempt state laws - states can require more strict standards
- But ACA preempts any state law that provides less information than required in an SBC
- Federal SBC is the minimum threshold



Headline News

Penalties for Noncompliance

- \$1,000 for each willful failure (i.e., each enrollee) to provide SBC and uniform glossary
- DOL and IRS to coordinate on fines against group health plans that are not maintained by a governmental employer
- DOL is to issue regulations regarding procedures for assessing the civil fine against employers
- Until future notice, group health plans must continue to report and pay the Code § 4980D \$100 a day excise tax on Form 8928



25

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Fiduciary Fundamentals



Year-End Amendments and Actions

Andrew D. Gregor



26

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Fiduciary Fundamentals

Year End Amendments and Actions

- Code Section 436 Amendments for Defined Benefit Plans
- Cash Balance Plan Amendments (deadline pushed back)
- 2009 Required Minimum Distribution Amendments
- In-Plan Roth Rollovers
- PPA Amendments for Governmental Plans
- Controlled Group Election For Determination Letter Filing Purposes
- W-2 Reporting of cost of health plan coverage



27

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Fiduciary Fundamentals

Year End Amendments

- Code Section 436 Amendments for Single-Employer Defined Benefit Plans
 - Unlike Section 411(b)(5) amendments, Section 436 amendment deadline not extended
 - Regulations require numerous specific provisions be added to plan documents (incorporation by reference not sufficient)



28

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Fiduciary Fundamentals

Year End Amendments

- Cash Balance Plan Amendments
 - Amendment deadline pushed back to 2012 (at earliest)



Fiduciary Fundamentals

Year End Amendments

- 2009 Required Minimum Distribution (RMD) Amendments
 - Plans must be amended to reflect how 2009 RMDs were handled
 - Review notices sent to participants in 2009 to determine appropriate amendment language
 - IRS has issued model amendments
 - Amendment deadline for governmental plans is end of first plan year beginning on or after January 1, 2012



Fiduciary Fundamentals

Year End Amendments

- In-Plan Roth Rollovers
 - If a plan allowed an in plan Roth rollover, in either 2010 or 2011, amendment must be made

- PPA Amendments for Governmental Plans
 - Non-government plans had 2009 amendment deadline



Fiduciary Fundamentals

Other Year End Action Items

- Controlled Group Election For Determination Letter Filing Purposes
 - Members of a controlled group may jointly elect to be in Cycle A
 - In parent-subsidary controlled group, parent can elect to have all members of the controlled group file in Cycle applicable to parent (based on EIN)



Fiduciary Fundamentals

Year End Amendments

- W-2 reporting of cost of employer-sponsored health coverage
 - To be reported on 2012 W-2 that will be issued in January 2013
 - Total of employee and employer cost to be reported (COBRA rate)
 - Exception for self-funded church plans



33

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Brave New World

Proposed Benefits Legislation

Leigh C. Riley

34

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Brave New World

Medical Flexible Spending Accounts

- Originally, over-the-counter (OTC) drugs not reimbursable from health FSA
- IRS said they were (2003)
- PPACA said not, effective January 1, 2011
- Restoring Access to Medication Act (House & Senate) would repeal PPACA provision, allowing OTC drugs to again be reimbursable
- No effective date provided

35

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Brave New World

401(k) Leakage

- Bipartisan bill
- SEAL 401(k) Savings Act (House)
 - Would allow defaulted loans that are distributed due to plan termination or termination of employment to be “paid off” via rollover by plan participant’s tax filing deadline (not normal 60 days)
 - Eliminate 6-month suspension of contributions following hardship withdrawal
- Savings Enhancement by Alleviating Leakage in 401(k) Savings Act of 2011 (Senate)
 - Same as above
 - No 401(k) loans through “credit card”
 - No more than 3 401(k) plan loans outstanding at any time

36

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Annuity Payments

- Lifetime Income Disclosure Act (Senate only)
- Additional disclosure for individual account balance plan statements (typically quarterly)
- At least one statement per year would be required to disclose the account balance's actuarial equivalent:
 - single life annuity
 - joint and survivor annuity assuming spouse of equal age
- DOL to provide model statement to be included with notice

37

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Stock Option Deductions

- Ending Excessive Corporation Deductions for Stock Options Act (Senate only)
- Tax deduction taken by corporation for stock option compensation cannot exceed the accounting expense and must be deducted at the same time accounting expense is recognized
- For publicly traded companies, stock option compensation NOT treated as performance-based compensation under Code section 162(m)
- Would apply to all options except those vested before June 15, 2005
- Would not change taxation to optionee – mis-match between company and optionee

38

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Brave New World

Supercommittee Review of Benefit Plans

- Joint Committee on Deficit Reduction charged with cutting \$1.5 trillion from budget (or raising equivalent amount) for next 10 years
- Increased PBGC premiums
- Lowering annual cap on employer and employee contributions to defined contribution plans to 20% of participant's pay or \$20,000, whichever is lower

39

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Brave New World

IRS Regulatory Plan for 2011-2012

- Suspension or reduction of safe harbor 401(k) contributions
- Cash balance plans and pension equity plans
- Issues related to lifetime income from defined contribution plans
- Final regulations for cafeteria plan rules – Code section 125
- 409A income inclusion regulations (when 409A violations occur)
- 457(f) plan regulations (long awaited for by tax-exempt entities)

40

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Brave New World

Department of Health and Human Services

- Final comprehensive HIPAA privacy and security regulations expected to be issued in early 2012
- Would address
 - Breach notification
 - Other HITECH changes
 - Genetic Information Nondiscrimination Act

41

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Questions & Answers

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42

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43

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Mark Your Calendar

- The final session of the 2011 Employee Benefits Broadcast Series will take place on the following date:
 - January 24, 2011
 - April 24, 2011
 - July 24, 2011
 - October 23, 2011



44

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Thank You

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http://www.foley.com/news/event_detail.aspx?eventid=3933
- We welcome your feedback. Please take a few moments before you leave the web conference today to provide us with your feedback:

<http://www.zoomerang.com/Survey/WEB22DQJSTECAD>



45

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