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CLIENT BULLETIN

Upcoming 2010 Compliance Dates For Pension And Healthcare Plans

This *Client Bulletin* will review select 2010 compliance dates for multiemployer pension and healthcare plans.

Selected 2010 Pension Plan Compliance Dates

TOPIC	COMPLIANCE DATE(S)
***EGTRRA* Determination Letter Program**	Cycle D plans with a Plan Year beginning on or after March 1st can file in Cycle E (through January 31, 2011)
Rollover Notices	New 402(f) Notices for use on or after January 1, 2010
Heroes Earnings Assistance and Relief Tax Act of 2008 *("HEART Act")*	Remedial amendment period for Sections 104, 105 and 107 runs through last day of the first plan year beginning on or after January 1, 2010

EGTRRA Determination Letter Program

Under the current remedial amendment and determination letter system, every individually designed qualified pension plan has a regular, five-year remedial amendment cycle. Multiemployer pension plans are in Cycle D and have a filing period running from February 1, 2009 through January 31, 2010.

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However, multiemployer pension plans with Plan Years beginning on or after March 1st, may be filed in Cycle E which ends on January 31, 2011. From industry news and anecdotal evidence, it appears many multiemployer plans took advantage of this extension.

No special filing is needed although multiemployer plans who use this option should note so in their cover letter to the IRS. See *Benefit News Briefs 2009-34* for more information.

New Model Safe-Harbor Rollover Notices

The IRS released *Notice 2009-68*, containing two safe harbor explanations that may be provided to recipients of eligible rollover distributions from an employer plan in order to satisfy Section 402(f). The Notice is available at: *http://benefitslink.com/IRS/notice2009-68.pdf* or by "*clicking here.*" **The new safe harbor notices *apply to* rollovers on or after January 1, 2010.**

The **first** safe harbor explanation applies to a **distribution not from a designated Roth account**. The second safe harbor explanation applies to a distribution from a designated Roth account. Since multiemployer plans are not Roth accounts, the Research Department has made a copy of the first safe harbor explanation (for non-Roth plans) in Microsoft Word that is suitable for modification and is available by "*clicking here*."

A plan administrator or payor may customize a safe harbor explanation by deleting any section with information that does not apply to the plan. In addition, the plan administrator or payor may provide additional information with a safe harbor explanation if the information is not inconsistent with Section 402(f). See *Benefit News Briefs 2009-52* for more information.

HEART Act

The IRS recently released *Notice 2010-15,* which provides guidance in the form of 20 Questions and Answers (Q&As) with respect to certain provisions of the *Heroes Earnings Assistance and Relief Tax Act of 2008* (*"HEART Act"* or *"Act"*). The Notice addresses Sections 104, 105, 107, 109 and 111.

The *Notice* is available online at *http://www.irs.gov/pub/irs-drop/n-10-15.pdf* or by "*clicking here.*" A specially prepared copy with a Table of Contents listing each of the 20 Q&As is available by *"clicking here." See Benefit News Briefs 2008-29* for more information on the *HEART Act.*

The remedial amendment period for Sections 104, 105 and 107 of the *HEART Act* extends compliance to the **last day of the first plan year beginning on or after January 1, 2010.** *Pay special attention to Questions 18 and 19 of the Notice.* Individuals responsible for a pension plan's Plan Document will want to review the *Notice* in detail in order to determine what changes need to be made to comply with the law. *See Benefit News Briefs 2010-05* for more information.

Selected 2010 Healthcare Plan Compliance Dates

TOPIC	COMPLIANCE DATE(S)
Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Wellstone-Domenici Act)	Later of Plan Years beginning on or after January 1, 2010 or expiration date of CBA in effect on or before October 3, 2008.
HI-TECH Act – HIPAA Privacy and Security	Generally, February 17, 2010
COBRA Subsidy and Notices	Generally, new notices by February 17 2010; subsidy extended until February 28, 2010
Creditable Coverage Disclosure to CMS	Within 60 days after beginning of Plan Year (March 1, 2010)

Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Wellstone/Domenici Act)

The new law is generally effective the later of Plan Years beginning on or after January 1, 2010 or the expiration date of the collective bargaining agreement (CBA) in effect on or before October 3, 2008, without regard to any extensions thereof. **Regulations on the subject have not yet been issued.**

The *Wellstone/Domenici Act* concurrently amends several laws including *ERISA* and the *Code* by amending the prior *Mental Health Parity Act (MHPA).* A specially prepared redline version of *ERISA* Section 712, as amended by the *Wellstone/Domenici Act* is available by "*clicking here*."

The prior *MHPA* provided for parity in the application of aggregate lifetime and annual dollar limits on mental health benefits with the limits on medical/surgical benefits. The *MHPA* did not require parity for substance abuse or chemical dependency. The *Wellstone/Domenici Act* changes this and now requires parity for "mental health" benefits and also for "substance use disorder" benefits.

The *Wellstone/Domenici Act* does NOT require group health plans (GHP) to offer *mental health* or *substance abuse* benefits. However, if a GHP does provide both medical and surgical benefits along with mental health and/or substance use disorder benefits, the plan must impose the same *lifetime* and *annual limits* to the mental health and substance use disorder benefits as currently

provided under the plan for medical and surgical benefits, as well as comply with the other rules set out below.

The deductibles, copayments, coinsurance and out-of-pocket expenses of *mental health* or *substance use disorder benefits* must be no more restrictive than the deductibles, copayments, coinsurance and out-of-pocket expenses applied to *substantially all medical* and *surgical benefits* covered by the plan. No separate cost sharing requirements applicable only to mental health or substance use disorder benefits are allowed.

In addition, the "*treatment limitations*" applicable to the plan's mental health or substance use disorder benefits must be no more restrictive than the *predominant treatment limitations* applied to *substantially all* medical and surgical benefits covered by the plan. Treatment limitations include limits on the frequency of treatment, number of visits, days of coverage or other similar limits on the scope or duration of treatment. No separate treatment limitations applicable only to mental health or substance use disorder benefits are allowed.

The law contains a cost exemption similar to the increased cost exemption under the *MHPA* and provides for a one-year exemption from the *Wellstone/Domenici Act* if costs to a plan increase 2% the first year or 1% any subsequent year due to the law. Detailed criteria for calculating the plan's increased costs are included in the law.

Two other significant changes are: (1) requiring disclosure of the criteria for "medical necessity" determinations on mental health or substance use disorder benefits and (2) requiring plans that provide coverage for medical or surgical benefits by out-of-network providers to provide coverage for mental health or substance use disorder benefits by out-of-network providers. See *Special Bulletins 2008-50* and *2008-67* for more information.

HI-TECH Act

As part of the *American Recovery and Reinvestment Act of 2009 (ARRA*), changes were made to the *HIPAA Privacy* and *Security* laws. ***Most* of these changes are effective February 17, 2010 or later**. These changes were made in *ARRA at Title XIII-Health Information Technology for Economic and Clinical Health Act (HI-TECH Act).*

In broad brush strokes, some of the most significant changes effective soon include:

- The *Security Rules* will be applicable to a Business Associate of a Healthcare Plan in the same manner that such Sections apply to Healthcare Plans *beginning February 17, 2010.*

- Healthcare Plans and Business Associates have mandatory disclosure duties in the event of a *Breach* of **unsecured** PHI beginning February 22, 2010 (*See Special Bulletin 2009-50)*.

- Healthcare Plans will be required to comply with restrictions on the disclosure of PHI when restrictions are requested by an individual *beginning February 17, 2010;* whereas before Healthcare Plans had an option of complying.

- Individuals will have a right to electronically access the PHI in their electronic health record if the Healthcare Plan uses *Electronic Health Record* beginning on *February 17, 2010.*

- The Secretary of the Department of Health and Human Services (HHS) will undertake **periodic audits of Healthcare Plans** to ensure that Healthcare Plans and Business Associates that are subject to the expanded requirements comply with such requirements beginning on *February 17, 2010.*

A list of compliance suggestions from *Research Memo* 2009-47 (such as updating business associate agreements and policy manuals, etc) is available by "*clicking here.*"

On a related note, the impact on *HIPAA Privacy Notices* by *GINA* is the subject of proposed regulations. See *Benefits News Briefs 2009-59* for a detailed discussion of how *GINA* impacts the *HIPAA Privacy Rule* and the various proposals under consideration for communicating the fact that "genetic information" is "protected health information" (PHI) and the *HIPAA Privacy Notice*.

Healthcare Plans will have at least 180 days to comply with the GINA regulations once they become final.

COBRA Subsidy Notices and Extension

The COBRA premium subsidy was extended for eligible individuals experiencing an involuntary termination through February 28, 2010. In short, the new law:

- extends the involuntarily termination period through February 28, 2010.

- extends the length of the COBRA subsidy by six months (from nine to 15) for those still covered under COBRA and provides another six months of subsidized coverage for eligible beneficiaries whose nine-month COBRA premium subsidy has run out.

- provides eligible beneficiaries whose subsidy expired and who didn't pay the full premium the opportunity to receive retroactive coverage. For example, a beneficiary whose nine months of subsidized coverage ran out November 30 and who didn't pay the unsubsidized premium for December could pay his or her 35% share in January and receive COBRA coverage for December.

- requires employers to notify current and future COBRA beneficiaries of the new 15-month premium subsidy.

- employers can offset future COBRA premiums or issue refund checks for beneficiaries who overpaid their COBRA premium for December or January.

The DOL released new model *Notices* healthcare plans can use to explain the changes. The new model *General COBRA Notice* is used for qualifying events occurring after the December 19, 2009 and the new premium assistance notice is used for other groups and is generally due to be distributed by February 17, 2010. The *COBRA* subsidy extension and Notices are discussed in detail, including copies of the model notices and other information and Q&As in *Special Bulletin 2009-65*, *Client Bulletin 2010-01* and *Special Bulletin 2010-03.*

Creditable Coverage Disclosure to CMS (60th day of Plan Year)

Healthcare plans that provide prescription drug coverage to Medicare Part D eligible individuals must disclose to the Centers for Medicare and Medicaid Services (CMS) whether the coverage is "creditable prescription drug coverage."

This disclosure to CMS is required whether the entity's coverage is primary or secondary to Medicare. **The Disclosure to CMS Form is due no later than 60 days following the beginning of the healthcare plan's plan year** (renewal year, contract year, filing year, etc.). That would be **March 1, 2010** for calendar year plans, etc.

If a healthcare plan does not offer prescription drug benefits to any Medicare Part D eligible individuals on the beginning date of their plan year (renewal year, contract year, etc.), the plan is not required to complete the disclosure to CMS form for that plan year.

Entities **must** use the online Creditable Coverage Disclosure Form to disclose its creditable coverage status to CMS. The Form and helpful information can be found at: Disclosure to CMS Guidance and Instructions at:
https://www.cms.hhs.gov/CreditableCoverage/40_CCDislcosure.asp#TopOfPage.

The website has the Disclosure to CMS Form, Creditable Coverage Disclosure to CMS Guidance and Creditable Coverage Disclosure to CMS Form Instructions and Screen Shots and other helpful links and information.

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Tip: To review the past year's benefit news, access our Resources Page at: *http://www.unitedactuarial.com/research/resources.asp?Name=CB* which lists all Research Publications by year beginning with 2004 with links to each publication issued in that year. The 2010 Topical Index of publications is available at: *http://www.unitedactuarial.com/research/docs/topical_index/topind_pdflinks.pdf*.

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