



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

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**“The Benefits News You Need
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**Tuesday, October 14, 2014
12:00 p.m. – 1:00 p.m. CST**

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Employee Benefits Broadcast

Today's Topics

- Reviewing Your Summary Plan Descriptions: The Who, What, When, Why, and How
- HRAs and FSAs: An Update on the Current Legal Requirements
- Year-End Amendments

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Employee Benefits Broadcast

Today's Speakers



Leigh C. Riley



Katherine L. Aizawa



Isaac J. Morris

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5



In the Spotlight

Reviewing Your Summary Plan Descriptions: The Who, What, When, Why, and How

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In the Spotlight

Setting the Stage—Some Background Information

- Summary describing plan's terms & benefits and participant responsibilities
- Written in a manner *your* average participant can understand
 - Use simple declarative sentences & cross-references
 - Explain rules *and* the consequences of failure
- Generally applicable to all ERISA plans with limited exemptions
- Can have a “wrap” SPD and/or SPD can be the plan document

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In the Spotlight

What *Must* Be Included (A Non-Exhaustive List—see ERISA 102 and Regulation 2520.102-2 & -3)

- Eligibility & participation guidelines—ACA info!
- Identifying information (e.g., plan name, administrator info)
- Funding & contribution mechanisms
- Amendment & termination provisions
- Claims & appeal procedures
- Statement of ERISA rights & other technical notices

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In the Spotlight

What Should Be Included (A Non-Exhaustive List)

- Reservation of discretionary authority
- The plan's statute of limitations
- Overpaid benefits & uncashed payments
- A "non-waiver" clause
- Participant cooperation requirements
- Your unique provisions or recurring situations

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In the Spotlight

What About Amendments? The Summary of Material Modifications (SMM)

- "Material" changes require a formal amendment—
an SMM
 - Material is based on the "facts and circumstances"
- Timeline for providing is generous—see "*When
Do You Need to Provide It?*"
 - Consider notifying participants "informally" beforehand
- Interim SMMs are part of the SPD

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In the Spotlight

Who's Responsible to Provide It?

- The Plan Administrator
 - Usually the Sponsoring Employer
- *Not* the insurer or the TPA (unless delegated)

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In the Spotlight

Who Needs to Receive It? (SPD and Interim SMM)

- For welfare plans: Only participants actually covered
- For retirement plans: Each covered participant & each beneficiary receiving payments
- For any SPD, don't forget about special situations
 - COBRA, QMCSO, retirees, deceased participants

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In the Spotlight

When Do You Need to Provide It?

- For the SPD (includes any SMMs)
 - When a new plan takes effect (no later than 120 days after)
 - When an employee becomes eligible to participate (no later than 90 days after)
 - Every 5 years if material modifications, or 10 years otherwise
 - Within 30 days upon written request of a plan participant or beneficiary
- For the SMM
 - Generally within 210 days after plan year in which adopted

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In the Spotlight

How and Where to Provide It—Part 1 of 2

- Method reasonably calculated to ensure actual receipt
- Acceptable safe harbor methods
 - First-class mail or hand-delivery
 - Electronic distribution—no consent required, if:
 - Employee must have access to computer, and
 - Access to computer is an integral part of work duties

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In the Spotlight

How and Where to Provide It—Part 2 of 2

- Consider method carefully and consider using “skinny” SPDs if needed
- Whatever method, consider having and following a policy

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In the Spotlight

Why You Should Do It Right!

- For administrative ease
- To cut down on litigation risks
 - Failure to provide leaves the terms wide open
- To avoid penalties
 - If not provided within 30 days after requested—up to \$110 a day
- To avoid criminal penalties—but only for willful violations

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Fiduciary Fundamentals

HRAs and FSAs: An Update on the Current Legal Requirements



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Fiduciary Fundamentals

What's the Difference?

	Contributions	Carryover of Unused Money	Subject to the Affordable Care Act?
Health Reimbursement Accounts (HRAs)	Employer contributions only; unlimited	Depends on plan design; unlimited carryover available	Yes, unless either: - Integrated - Former employee only
Health Care Flexible Spending Accounts (FSAs)	Employee pre-tax and employer contributions; capped at \$2500 annually	"Use it or lose it", except for - 2 ½ month grace period - \$500 carryover	Yes, unless excepted benefit; employer match capped at \$500 or 100% of employee contributions, whichever is less



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18

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Fiduciary Fundamentals

Interaction of HRAs and ACA

- ACA prohibits a health plan from having annual dollar limits and requires plan to pay 100% for preventive services
- HRAs are health plans – pay for medical care
- HRAs would normally violate ACA because they have an inherent annual dollar limit and don't provide free preventive services
- Gov't agencies have provided relief

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Fiduciary Fundamentals

Interaction of HRAs and ACA

- IRS Notice 2013-54
- Active employee HRAs must be “integrated”
- Two ways (see next 2 slides)
 - Minimum value not required
 - Minimum value required
- Effective in 2014
 - Amounts credited before 2014 generally not subject to integration rules and remain subject to plan terms as in effect on 1/1/13

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Fiduciary Fundamentals

Integration – Min. Value Not Required

5 Requirements:

1. Employer offers major medical plan to employee
2. Employee enrolled in *group* health plan that is major medical (of employer or otherwise)
3. HRA limited to those who are enrolled in group health plan (major medical) coverage
4. HRA reimbursements limited to co-pays, co-insurance, deductibles, and premiums under group coverage and other non-essential health benefits
5. Employee has ability to forfeit HRA balance 1x per year and at termination of employment

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Fiduciary Fundamentals

Integration – Min. Value Required

4 Requirements:

1. Employer offers *min. value* medical plan to employee
2. Employee enrolled in *min. value* group health plan (of employer or otherwise)
3. HRA limited to those who are enrolled in min. value group health plan
4. Employee has ability to forfeit HRA balance 1x per year and at termination of employment

No restriction on what can be reimbursed

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Fiduciary Fundamentals

Operational Issues

- Terms of HRA/SPD
- If permitting other employer coverage, how to confirm?
- Protocol for opt-out/forfeiture

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Fiduciary Fundamentals

When Does Integration Cease to Apply?

- Integration is relevant only at the time the amount is credited to the HRA
- Participant permitted to get reimbursement of unused \$ after integration ceases
 - As permitted by HRA, e.g. may be very limited reimbursement if was not a “min. value” integrated HRA

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Fiduciary Fundamentals

Retiree HRAs

- A plan covering fewer than 2 current employees is exempt from ACA
- Retiree HRAs do not need to be integrated
- But be careful:
 - Ensure that the retiree HRA program is separate from active employee
 - Cut off participation if retiree re-hired by HRA employer

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Fiduciary Fundamentals

Violation?

- ACA penalty of \$100 per day excise tax per effected individual
 - Paid by plan sponsor
- OR
- Report reimbursement amounts as taxable compensation on Form W-2

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Fiduciary Fundamentals

Health FSAs – Carryover Rule

- 2½ month grace period around for awhile
- \$500 carryover rule first available for 2014
- Allows up to \$500 of unused FSA dollars to be carried into following plan year
- Essentially gives employee a possible \$3,000 balance (\$2500 new money plus \$500 carryover)

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Fiduciary Fundamentals

Carryover vs. Grace Period

	Grace Period	\$500 Carryover
Amount Carried Over	Unlimited	\$500
Period Eligible Expenses Incurred	2½ months only	Entire plan year
Impact on HSA Eligibility	Unable to make HSA contributions for 2½ months, unless <ul style="list-style-type: none"> - Limited purpose FSA (<i>for everyone</i>; mandatory) 	Unable to make HSA contributions for entire plan year, unless <ul style="list-style-type: none"> - Limited purpose FSA (<i>for particular person</i>; automatic or choice) - Employee waives carryover amount

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Fiduciary Fundamentals

HSA Eligibility

- “General purpose” FSA precludes contributions to Health Savings Account (HSA)
- “Limited purpose” FSA is compatible with HSA
- \$500 carryover that is general purpose precludes HSA contributions for entire plan year
- Fix = Convert to limited purpose or forfeit carryover balance

See IRS Notice 2013-71 and Chief Counsel Advice 201413005
for more information

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Fiduciary Fundamentals

Fees

- Transitional Reinsurance Fee (\$63 per life)
 - Integrated HRAs exempt
 - Retiree HRAs “generally” exempt; “generally” because not considered major medical coverage
 - FSAs exempt if excepted benefit
- PCORI Fee (\$2.08 per life for plan years ending 10/1/14 - 9/30/15)
 - HRA integrated with insurance, separate fee due on HRA
 - HRA integrated with self-insured, no separate fee due
 - Non-integrated retiree HRAs, fee due
 - FSAs exempt if excepted benefit

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Headline News

Year-End Amendments

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Headline News

Health Plan Identifier for Large Health Plans

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32

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Headline News

HPID is a standardized unique identifying number - Intended to ease the following problems in HIPAA “standard transactions”

- Difficulty in determining patient eligibility
- Identifying the correct health plan during claims processing
- Improper routing of transactions
- Rejected transactions b/c of insurance identification errors

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Headline News

- November 5, 2014 deadline for large health plans
- A large health plan provides medical, dental and vision benefits;
- Engages in electronic transactions; and
- Pays more than \$5M in benefits a year

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Headline News

Who must obtain the HPID?

- Fully-insured plans: Insurance company
- Self-insured plans: Sponsor
- Plan has multiple self-insured arrangements: Single HPID or a separate HPID for each arrangement. Multiple HPIDs helpful if claims administrator wants separate IDs for tracking purposes.

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Headline News

How to get an HPID

- Centers for Medicare & Medicaid Services (CMS) Enterprise Portal
- Register in the Health Insurance Oversight System
- After registering in HIOS, select link for the Health Plan and Other Entity Enumeration System and follow the prompts
- CMS HPID webpage has step-by-step instructions, instructional videos and PowerPoints

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Headline News

ACA Transitional Reinsurance Fee November 15, 2014 Reporting Deadline

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37

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- Transitional Reinsurance Fees are paid by sponsors of self-insured plan and insurance companies
- Fees then paid to individual market insurers that cover high risk individuals

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38

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- November 15, 2014 deadline to submit annual enrollment count
- First fee installment due January 15, 2015

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When does the fee apply and how much?

- 2014, 2015 and 2016 calendar years
- 2014: \$63 per covered life
- 2015: \$44 per covered life
- 2016: To be announced later

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Headline News

Health FSA \$2,500 Maximum Limit

- Can be retroactive back to first day of plan year beginning after 2012, or January 1, 2013 for calendar year plans
- Exception to general rule that prohibits retroactive cafeteria plan amendments
- Limit is subject to IRS indexing; 2015 limit not yet announced

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Headline News

Health FSA \$500 Carry Over Amendments

- December 31, 2014 amendment deadline if \$500 carry over implemented for 2013 plan year, or to allow 2015 dollars to be carried over to 2016
- Allows employees to carry over up to \$500 of unused FSA dollars determined as of the end of the run out period for the prior plan year
- Must choose between \$500 carry over and grace period

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HIPAA Certificates of Credible Coverage

- Eliminated effective December 31, 2014
- ACA prohibits use of pre-existing condition exclusions effective for PYs beginning in 2014
- Check plan documents, SPDs, COBRA packets, employee communications
- DOL model Statement of ERISA Rights – delete reference

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Headline News

ACA Shared Responsibility – IRC 4980H for 2015

- Review game plan of how to identify full time employees and plan's eligibility requirements
- Look-back measurement period and stability periods

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Windsor Amendments – Same Sex Marriage

- Effective June 26, 2013
- December 31, 2014 amendment deadline for qualified retirement plans
- Governmental plans: the close of the first regular legislative session of the legislative body with the authority to amend the plan that ends after December 31, 2014

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Retirement, H&W Windsor amendment required

- If plan's marriage definition references Section 3 of the Federal DOMA or defines marriage as an opposite sex marriage
- Section 3 declared to be unconstitutional for purposes of Federal tax law

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Windsor amendment not required if

- Spouse definition not inconsistent with Windsor decision
- Spouse defined as spouse, legally married spouse, or spouse under Federal law with no distinction between the sexes
- Clarification may be advisable

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Retirement Plans

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401(k) Safe Harbor and Automatic Contribution Notices

- December 1, 2014 deadline for 2015 calendar year plans
- Matching safe harbor notice: To reduce or suspend the match during 2015, notice must state that Employer reserves these rights, provided 30 day advance notice of the reduction or suspension is given. Same rule applies to retroactive contribution.
- Automatic contribution feature: Explain deferral percentage, how employee can opt out or change deferral percentage, deadline by which to make elections

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401(k) Plan Roth Features

- December 31, 2014 deadline for 2013 effective dates
- In-plan Roth conversions of undistributable pretax amounts to in-plan Roth account
- Adopt a Roth contribution program
- Accept Roth rollovers from other plans
- Roth conversions limited to distributable amounts

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Discretionary Amendments/ Determination Letters

- Last day of the plan year which includes the effective date
- Cycle D qualified retirement plans – January 31, 2015
 - Plan sponsor EIN ends in 4 or 9
 - Union multiemployer plans

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Contact Information

- **Leigh C. Riley**
414.297.5846
lriley@foley.com
- **Katherine L. Aizawa**
415.438.6483
kaizawa@foley.com
- **Isaac J. Morris**
414.297.4973
imorris@foley.com

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