

New Benefit Plan Requirements for 2010--Are You and Your Clients Up-To-Date?

A number of new federal laws and regulations affecting employee benefit plans were enacted and adopted in 2008 and 2009 that will have 2010 compliance implications for many employers and agents, brokers and consultants. Here's an overview of new requirements NAHU members and their clients should be aware of for the 2010 plan year.

The Genetic Information Nondiscrimination Act of 2008 (GINA)

The federal departments of Labor, Health and Human Services and Treasury issued an interim final rule to implement the Genetic Information Nondiscrimination Act of 2008 (GINA) in October 1, 2009 went into effect on December 7, 2009. The new law and rule prohibit group health plans from discriminating on the basis of genetic information and strictly limits the collection of any information that could possibly contain genetic information by employers. Unfortunately, the rules extend these prohibitions to family-history questions on health-risk assessment (HRA) forms used to place people in appropriate employer-based wellness and disease management programs. They also prohibit providing any incentive or reward for employees who complete an HRA.

This is an interim final rule, which means while it could be changed for 2011, its requirements are in effect for the 2010 plan year. Since its effective date was just December 7, 2009, it is very important for health insurance agents and brokers to make sure that your employer clients are not unintentionally out of compliance. The majority of employer-sponsored health benefit plans are based on the calendar year, and many calendar-year plans have already distributed HRAs that include questions about family medical history as part of their open enrollment materials for the 2010 plan year. These plans may or may not have expectation of getting these documents back before January 1, 2010, and may have rewards already planned and promised to employees for completion to be distributed after the start of the new plan year. If this is the case, please take steps to correct your client's wellness or disease management programs right away!

Mental Health Parity

For most group benefit plans (all calendar-year plans), the Wellstone-Domenici Mental Health Parity and Addiction Equity Act goes into effect on January 1, 2010. The law applies to employers of more than 50 people who provide mental health and substance abuse services as part of the employee benefits program. While large employers are not required to provide those benefits to employees, those who do may not impose any stricter financial requirements on mental health or substance use coverage than the predominant financial requirements for medical and surgical coverage under the plan. Generally, this means plans may not have higher cost sharing provisions for mental health and substance abuse benefits (e.g., deductibles, co-payments and out-of-pocket requirements) than those that apply to medical and surgical coverage. In addition, plans may not have stricter annual and lifetime dollar limits or any more restrictive coverage limits on the number of office visits or similar restrictions on the duration of coverage for mental health or substance use services than there are for medical or surgical treatment generally. And if the plan provides out-of-network benefits for medical and surgical services, then they also have to provide them for mental health and substance abuse, and they cannot be subject to stricter financial requirements or treatment limitations than those that apply to out-of-network medical and surgical services.

Michelle's Law--Coverage for College Students

Michelle's Law, which was signed in 2008, also goes into effect on January 1, 2010 for calendar year plans. It applies to all most all group plans if they cover dependents and use student-status as a means of determining whether or not an individual is a dependent. This measure prohibits group health plans from terminating a college student who is on medical leave from school or has had to reduce their college status to part-time for medically necessary reasons for one year after the first day of the medically necessary leave of absence, or until the date coverage otherwise would terminate under the terms of the plan (like exceeding the plan's age limits).

Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)

The passage of CHIPA last year created special enrollment rules, effective April 1, 2009, that require employers to amend their plans to allow special enrollment rights (similar to a qualifying event under HIPAA) for individuals that become eligible for state-paid coverage under CHIP or lose their CHIP eligibility. In addition, if your state offers a CHIP premium assistance program to help subsidize employer-sponsored coverage as an alternative to CHIP enrollment, employers must provide their employees with annual notification of the existence of the premium assistance program.

COBRA Premium Subsidy

The temporary 65% federal subsidy of COBRA health insurance premiums for workers and their families who were involuntarily terminated between September 1, 2008 and December 31, 2009 began to phase out last month. Employers are responsible for advancing the premium subsidy and receive a federal tax credit as reimbursement. The reduced-cost premiums only last for nine months, so those who started getting subsidized coverage in March of 2009 — the first full month after the stimulus bill was signed — lost their subsidy in December 2009. Unless the subsidy is extended by new legislation (which is pending but has not been acted on yet) then no newly laid-off workers are currently eligible. However, those involuntarily laid-off workers who started receiving subsidies after March can continue receiving subsidized benefits in 2010. The expiration date for those individuals continues to be nine months after the start of benefits, meaning that even without any federal subsidy extension legislation employers will potentially need to continue to advance this subsidy until August 2010 for eligible individuals.

Protecting the Privacy of Medical Information

Privacy and security rules under the Health Insurance Portability and Accountability Act (HIPAA) were extended this year, so that they now cover all business associates of entities covered by HIPAA, including health care plans as well as third-party administrators and other vendors. The potential civil penalties for HIPAA violations were also substantially increased and a tiered penalty structure based on categories of violations became effective on November 30, 2009, and applies to violations occurring on or after February 18, 2009. Also, interim final rules on the breach notification requirements and guidance on encrypting/decrypting protected health information became effective September 23, 2009, but the Department of Health and Human Services has announced they will not begin enforcement of the rules for failure to provide notifications that are discovered before February 22, 2010. Until then, covered entities are expected to attempt to comply and DHHS will help covered entities through technical assistance and voluntary corrective action.