



Compliance Corner Webinar:

Benefit Compliance from A to Z

January 18, 2018

Q: Whenever possible can you mention how compliance may differ between fully-insured health plans and self-insured health plans? Self-insured plans are gaining in popularity but I think the compliance education piece is not keeping pace.

A: Most laws governing benefits are similar for self-insured and full-insured. For example, ERISA, HIPAA, COBRA and others apply and there are not too many differences. A couple differences that come to mind have to do with non-discrimination testing, ACA reporting and State Continuation. Self-funded medical plans have defined non-discrimination testing ensuring they do not favor highly compensated and key employees, where fully insured plans still do not define non-discrimination requirements. The IRS requires ACA Reporting for any self-insured medical plan regardless whether they are an Applicable Large Employer (50 or more FT or FTE). Some States do not require continuation of coverage for self-funded plans with less than 20 employees.

Q: Regarding SPD wraps for new hires, what is the 90 days from?

A: 90 days from their date of being newly covered by a plan.

Q: If notices are provided in the Employee Benefit books provided to each employee annually during open enrollment - is this acceptable as delivery?

A: Yes, as long as they have the right notices and it is delivered in a manner that they would reasonably receive it.

Q: Are SARs required only for those employers who need a 5500 form?

A: Yes, only organizations who do 5500 reporting are required to provide a Summary Annual Report to participants. Organizations who have 100 or more participants on a plan are required to submit form 5500.

Q: If a company fails to logon to the CMS website within 60 days of renewal, is there a penalty? What is this? And if they do this after 60 days, is this OK?

A: Although we have not actively seen CMS enforce this requirement with fines or penalties, it is possible. If they are later than 60 days, it is still better to comply and get it done than to continue to be later or violate the requirement.

Q: Has the DOL changed the WCRA, CHIP, etc notices in the last few years?

A: To our knowledge these notices have not changed much since 2014. It is wise to check each of them annually in case there are changes.

Q: Giving employer groups all this information seems like an E&O liability for agents. if we miss something, are we liable?

A: Benefit laws are the requirement of the employer. If agents elect to assist their groups by reminding them of requirements, referring compliance providers or actually assisting with documents such as SPD Wraps or notices, it is advisable to always make it very clear to your client that they are responsible for their compliance and that you are simply striving to help them. Asking them to sign a hold harmless agreement can help. The challenge is that so many employers look to their agent for this kind of assistance, if you elect not to help, you risk losing the business to other agents who will help.



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Q: Regarding record keeping system - Do you know how long employers AND brokers are required to keep Employer and Employee Applications for both active and terminated Group Health Plans?

A: It is advisable to keep records at least 7 years

Q: I would like more information about BAA. Where can I find a list of when a BAA is required?

A: Employers are required by HIPAA and Health and Human Services (HHS) to have a Business Associate Agreement with any outside entity or individual who has access to their Protected Health Information (PHI).

<https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>

Q: How can a Broker assist small employers (under 50 FTE) with compliance requirements without taking on liability to the agency?

A: Make sure they are clear that they are responsible for their compliance and that by assisting you are not taking on their requirements. It is advisable to have them sign a hold harmless agreement.

Q: Regarding working with small ER's he mentioned about having the client sign something. Is there a sample document somewhere or he would share?

A: This is not a legal document but you are welcome to see HR Service, Inc. has used as a hold harmless:

<https://www.hrserviceinc.com/erisa-compliance/>

Q: It is my understanding that if a Welfare Benefits Plan document includes only benefit plans with less than 100 participants (e.g. health coverage - 75 employees, dental - 50 employees, vision - 48 employees, etc.) then no Form 5500 for these plans is required. If, however, any ONE of the plans covered by the Welfare Benefits Plan document has 100 or more participants, then the Form 5500 filing needs to include information on ALL plans named in the document. For example, if an employer's Section 125 Plan covers 100+ participants, and is included in a Welfare Benefits Plan, then the Form 5500 must include ALL benefits named in the plan document. However, if the Section 125 Plan has its own Plan Document, it appears as though it may not need to be included in the Welfare Benefits Plan and therefore, based on the above scenario, a Form 5500 would need to be filed for the Section 125 Plan only and not for the various other benefits that may be covered under the Welfare Benefits Plan (if all other plans have fewer)

A: Plans with less than 100 participants do not need to be reported on form 5500 unless they are included in a Summary Plan Description Wrap or Plan Document. In the example provided, only a 5500 report on Section 125 plan would be required. If an organization elects to use a Summary Plan Description Wrap document and any of the plans have 100 or more participants, they would then complete the 5500 report on all benefits within the Wrap document.

Q: Do you have a recommendation on a system to maintain your records of document distribution for an employer with <100 employees?

A: I do not recommend a specific vendor or system. Organizations can setup a simple record keeping system as described below:

- 1) Keep an annual folder for all benefit documents, records and distribution information.
- 2) Maintain copies of contracts, rates, notices, SMM, SPDs or Wrap, etc. for everything throughout the year
- 3) Be able to clearly demonstrate what, was given to whom



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Q: If an employer or broker has not provided a SPD to their employees can they do it now after the plan effective date?

A: Yes, it is best to start following ERISA requirements as soon as possible, even if you are late. Moving forward, organizations should provide SPD or SPD Wraps to all participants within 90 days of them joining a plan, then every 5 years thereafter with a new SPD or SPD Wrap.

Q: In the last 3 years, has the number of audits gone up? If so, about how much?

A: Although it is difficult to answer this question, it appears to us that the DOL and IRS have hired more auditors and have been conducting more audits. They both claim they have done this and it appears to us from talking with many brokers across the country.

Q: Many contractors (ie payroll) are offering services to groups related to compliance. What concerns, if any, do you foresee with employers utilizing these services?

A: It is advisable to work with trusted contractors and vendors who are experts in compliance. Organizations who do not follow the law or know what they are doing can lead agents and their employers astray.

Q: Does a 500+ self funded, nonprofit employer have to complete a schedule A on a 5500 for medical plans self funded?

A: I am not aware of an exemption for nonprofit employers with 100 or more participants allowing them not to file for 5500.

Q: Do we need to distribute a SMM if we do an annual SPD/Wrap Document?

A: If you capture all material changes in your SPD/Wrap and send it out annually you may be fine. It is advisable to send a separate clearly defined Summary of Material Modification (SMM) to all participants. DOL auditors ask for copies of all SMMs when conducting audits.

Q: Regarding the SPD, is a "plan participant" defined as an enrolled employee or does it also include the enrolled employee's dependents?

A: The requirement for SPDs and participants is for employees. However, it is advisable to provide dependents with the same information provided to employees.

Q: If the employer provides the wrap, but the certificate appears in carrier website, have they met their obligation?

A: To be complete, an SPD Wrap should include the plan details such as is found in insurance certificates. If an employer elects to merely reference a carrier's certificate, make sure everyone knows where to find it, are separately notified of its location and are given an opportunity to obtain a physical copy upon request.

Q: Can you provide a wrap doc instead of spd?

A: Yes, an SPD Wrap meets the requirements of doing separate summary plan descriptions. The Wrap pulls in the missing insurance company information and wraps in all benefits such as medical, dental, vision, life, etc.



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Q: The problem with using paper is carrier plan booklets are over 100 pages each. Email is the best, or what about using a thumb drive?

A: We favor doing electronic document delivery for SPDs/Wraps, Notices, etc. because of the large number of pages and copy requirements. Electronic delivery works great as long as you have a regular work email or obtain their signature for a personal email. ERISA says they must have a reasonable access and ability to receive the information. A thumb drive could work as well as long as you can show that everyone got it and has the ability to open it. I would always offer to provide a hard copy and help accessing the information upon request to the plan administrator.

Following the provisions in this Electronic Disclosure Release No. 2011-03 is the safest route. (See Section B, 1 – 7). Section 4 states: The plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the electronic delivery system results in actual receipt of transmitted information (e.g., using return receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of transmitted information, etc.). <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/technical-releases/11-03>

Q: What impact if CHIP is not reauthorized or funded?

A: Organizations must provide CHIP notice of face risk of fines. If the U.S. government does not fund or sponsor this program, many individuals will lose coverage.

Q: Don't count on a TPA to know what the SPD is. Usually do but not always. We just found a PEO with over 60,000 covered, self funded, did not know what an SPD was.

A: Very true. There are some TPAs and PEOs who are not meeting ERISA or Summary Plan Description requirements.

Q: Ken do you provide any regular HR support to clients or brokers?

A: My organization, HR Service, Inc. does provide HR Support packages, help desks, handbooks, supervisor training and more to employers and brokers across the country. Visit us online, call or email for assistance. www.hrserviceinc.com ; (855) 447-3375 x 1 or Solutions@hrserviceinc.com

Q: If SPD or wrap omits group number due to unavailability at time of draft, is that okay?

A: It is advisable to include all needed information in an SPD or Wrap. However, ERISA does not require that everything go out together at the same time. If you can, wait and include all information. If not, provide any missing information later.

Q: We use Compliance Dashboard as our system to remind our clients that compliance items are needed. They can record everything they've done on this site and download all of the activity. Some of our clients use this very regularly and like the prompts.

A: This is one of many available options for compliance notifications. Some don't like being notified so frequently.



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Q: In your experience, when audits occur, how much time is required of the employer and what is the average consequence (penalty, etc.)

A: It depends. If employers are ready and have everything in order, the time required is much less. If they do not, it can be very time consuming to pull everything together. Regarding fines, it again depends on the violation and the auditor. In some instances, they allow the employer to fix the missing items without fines. In other instances, they assign fines.

Q: Does a section 125 plan need a separate SPD?

A: A Section 125 Plan should have a Summary Plan Description or be part of an SPD Wrap.???? (This was restated)

Q: Do you have to hand out the medical carriers SPD if you have an ERISA Wrap document?

A: No, as long as you are providing a complete SPD Wrap. However, if a medical carrier provides an SPD, which they usually do not, I would give it to participants. Most carriers provide the SBC and insurance certificates.

Q: What do you do with return to sender compliance letters that are mailed?

A: Strive to contact the participant to their last known address and telephone number. If you can't reach them, keep a copy of the return to sender note and document your efforts to contact them. Keep on file.

Q: Can Ken provide basic pricing for HR Services

A: Yes, please contact HR Service, Inc. for a discussion of your needs, a short demonstration of options and pricing at: (855) 447-3375 x 1 or Solutions@hrserviceinc.com

Q: If we are using a Teledoc program in a self funded plan does that teledoc need and SPD? Can it be included in the Wrap?

A: If your Teledoc program is a group plan, it would be covered by ERISA and should provide an SPD or be included in a Wrap.

Q: If the employer provides the wrap, but the certificate appears in carrier website, have they met their obligation?

A: Answered above



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Q: Can you give a few examples of "material" changes that should be reported in an SMM? Would a change in carrier qualify as a material modification?

A:

- ☐ Provisions that establish new benefits or services
- ☐ Changes that eliminate benefits or services
- ☐ Changes that increase premiums, deductibles, coinsurance, copayments
- ☐ Provisions that establish new conditions or requirements
- ☐ Modifications that narrow or expand the circumstances under which benefits are paid
- ☐ Changes to any of the terms of the plan, not reflected in the most recently provided Summary of Benefits and Coverage (SBC)
- ☐ Terminating the plan or parts of the plan

Q: The monthly rates have to be included in a Wrap SPD? Our previous SPD system had a generic description about contributions, but it did not have a place to input the specific contribution schedule.

A: Rates do not need to be included directly inside the SPD or SPD Wrap, as long as they are otherwise provided to participants.

Q: In regards to Public Sector groups which or what forms, compliance issue's, are applicable considering their position with ERISA?

A: Pretty much everything except ERISA requirements.

Q: Would SPD and notices also need to be sent to Cobra participants?

A: Yes, if employees. No, if former employees. This being said, it a good practice to provide COBRA participants with the same communication and information as employees.

Q: Can you provide an example of when NOT to use a wrap document as it relates to 5500 filing?

A: The Wrap document is a very common approach for many employers. If someone has one benefit plan that has over 100 participants and the other plans do not, they would complete one 5500 for the SPD Wrap, including information on the other benefit plans that were not required. This might be an example of when they may not want to use a Wrap. It is a tradeoff, do they do a little extra work on the 5500 and get the benefit of using a Wrap for everything or do they work harder pulling together separate SPDs and has an easier 5500?

Q: You might point out that all plans are the property and responsibility of the employer fully or self funded. It is all the employers' problem.

A: Agreed. The employer is ultimately responsible for all legal requirements. This being said, they do seem to look for their agent to help or they find one who will.

Q: Do EAP's need to be included in the wrap document?



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A: If the EAP is a separate benefit plan and is a group plan, it should be included in the SPD Wrap or have its own SPD.

Q: If a group drops their HSA during open enrollment does that count as a Material Modification that needs a SMM or is it covered when you create the updated SPD Wrap?

A: Any changes to benefits that are considered material should provide participants with a Summary of Material Modification (SMM). This can be done formally or as part of open enrollment with materials provided by a carrier.

Q: For 5500 filing purposes, do you determine the number of employees based on the beginning of the plan year or end of the plan year?

A: Beginning

Q: Are voluntary plans required to be in the SPD?

A: Yes if they are sponsored and endorsed by the employer or if they are allowing them to be paid for on a pre-tax basis as part of a 125 Premium Only Plan (POP) or Flexible Spending Account (FSA). If they are not sponsored or pre-tax, no.

Q: It says changes that increase premiums needs an SMM. I assume that is not referring to an annual renewal increase, correct? This is referring to a plan change that would result in an increase in premium, correct?

A: Correct

Q: Do you know if an AHP is required to generate the SPD- Does their SPD satisfy the requirement for the individual employer on the AHP plan?

A: If by AHP, you mean Association Health Plan, yes they too must meet SPD requirements if used by employers as part of their group plans.