

# Plan Document Requirements and Employee Disclosure Rules Related to the Affordable Care Act

August 28 & 29, 2013



# **Plan Document Requirements and Employee Disclosure Rules Related to the Affordable Care Act**

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. You can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “questions” box located on your webinar control panel.



# Plan Document Requirements and Employee Disclosure Rules Related to ACA

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- RJ Ahmann Company
- Catto & Catto
- Commercial Insurance
- The Crichton Group
- The Daniel & Henry Co.
- Engle-Hambright & Davies
- Frenkel Benefits
- Gillis, Ellis & Baker, Inc.
- The Horton Group
- INSURICA
- Kinney Pike Insurance
- Lipscomb & Pitts Insurance
- LMC Insurance & Risk Management
- Louisiana Companies/Querbes & Nelson
- Lyons Companies
- The Mahoney Group
- The McCart Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- R&R/The Knowledge Brokers
- RCM&D
- Roach Howard Smith & Barton
- The Rowley Agency
- Senn Dunn Insurance
- Smith Brothers Insurance
- Starkweather & Shepley Insurance Brokerage
- Van Gilder Insurance
- Woodruff-Sawyer & Co.
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# Agenda

- Plan Documentation Fundamentals and Assumptions
  - Types of documents
  - *Let's get real...*
  - Our goal for today's discussion
- ACA Plan Document Issues
  - Employee and dependent eligibility
  - Mandated plan design requirements
  - Claim review and appeal process
  - Integrated benefits
  - Wellness programs
  - *And let's not forget...*



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# Agenda

- ACA Cafeteria Plan Document Issues
  - Maximum salary reduction contribution
  - Fiscal year plan election changes
  - *And let's not forget...*
- Employee Disclosure Requirements
  - Exchange Notice
  - Grandfathered status
  - SBCs
  - W-2
  - Automatic enrollment
  - Health Insurance coverage
  - *And let's not forget...*



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# Fundamentals and Assumptions

- Welfare Benefit Plan Document
  - Formal written instrument
  - Required under ERISA and the Internal Revenue Code
  - Creates and provides the legal basis for plan
- Summary Plan Description (SPD)
  - Written (or electronic) document
  - Required under ERISA
  - Distributed to plan participants
  - Plain language description of plan benefits
- ERISA does not mandate the plan document and SPD be separate documents... but it does suggest two separate documents



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# Fundamentals and Assumptions

- Cafeteria plan document
  - Cafeteria plan document required under the Internal Revenue Code
  - August 2007 regulations establish that a cafeteria plan **must** have a written plan document
- Cafeteria plan document and welfare benefit plan document can be combined... but most often are drafted separately



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# Fundamentals and Assumptions

## *Let's get real...*

- The requirement is...
  - Every ERISA plan must have a formal plan document and a SPD
- But also be aware that...
  - Insurance policies are not ERISA plan documents
  - Certificates of Insurance are not SPDs
- The reality is that most ERISA plans have neither a plan document nor a summary plan description
- The ACA provides a viable opportunity to change that reality!



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# Fundamentals and Assumptions

- Our goal for today's discussion
  - **Is not** to address the specifics of various provisions of the ACA
  - **Is not** to provide specific plan document language that will apply in every case
  - **Is not** intended to be all inclusive and identify every plan document revision required... or suggested... by the ACA
  - **It is** to identify the major issues plan sponsors will need to consider... and likely address... in their post-ACA plan documentation and related employee notifications



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# Medical Plan Documentation Issues

- Considerations related to employee eligibility
  - Definition of full-time employee for eligibility purposes
  - Treatment of variable-hour, part-time, seasonal, temporary, etc. employees
  - Is measurement/stability safe harbor to be employed?
    - Should standard measurement/stability periods be stated in plan?
    - Might entire issue be better addressed as an employment policy?
  - Eligibility provisions that discriminate in favor of highly compensated individuals
- Considerations related to dependent eligibility
  - Change in definition of dependent children
  - Will coverage be extended to (opposite-sex) spouses?



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# Medical Plan Documentation Issues

- Mandated Plan Design Requirements
  - Prohibition on annual and lifetime limits on essential health benefits (Ins SG-GF)
  - Elimination of pre-existing condition limitation/exclusion (SG-LG-GF)
  - Prohibition on rescissions (SG-LG-GF)
  - Coverage of adult children to age 26 (SG-LG-GF)
  - Limitation on waiting periods (SG-LG-GF)

[**SG** = small group; **LG** = large group; **Ins** = insured; **GF** = grandfathered]



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# Medical Plan Documentation Issues

- Mandated Plan Design Requirements
  - Coverage of preventive health care without cost sharing (SG-LG)
  - Internal claims appeal process and external review process (SG-LG)
  - Guaranteed availability and renewability (Ins SG-Ins LG)
  - Insurance market reforms (Ins SG)
  - Requirement to provide essential health benefits (Ins SG)

[**SG** = small group; **LG** = large group; **Ins** = insured; **GF** = grandfathered]



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# Medical Plan Documentation Issues

- Claim Appeal and Review Process
  - Existing DOL claim denial/appeal requirements still apply
  - ACA expands upon these requirements by:
    - Expanding the scope of adverse benefit determinations
    - Requiring an effective internal claim appeal process
    - Requiring an external review by an Independent Review Organization (IRO) consistent with state requirements
    - If state does not have an external review process that meets required standards, a federally established review process must be used
  - Internal claim appeal process and applicable state/federal external review process must be addressed in plan document



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# Medical Plan Documentation Issues

- Integrated Benefits
  - Some ACA mandates can be satisfied by a combination of “integrated” benefits
    - *e.g.*, determination of the applicable PCORI Fee
    - *e.g.*, determination of a plan’s minimum value
  - Although no definition is provided in the ACA, integrated benefits are generally those that:
    - Have the same plan year,
    - Are components of the same ERISA plan, and
    - Are inter-related as to eligibility/participation
  - Integration can be easily established by use of a wrap-around plan document



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# Medical Plan Documentation Issues

- Wellness Programs
  - The ACA expands the wellness program requirements originally imposed under HIPAA
  - Where wellness benefits are incorporated into the medical plan, the plan document will need to formalize the related requirements, rewards (or penalties), alternative standards, etc.
  - To the extent that a stand-alone wellness program provides medical benefits (rather than simply promoting good health), it could be considered a group health plan and thereby become subject to ERISA's plan documentation requirements



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# Medical Plan Documentation Issues

- *And let's not forget...*
  - The United States Supreme Court recently overturned Section 3 of the Defense of Marriage Act (DOMA)
    - As a result, a legally married same-sex partner is now a “spouse” for all federal law purposes
    - However, repeal of DOMA does not mandate that (self-funded) plans extend coverage to same-sex spouses
    - Therefore, careful attention must be directed to the plan’s definition of eligible dependents... specifically, the term “spouse”



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# Cafeteria Plan Documentation Issues

- Maximum Salary Reduction Contribution
  - Limited to \$2,500/year/employee
  - Limitation became effective for plan years beginning after December 31, 2012
  - Maximum contribution is indexed for plan years beginning after December 31, 2013
  - Plan document must be amended to reflect new limits prior to December 31, 2014, as long as...
    - Amendment is retroactive to first year of limitation, and
    - Plan operates in compliance starting with first year of limitation
  - Plan amendment should reflect indexing... unless plan sponsor intends to hold limit at or under \$2,500



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# Cafeteria Plan Documentation Issues

- Fiscal Year Plan Election Changes
  - Applies in situations where the employer offers group health care coverage through a cafeteria plan, and
  - Employer maintains a fiscal year medical plan
  - Effective January 1, 2014, employees may want...
    - To enroll in an Exchange plan and discontinue employer coverage, or
    - Enroll in employer's plan to avoid individual shared responsibility payment
  - Such mid-plan year changes in election would not be permitted under existing cafeteria plan regulations



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# Cafeteria Plan Documentation Issues

- Fiscal Year Plan Election Changes
  - Transition relief will permit (without a change in status event)...
    - An employee to prospectively revoke or change an existing election (once), or
    - Begin salary reductions after open enrollment
  - Plan document must be amended to reflect new limits prior to December 31, 2014



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# Cafeteria Plan Documentation Issues

- *And let's not forget...*
  - On August 6, 2007 Treasury issued (re)proposed cafeteria plan regulations which require (partial list)...
    - A description of all benefits offered through the plan
    - Rules governing participation, employee elections, and contributions
    - Special requirements that apply to H-FSA, DC-FSA, or adoption assistance
    - Provisions applicable to health savings accounts (HSA)
    - A description of grace periods on an H-FSA and/or DC-FSA (if present)
    - Elections under the plan be irrevocable (except for recognized status changes)
    - How employer contributions are made to the plan
  - And if there's no written plan document... **there is no cafeteria plan!**



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# Employee Disclosure Requirements

## Notice of Exchange

- Originally due March 1, 2013... but delayed
- Now must be distributed by October 1, 2013 to
  - All current employees, and
  - All subsequent new employees at date of hire
- Requirement applies to all employers subject to Fair Labor Standards Act
  - Therefore, distribution obligation is blind to: employee status, union affiliation, plan participation, etc.
- Model notice and guidance released by DOL and can be found at:  
[www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform)



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# Employee Disclosure Requirements

## Notice of Exchange

- Content Requirements
  - Information on the existence of an exchange and a description of the services provided by the exchange
  - Information that employees may be eligible for a premium tax credit through the exchange if the employer's plan does not meet minimum essential coverage
  - Inform employees that if they purchase a plan through the exchange they would lose any employer contribution
  - Contact information for exchange



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# Employee Disclosure Requirements

## Summary of Benefits and Coverage

- Requirement applies to all individual and group health plans (SG-LG)
- Responsibility falls on:
  - plan sponsor for self-funded plans, and
  - Insurer and plan sponsor jointly for insured plans
- SBC must be provided at:
  - Initial enrollment
  - Annual open enrollment
  - HIPAA special enrollment, and
  - Upon request



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# Employee Disclosure Requirements

## Summary of Benefits and Coverage

- Content requirement is the same as last year with the addition of two new requirements:
  - Does the plan qualify as “minimum essential coverage”?
  - Does the plan provide “minimum value”?



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# Employee Disclosure Requirements

## Summary of Benefits and Coverage

- Information should be included in SBCs for 2014 plan years, however if not included, employers should include the following statements:
  - Does the plan qualify as “minimum essential coverage”?  
*The Affordable Care Act requires most people to have health care coverage that qualifies as “minimum essential coverage.” This plan or policy [does/does not] provide minimum essential coverage.*
  - Does the plan provide “minimum value”?  
*The Affordable Care Act establishes a minimum value standard of benefits of a health plan. The minimum value standard is 60% (actuarial value). This health coverage [does/does not] provide minimum value.*



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# Employee Disclosure Requirements

## Grandfathered Plan Status

- A grandfathered plan must provide a statement that:
  - Plan is believed to be a grandfathered plan, and
  - Contact information for questions or complaints
- Requirement was effective for first plan year after September 23, 2010
- Statement must be included in any plan materials describing benefits which could include:
  - Summary Plan Descriptions (SPD)
  - Summary of Material Modifications (SMM)
  - Benefit enrollment material
- Disclosure requirement is in addition to SBC
- DOL has provided model language at: [www.dol.gov/ebsa/healthreform/](http://www.dol.gov/ebsa/healthreform/)



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# Employee Disclosure Requirements

## W-2 Cost of Health Care Reporting

- Employers must report the aggregate (*i.e.*, total) cost of applicable employer sponsored coverage on employees' Form W-2
- Amount reported is for “informational purposes” only
- First required for calendar 2012 (*i.e.*, W-2s issued in January 2013)
- Employers that issued fewer than 250 W-2s are exempt from the reporting requirement
- Although not entirely clear, it appears the controlled group rules **do not** apply in determining exemption
- Exemption is open ended (*i.e.*, IRS retains the right to eliminate the exemption)



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# Employee Disclosure Requirements

## Automatic Enrollment

- Requires employers to automatically enroll new full-time employees in one of employer's health plans
- Employees must be given the opportunity to “opt out” of coverage
- Applies to employers subject to the FLSA with more than 200 employees
- Employers must provide “adequate notice” to employees of their right to opt-out of coverage... but no guidance has been provided on what constitutes adequate notice
- DOL has delayed enforcement until plan years starting “sometime after” guidance is issued



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# Employee Disclosure Requirements

## Health Insurance Coverage Reporting

- Employers (self-funded plans) and insurers must report coverage information to
  - The Internal Revenue Service, and
  - The participant
- Requirement applies to all group health plans (SG-LG-GF)
- For large employers, the information will be used to administer the employer shared responsibility requirements



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# Employee Disclosure Requirements

## Health Insurance Coverage Reporting

- Information is to include...
  - Name, address and TIN of primary covered individual
  - The dates during which individual was covered during the year
  - Whether coverage was a GHP offered through an exchange
  - Name, address and EIN of employer providing the coverage
  - The portion of the premium paid by the employer
  - Any other information required by the IRS
- Originally, requirement was to go into effect January 1, 2014
- On July 2, 2013, Treasury announced that reporting requirements were being provided transition relief for 2014



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# Employee Disclosure Requirements

*And let's not forget...*

- ERISA's content requirements for SPDs still apply
- Essentially all of the eligibility, design and administrative changes required by the ACA must also be reflected in an updated SPD



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***Thank you!***



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Thanks for joining us.

