

## Year-End Welfare Benefit Plan Checklist December 3, 2019

Last year we sent you a “Year-End” Checklist for your welfare benefit plans. It was so popular that we are sending one again ... and a bit earlier! Your bellies may still be full from Thanksgiving, but the more calories you consumed, the more energy you should theoretically have to complete this Checklist over the course of this month. The goal of this Checklist is to help you avoid common welfare benefit pitfalls and reduce the likelihood of needing to clean up messes in 2020.

Below are some “year-end” reminders related to administration of your welfare benefit plans. Consider yourself lucky that they should all look familiar, given that 2019 was relatively quiet with respect to legislative changes for welfare benefits.

### Notices / Reminders to Employees

Have you provided the appropriate annual notices and/or reminders to employees?

**If you have provided them, then check the box under the “Yes” column. If a particular notice requirement doesn’t apply to you, check the box under the “N/A” column. If neither box is checked, you had better get to work!**

**Yes    N/A    Notices/Reminders:**

- |                          |                          |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Notice of Exchange.</b> This should have already been provided to all new hires in 2019. If you missed providing the Notice of Exchange to your new hires, provide it now. Be sure to include every new hire, not just those eligible for medical coverage. |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Wellness Program Notice.</b> If you have a wellness program that asks disability-related questions or requires a medical examination, provide the Wellness Program Notice.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Women’s Health and Cancer Rights Act (WHCRA) Notice.</b> Provide the WHCRA Notice upon enrollment in the medical plan.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Summary of Benefits and Coverage (SBC).</b> Provide SBC(s) to all those employees who are eligible for coverage in your medical plan.   |

- | Yes                      | N/A                      | Notices/Reminders (continued)  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>CHIP Notice.</b> Distribute the annual CHIP Notice to <u>all</u> employees, not just those who are eligible for welfare benefits.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Medicare Certificate of (Non-)Creditable Coverage.</b> All Medicare Part D eligible individuals “enrolled in or seeking to enroll in” your medical plan (if it provides prescription coverage) must receive this Certificate. Because you may not know who is “seeking to enroll” and because you may not know who is Medicare-eligible based on disability or end-stage renal disease, you should ensure that all eligible employees are provided the Notice at open enrollment. If you have a January 1 plan year, this means providing the Certificate now. Note there are other required distribution events. |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Health FSA and DCAP Balances.</b> Remind participants to use up any remaining balances before the end of your plan year (if it ends 12/31) unless a grace period or carryover applies. Unused funds must be forfeited at the end of the plan year per IRS rules unless an exception applies.  |

### Changes in Benefits Offered

Have there been changes to the benefits you offer to your employees? For example, have you changed eligibility conditions or waiting periods? Have you added or dropped benefits? Have you changed insurance companies? If you have a claims administrator or COBRA administrator, have they changed? Were there other, similar changes?

**If the answer to any of the questions above is yes, read your “to-do” list below. You will check the box under “Yes” if the item is applicable and you have completed it. You will check the box under “N/A” if it doesn’t apply. If neither box is checked, you know what to do ... get to work!**

- | Yes                      | N/A                      | Benefit Changes:   |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Change in Benefits Provided.</b> Review plan documents to ensure that all benefits offered are correctly identified and listed, and that the plan terms reflect the correct eligibility conditions. |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Change in Insurance Carrier.</b> For benefits that are fully insured, confirm that the correct insurance carrier is reflected in your plan documents.   |

**Yes    N/A    Benefit Changes (continued)**

       **Change in TPA.** For benefits that are self-funded, confirm that the third-party administrator is correctly identified in your plan documents.

       **Change in COBRA Administration.** For group health plans, if you changed COBRA administrators, confirm that the correct administrator is reflected in your plan documents.

**HIPAA Medical Privacy and Group Health Plans**

Does your fully insured group health plan(s) receive “protected health information”? Do you have a self-funded group health plan(s), including a health FSA?

**If the answer to either of the questions above is yes, then complete the following checklist by checking the box under “Yes” or checking the box under “N/A.” As before, if neither box is checked, act quickly to get the task done.**

**Yes    N/A    HIPAA Medical Privacy Compliance:**

       **HIPAA Business Associate Agreements.** Did you change third-party administrators for your medical, dental or health FSA plans? Are you using a new broker or has your broker started to see “protected health information”? If so, make sure you have a new business associate agreement in place for 2020.

       **HIPAA Policies and Procedures.** Did you add a self-funded group health plan such as a health FSA or switch to self-funded major medical or dental coverage? Make sure you have HIPAA policies and procedures in place and train all employees who are authorized to see PHI. In addition, if you changed your third-party administrator and if we prepared your HIPAA policies and procedures, you will want to update the documentation and worksheets to reflect any changes in the form of PHI or how it is being safeguarded.

       **HIPAA Privacy Notice.** If you have a self-funded group health plan (including a health FSA), provide the reminder of the Privacy Notice to re-enrollees. (Technically, the reminder must be received every three years, but it is probably administratively easier to provide the reminder every year. Also, new enrollees will need to receive the full Privacy Notice.)

### Government Reporting

Have you completed required government reporting?

**If the item below applies to you, check the box under "Yes" if you have completed the item. Check the box under "N/A" if the particular type of government reporting doesn't apply to you.**

Yes   N/A   **Government Reporting:**

     **Creditable Coverage Notice to CMS.** Don't forget that CMS requires an annual disclosure of the plan's prescription coverage as creditable or non-creditable. This online disclosure must be made within 60 days after the first day of the plan year. (Note: There are other times the CMS disclosure may be required, e.g., mid-year termination of prescription drug plan.)

     **Notice of Coverage Reported to the IRS (Forms 1094/1095).** Make sure to satisfy the reporting requirements on Forms 1094/1095 for all covered persons (unless you have fewer than 50 full-time employees and the insurance company is responsible) and to the IRS.

     **Summary Annual Report.** Although the Summary Annual Report (SAR) must be distributed to participants (and not to the government), it is based on the governmental Form 5500 which you may have been required to file (e.g., a "large" fully-insured plan). If you are required to distribute a SAR to participants, the deadline is two months after you filed your Form 5500. Therefore, if you have a calendar year plan and you filed an *extension* on your Form 5500 (to October 15<sup>th</sup>), your deadline would be December 15.

### Nondiscrimination Testing for your Cafeteria Plan

If you allow employees to elect one or more welfare benefits on a pre-tax basis, you have a cafeteria plan. Cafeteria plans are subject to special nondiscrimination rules. Have you performed year-end nondiscrimination tests with the data you have for the 2019 plan year?

**Check the box under "Yes" if you have a cafeteria plan and you have completed the testing. If the testing doesn't apply, then check the box under "N/A." If neither box is checked, then start taking steps to get the item done.**

Yes   N/A   **Nondiscrimination Testing for Cafeteria Plan:**

     **Near-End Data.** Perform nondiscrimination testing for the cafeteria plan with available data *prior to* the end of the calendar-year plan year.

- | Yes                      | N/A                      | Nondiscrimination Testing for Cafeteria Plan (continued)   |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Final Data.</b> Perform nondiscrimination testing for the cafeteria plan <i>after</i> the close of the plan year.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>New Plan Year Data.</b> Perform preliminary nondiscrimination testing for 2020 in early 2020.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Nondiscrimination Testing for Other Benefits.</b> Don't forget nondiscrimination testing for other welfare benefits, such as dependent care assistance, health flexible spending accounts, and other self-funded group health plans such as medical and dental plans. |

### Change in Employer Structure

Have there been changes to your structure over the past year? For example, do you have new ownership? Did you acquire any businesses? Did you change your corporate form? Were there other, similar changes?

**If the answer to any of the questions above is yes, then check the box under "Yes" if you have completed the task. If the item doesn't apply, then check the box under "N/A."**

- | Yes                      | N/A                      | Changes in Employer Structure:  |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Plan Documents.</b> Check plan documents to ensure that all employers are correctly identified and listed.                         |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Controlled Group Analysis.</b> Determine if an updated "controlled group" analysis is needed and, if so, if it has been performed. |

### Other Miscellaneous Calculations

Do you have certain calculations you normally make at the end of the plan year? For example, perhaps you provided employer-provided group term life insurance above \$50,000.

**If you answered yes to the above question, then you should make those calculations now. They might include the following items:**

- | Yes                      | N/A                      | Miscellaneous Calculations:  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Group Term Life Insurance Imputed Income.</b> If you offer employer-provided group term life insurance in excess of \$50,000 or in excess of \$2,000 for dependents, determine the amount of imputed income. For discriminatory plans, the total value of all employer-provided coverage must be included in key employees' income. |

- | Yes                      | N/A                      | Miscellaneous Calculations (continued)  |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Vacation/PTO.</b> For calendar year plans, determine the number of days that will be cashed out before the end of the year.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Imputed Income from Health Coverage.</b> If you cover domestic and/or civil union partners, make sure records are current so that imputed income for health coverage is calculated and reported correctly. Similarly, if you cover older children (i.e., nondisabled children after the end of the calendar year in which age 26 is attained), calculate the imputed income.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>ALE Status.</b> Determining whether an employer is an “applicable large employer” or “ALE” that is subject to health care reform’s penalty taxes is based on a calculation that should be made at the end of each year. Employees are counted in 2019 to determine ALE status for 2020. This may be an important calculation for those of you who hover around 50 “full-time” employees (including full-time equivalents). |

We hope this checklist is helpful to you. Please feel free to supplement it with any other items that are particular to your welfare benefit structure. If you have questions regarding this checklist, please feel free to contact Eric Namee, Steven Smith, Brad Schlozman, or Ruhe Rutter at (316) 267-2000.

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