

Lynne Desrochers

From: Hardenbergh Insurance Group [benefits@hig.net]
Sent: Tuesday, January 25, 2011 10:20 AM
To: hig@hig.net
Subject: HR & Benefits Newsletter - August 2010

This email contains graphics - please enable images in your email client to display completely.



Information Every Business Needs to Know

HR & Benefits Advisor

August 2010

Brought to you by: **Hardenbergh Insurance Group**

In this Issue
Health Reform: List of Preventive Services
Employment At-Will
Small Business Emergency Preparedness Plans
New Interpretation of Son or Daughter Under FMLA
Proposed Rules on Health Information Privacy
Revised Safety and Health Standards
New Rules on Health Plan Appeals

Health Reform: List of Preventive Services without Cost-Sharing Released

The Departments of Health and Human Services (HHS), Labor, and Treasury issued [interim final regulations](#) requiring new plans and issuers to cover certain preventive services without any cost-sharing requirements when delivered by network providers. Cost-sharing includes out-of-pocket costs like deductibles, co-payments and co-insurance. **Employers should note that these required preventive services do not apply to [grandfathered plans](#).**



Under the new rules, services recommended by the U.S. Preventive Services Task Force (USPSTF) will generally be required to be provided without cost-sharing when delivered by an in-network provider in the plan years that begin on or after September 23, 2010 (except grandfathered plans). For recommendations that have been in effect for less than one year, plans and issuers will have one year from the effective date to comply. Thus, recommendations and guidelines issued prior to September 23, 2009 must be provided for plan years beginning on or after September 23, 2010.

Recommendations of the USPSTF appear in a released chart, which can be accessed by [clicking here](#).

Preventive Services to Be Covered without Cost-Sharing

HHS reports that under the new rules, depending on age and plan type, individuals may have easier access to the following preventive services:

- Blood pressure, diabetes, and cholesterol tests
- Cancer screenings, including mammograms and colonoscopies
- Flu and pneumonia shots
- Routine vaccines ranging from routine childhood immunizations to periodic tetanus shots for adults, including diseases such as measles, polio, or meningitis
- Counseling from health care providers on such topics as quitting smoking, losing weight, eating better, treating depression, and reducing alcohol use
- Counseling, screening and vaccines for healthy pregnancies

HHS Launches Website and Proposed Rules on Health Information Privacy



The U.S. Department of Health and Human Services (HHS)

has [announced new proposed rules and resources](#) aimed at strengthening the privacy of health information, and helping individuals understand their rights and the resources available to safeguard their personal health data. Through the Health Information Technology for Economic and Clinical Health (HITECH) Act, current health information privacy and security rules will now include broader individual rights and stronger protections when third parties handle individually identifiable health information.

According to HHS, the proposed rule would strengthen and expand enforcement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy, Security, and Enforcement Rules by:

- Expanding individuals' rights to access their information and to restrict certain types of disclosures of protected health information to health plans;
- Requiring business associates of HIPAA-covered entities to be under most of the same rules as the covered entities;
- Setting new limitations on the use and disclosure of protected health information for marketing and fundraising; and
- Prohibiting the sale of protected health information without patient authorization

New Privacy Website Launched by HHS

HHS has also launched a [privacy website](#), to help visitors easily access information about existing HHS privacy efforts and the policies supporting them. The site covers privacy in the collection, use, and exchange of personally identifiable information. This new resource is meant to provide individuals with

- Regular well-baby and well-child visits, from birth to age 21

The interim final regulations also make clear that a plan or issuer is not required to provide coverage or waive cost-sharing requirements for any item or service that has ceased to be a recommended preventive service. For example, if a recommendation of the USPSTF is downgraded from a rating of A or B to a rating of C or D, or if a recommendation or guideline no longer includes a particular item or service, the service is not required to be provided without cost-sharing.

For more on preventive services under the Affordable Care Act, please [click here](#), or view the chart of covered services by [clicking here](#). You can also view a list of covered services for adults, women (including pregnancy) and children by [clicking here](#). To view the interim final regulations, please [click here](#). To learn more about changes to group health plans under the Affordable Care Act, including grandfathered plans, please visit the HR & Benefits Essentials **Health Care Reform Section** by [clicking here](#).

Employment At-Will and Your Company

If you are thinking of terminating an employee, it is vitally important to understand your company's rights and obligations under 'employment at-will'.

Employment at-will means that, generally, absent a statute or express agreement to the contrary (such as an individual or union contract), employers may discharge an employee for any reason, or no reason at all, at any time and without advance notice. Employees have equal freedom to terminate the employment relationship under employment at-will. Almost all states in the U.S. follow the traditional legal framework of employment at-will.

[Please Note: States have their own exceptions to employment at-will, and potential discrimination issues that can result in employee termination lawsuits. We strongly advise you to consult an employment law attorney who knows your state labor laws for guidance on your employment at-will policy and any termination issues you may have.]

Federal law and States, however, have restricted the breadth of employment at-will. Federal law, for example, prohibits [discrimination](#) in employment on the basis of race, color, sex (including pregnancy), age, national origin, disability, religion, genetic information and military service (including the intent to serve). Since all employees in your company could be members of a protected class, (for example, based on sex or race), the practical effect of nondiscrimination laws can make terminations a potentially problem-filled area. Leave properly taken under the Family and Medical Leave Act is also protected employee activity under federal law.

States, through legislation and the courts, also impose exceptions to employment at-will to varying degrees. Common exceptions include:

- Public policy exceptions, such as an employee's exercise of statutory rights, or the employee's refusal to engage in illegal activity
- An implied promise to deal fairly and in good faith with an employee
- Contracts of employment that are implied orally or by an employer's actions, versus a written or express agreement



confidence that their personal information is secure and underscore HHS' goal of greater openness and transparency in government. To visit the new HHS privacy site, please [click here](#).

To view the HHS press release, please [click here](#). To view the proposed rules, [click here](#). For more on the HITECH Act and HIPAA, please visit the HR & Benefits Essentials HITECH Act Section by [clicking here](#).

OSHA Proposes Rule to Revise Safety and Health Standards



The Occupational Safety and Health Administration (OSHA) has issued a [proposed rule](#) and request for comments on its efforts to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in its safety and health standards. The proposed rule is aimed at building on the Standards Improvement Project (SIP) - Phase I published on June 18, 1998, and SIP - Phase II published on Jan. 5, 2005. OSHA intends that the proposed revisions will reduce compliance costs, eliminate paperwork burdens, and clarify requirements without diminishing worker protections.

Comments and hearing requests must be submitted by Sept. 30, 2010. You can submit comments electronically at regulations.gov. To view the proposed rule, please [click here](#).

To gain a full understanding of your rights and responsibilities as an employer, it is important to consult the state and local laws where your business operates. Some states may have many of their own exceptions to employment at-will, while others may have nearly none. For a thorough overview, seek the advice of local employment counsel.

Use a Clear and Prominent Disclaimer Stating Your Employment At-Will Policy in Your Employee Handbook

If you distribute an employee handbook, it is important to have a clear and prominent disclaimer employees will see stating that the employment relationship is 'at will' to the extent permitted by law.

Courts have concluded that handbooks that do not have a proper employment-at-will disclaimer may give employees reasonable expectations of continued employment. These expectations can create contractual obligations for the employer. And, even with a clear and prominent disclaimer, the handbook should not make any promises to the contrary of the employment at-will statement. Such explicit promises can create an employer contractual obligation in spite of a general statement of employment at-will.

Have Local Employment Counsel Review Your Handbook

As with learning about employment at-will in your state, it is important to have local employment counsel review your company's actual handbook. Proper 'at-will' statements, disclaimers and other contract issues arising out of employee handbooks vary from state to state. Thus, be sure to consult an employment attorney who is knowledgeable with employee handbook requirements in your jurisdiction.

Website Launches for Small Business Emergency Preparedness Plans

The U.S. Small Business Administration (SBA) has launched a new website to help small businesses develop an emergency preparedness plan.

In an effort to encourage businesses to plan ahead, the SBA and Agility Recovery Solutions have launched the *Prepare My Business* (www.preparemybusiness.org) web site. *Prepare My Business* provides tips on how small business owners can develop their own disaster preparedness plans, and features interactive tools such as monthly webinars on business continuity planning.



Preparing for Common Everyday Events

Prepare My Business covers preparation for major disasters, such as earthquakes and flooding, as well as common everyday events such as server failure, burst pipes and power outages - all of which can be equally devastating for a small business.

Among other steps for disaster preparedness, the SBA recommends the following:

- A written emergency response plan
- Adequate insurance
- Making copies of important records
- A 'Disaster Survival Kit'

New Rules on Health Plan Appeals Released

[New rules](#) issued by the Departments of Health and Human Services, Labor, and Treasury are aimed at standardizing internal and external processes for individuals to appeal decisions made by health plans. The rules provide individuals with the following:

- The right to appeal decisions made by their health plan through the plan's internal process; and
- The right to appeal decisions made by their health plan to an outside, independent decision-maker, regardless of the State or health plan.

Note that these new rules do not apply to grandfathered plans, which include those plans which were in place on March 23, 2010. For more on what your health plan must do to maintain grandfathered status, please [click here](#).

For more on these appeals rules, you can view a newly released Fact Sheet by [clicking here](#). To view the rules, [click here](#). To learn more about the Affordable Care Act, you can also visit the HR & Benefits Essentials *Health Care Reform Section* by [clicking here](#).

The user-friendly site (www.preparemybusiness.org) is broken down into four key actionable elements of disaster preparedness and recovery - Planning, Education, Testing and Disaster Assistance.

The SBA advises that in addition to the *Prepare My Business* site, more preparedness tips for businesses, homeowners and renters are available on the SBA's Web site at www.sba.gov/disasterassistance. To learn more about developing an emergency plan, visit the Federal Emergency Management Agency's Web site Ready.gov or call 1-800-BE-READY to receive free materials. You can also visit the U.S. Department of Labor's Disaster Recovery Assistance page, which links to DisasterAssistance.gov, a federal government site that provides access to disaster help and resources.

IRS Tips on Preparing for a Disaster

On July 12, 2010, the IRS released [Summertime Tax Tip 2010-03](#), 'Four Tips on Preparing for a Disaster.' This Tax Tip encourages taxpayers to safeguard their records by taking a few important steps. Specifically, the IRS urges:

- Using paperless recordkeeping
- Documenting valuables
- Updating emergency plans
- Seeking IRS help in the event of destroyed records

The Tax Tip also links to disaster-related IRS forms; [Publication 584](#) - Casualty, Disaster, and Theft Loss Workbook for personal-use property; and [Preparing for a Disaster](#) for Taxpayers and Businesses. To view Tax Tip 2010-03, please [click here](#).

DOL Issues New Interpretation of 'Son or Daughter' Under Family and Medical Leave Act

The U.S. Department of Labor (DOL) has [clarified the definition of 'son or daughter' under the Family and Medical Leave Act](#) to ensure that an employee who assumes the role of caring for a child receives parental rights to family leave, regardless of the legal or biological relationship.



The FMLA allows workers to take up to 12 weeks of unpaid leave during any 12-month period to care for loved ones or themselves. The 1993 law also allows employees to take time off for the adoption or the birth of a child. An administrative interpretation issued by the DOL's Wage and Hour Division clarified that these rights, which provide work-family balance, extend to various parenting relationships, including families in the lesbian-gay-bisexual-transgender community.

You can view the administrative interpretation by [clicking here](#). For more information on the FMLA and the administrative interpretation, visit the Wage and Hour Division's website, <http://www.dol.gov/whd>, or call the division's toll-free helpline at 866-4US-WAGE (487-9243). To view the DOL press release, please [click here](#). To visit the HR & Benefits Essentials FMLA Section, please [click here](#).

Newsletter provided by:
 HR and Benefits Essentials
 400 Main Street, Suite 410, Stamford, CT 06901
 (203) 977-8100
www.HRandBenefits.com

Please Note: The information and materials herein are provided for general information purposes only and are not intended to constitute legal or other advice or opinions on any specific matters and are not intended to replace the advice of a qualified attorney, plan provider or other professional advisor. This information has been taken from sources which we believe to be reliable, but there is no guarantee as to its accuracy. In accordance with IRS Circular 230, this communication is not intended or written to be used, and cannot be used as or considered a 'covered opinion' or other written tax advice and should not be relied upon for any purpose other than its intended purpose.

The information provided herein is intended solely for the use of our clients and members. You may not display, reproduce, copy, modify, license, sell or disseminate in any manner any information included herein, without the express permission of the Publisher. Kindly read our Terms of Use and respect our Copyright.

We respect your online privacy. If you have received this mail in error or are not interested in receiving this further, please accept our apology and reply with a request to be removed in the 'Subject' from our mailing list.

© 2001-2010 HR & Benefits Essentials - All rights reserved