

HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

New Notice Requirements for Health Plans

April 23, 2010

Prior to March 23, 2012, plan administrators (in the case of a self-insured plan) or insurers (in the case of a fully-insured plan) of a group health plan (whether grandfathered or not) must provide enrollees and participants a uniform summary of benefits and coverage. At this time, it is not known precisely what the uniform summary must contain or how it should look. The exact details of the content and format of the uniform summary will be set out in regulations that will be issued by the Secretary of Health and Human Services ("HHS"). HHS is required to provide these details by March 23, 2011. This timeline gives plan sponsors and insurers a full year to prepare for the distribution deadline of March 22, 2012.

What is known at this time is that the uniform summary must state whether the group health plan (1) provides minimum "essential coverage," and (2) pays less than 60% of the total cost of benefits provided under the plan. In addition, the uniform summary must provide the following information: a description of the coverage and cost-sharing provisions under the plan; any exceptions, reductions and/or limitations on coverage; renewability and continuation of coverage provisions; a "coverage facts label" that includes examples to illustrate common benefits scenarios, including pregnancy and serious or chronic medical conditions; and contact numbers and web addresses where the actual group certificate or policy may be obtained. Finally, the health reform legislation provides that the uniform summary must be four pages or less, must use 12-point or larger font, and must describe the benefits offered under the plan in language that is "culturally and linguistically appropriate" so the summary is easily understandable to the participant.

This new summary is essentially a shorter version of the summary plan description that group health plans are required to provide under ERISA. It appears that ERISA-governed plans will still be required to provide a summary plan description to their participants in addition to the new uniform summary. The Department of Labor ("DOL") is expected to update its regulations regarding summary plan descriptions to conform to the health reform legislation but, it is not known what, if any, action the DOL will take to eliminate these potentially duplicative disclosures.

In addition, the reform legislation will require another new notice to be provided for group health plans. Plan administrators and insurers of group health plans will have to provide notice to participants of any material modification to a group health plan no later than 60 days *prior* to the effective date of the change. This disclosure is in addition to the existing ERISA disclosure requirement to provide notice no later than 60 days *after* the adoption of such a material modification. Unless the expected guidance is to the contrary, plan administrators and insurers should ensure that the new 60-day notice meets the ERISA requirements for a summary of material modifications in order to avoid a duplication of efforts. This new

60-day notice requirement is effective as of March 23, 2012 and applies to all plans, including church and governmental plans.

Failure to provide the uniform summary or the 60-day notice may result in a \$1,000 fine per participant per failure. A failure can occur with regard to an applicant at the time of application, an enrollee prior to enrollment or reenrollment, and/or a policyholder at the time a policy is issued. For this reason, all plans, including church and governmental plans, must ensure that they are prepared for these new disclosures before March 23, 2012.

If you have questions regarding the information in this alert, or with respect to other provisions of the health reform legislation as it relates to your employee benefits plans, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

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Bass, Berry & Sims Employee Benefits Attorneys

Fritz Richter
(615) 742-6256
frichter@bassberry.com

David Thornton
(901) 543-5922
dthornton@bassberry.com

Richard Barry
(615) 742-6230
rbarry@bassberry.com

Curtis Fisher
(615) 742-7892
cfisher@bassberry.com

John Kirk
(615) 742-7808
jkirk@bassberry.com

Michael Moore
(901) 543-5916
mtmoore@bassberry.com

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