

VEDDERPRICE

Employee Benefits Bulletin

A review and analysis of recent developments affecting employee benefits

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March 1st Deadline for Health Plan Disclosures

As part of its 1996 health care legislation, Congress expanded various disclosure requirements for sponsors of health plans. **For employers with calendar year health plans, certain information needs to be communicated to participants on or before March 1, 1998.** This Employee Benefits Bulletin summarizes these requirements.

What needs to be communicated?

Three pieces of information must be communicated to participants. These are:

1. The name and address of any insurance company involved in the plan, and whether the insurance company is insuring the benefits under the plan or acting as a third-party administrator. If the insurance company is acting as a third-party administrator, what is the nature of its administrative services (e.g., payment of claims)?
2. Additional information about how participants may contact the U.S. Department of Labor ("DOL"). In this regard, the DOL has issued the following "model" language which is designed to be included in the standard ERISA Rights language contained in Summary Plan Descriptions ("SPDs"):

"If you have any questions about this statement [i.e., the ERISA Rights statement] or about your rights under ERISA, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance

and Inquires, Pension and Welfare Benefits
Administration, U.S. Department of Labor, 200
Constitution Ave., N.W. Washington, DC 20210."

3. A statement about the new 48/96 hour maternity length of stay requirements. Again, the DOL has provided the following sample language that can be used to provide this information:

"Under the Newborns' and Mothers' Health Protection Act of 1996, group health plans and health insurance issuers may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a normal vaginal delivery or less than 96 hours following a cesarean section, or require that a provider obtain authorization from the plan or the insurance issuer for prescribing a length of stay not in excess of the above periods."

Additional information may also need to be disclosed if there has been a change to a health plan that constitutes a "material reduction in covered services or benefits." Unfortunately, there is no clear test for determining whether a change constitutes a material reduction (DOL regulations state that it is determined from the point of view of the average plan participant). Examples of material reductions are those that eliminate benefits payable under the plan; reductions in benefits, including reductions that occur because of a change in formulas, methodologies, or schedules that serve as the basis for making benefit determinations; increases in deductibles, copayments or other amounts paid by a participant or beneficiary; reduction in the service area covered by a health maintenance organization; and new conditions or requirements, such as preauthorization requirements, to obtain services or benefits under the plan.

When does it need to be communicated?

Calendar Year Plans: The three pieces of required information described above need to be communicated to participants on or before March 1, 1998.

Fiscal Year Plans: The three pieces of required information described above need to be communicated within 60 days after the plan year begins. Most of the

disclosure requirements are effective for plan years beginning on or after July 1, 1997. However, the Newborns' and Mothers' disclosure requirement is effective for plan years beginning on or after January 1, 1998.

Material Reduction Disclosures: If a health plan change constitutes a "material reduction in covered services or benefits," the change needs to be disclosed within 60 days after the change is adopted.

About Vedder Price

Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with approximately 180 attorneys in Chicago, New York City and Livingston, New Jersey.

The Employee Benefits Group

Vedder Price has one of the nation's largest employee benefits practices, with ongoing responsibility for the design, administration and legal compliance of pension, profit sharing and welfare benefit plans with aggregate assets of several billion dollars. Our employee benefits lawyers also have been involved in major litigation on behalf of benefit plans and their sponsors. Our clients include very large national corporations, smaller professional and business corporations, multi-employer trust funds, investment managers and other plan fiduciaries.

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How can it be communicated?

The information can be communicated by either updating the current SPD or by issuing a Summary of Material Modifications ("SMM"). The traditional method of delivery is to provide paper documents, but recent DOL regulations permit e-mail delivery if the following requirements are satisfied:

- ⚡ the plan administrator ensures that there is actual receipt of documents through a method calculated to confirm receipt, such as the return-receipt feature in e-mail or periodic reviews or surveys to confirm receipt by the participants;
- ⚡ materials delivered electronically meet the style, format and content required of SPDs and SMMs.
- ⚡ each participant receives notice, electronically or in writing, that the document is being provided electronically, of its significance (*e.g.*, "information relating to your plan benefits, keep for your records"), and that a paper copy of the information may be received free of charge;
- ⚡ the plan administrator provides on request and free of charge, a paper copy of any document delivered electronically; and
- ⚡ the employee must have the ability to effectively access the information at his/her worksite, and must have the opportunity to convert an electronic message to paper, free of charge.

If you have any questions regarding these disclosure requirements, please call [Phil Mowery](tel:3126097642) (312) 609-7642, or any other Vedder Price attorney with whom you have

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