

COMPLIANCE News to Know

News from June 1 - June 16, 2023: Vol 2.10



PATRIOT
GROWTH INSURANCE SERVICES
COMPLIANCE ✓

Upcoming...

July 13, 2023 - 1:30 - 2:15 pm.
Broker Compensation Webinar - [Register Here](#)

July 31, 2023 - PCORI Fee Due
Form 5500 Filing Due

Summer is around the corner, and for benefits professionals, it's time to verify Form 5500 filings (or extensions) are submitted & PCORI fees are paid. Click the links at left for details from the DOL. It's also time to take a break and soak up sun before autumn arrives, and with it, open enrollment season!

July's webinar addresses requirements for agents, brokers, and consultants under the CAA. Refresh yourself on details underlying this obligation. A template disclosure form is housed on the EB Compliance SharePoint site.

Elimination of MHPAEA Opt-Out for Self-Funded Non-Federal Gov. Plans

The Centers for Medicare and Medicaid Services (CMS) issued guidance on June 7th directed to self-funded non-Federal government plans* (NFGP) that previously opted-out of compliance requirements under the Mental Health Parity and Addiction Equity Act (MHPAEA). The Consolidated Appropriations Act of 2023 (CAA 2023) eliminated the opt-out provision for NFGP, eliminating new elections after December 29, 2022.

Elections expiring on or after June 27, 2023 may not be renewed, except for certain collectively bargained NFGP. If NFGPs are subject to multiple collective bargaining agreements, and has a current MHPAEA opt-out in place, the NFGP may extend the election until the last agreement expires.

CMS' guidance explains:

- how to secure the extension;
- documents to complete;
- securing approval; and
- submission of a renewal opt-out.



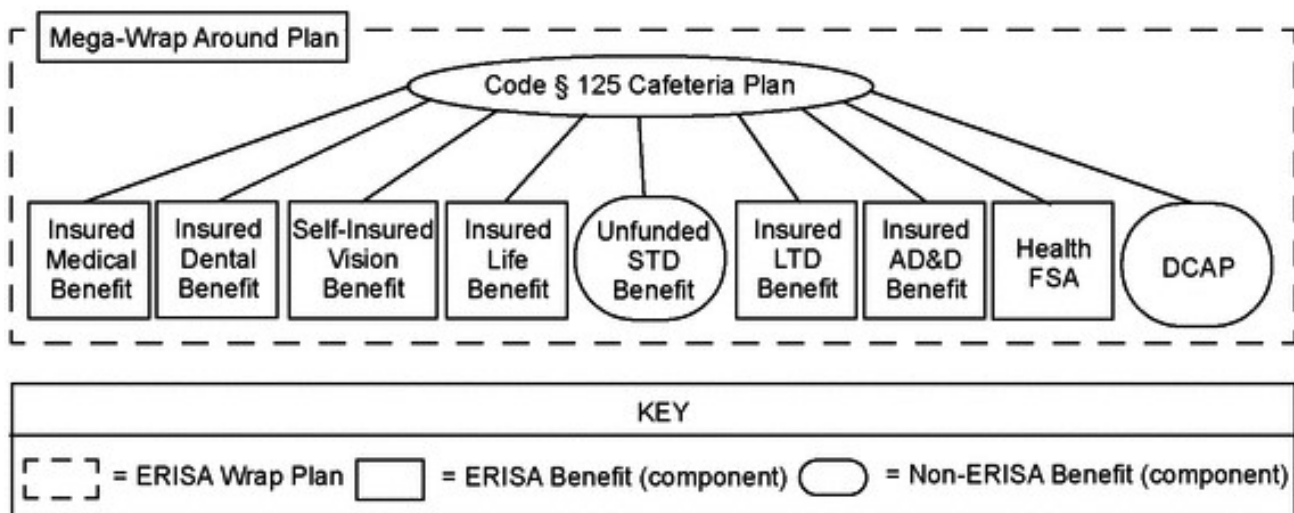
**Including Plans sponsored by states, counties, school districts, and municipalities for state or local gov. employees.*

Did you Know? The Plan & Its Documents

Aside from a few exceptions, ERISA requires Group Health Plans (Plans) create and maintain a Plan Document (PD). ERISA also requires a Summary Plan Description (SPD). What about a "Wrap Doc?" Do we need all three? Great question; it depends. Let's start with the basics.

- **PD:** requires a "specific description" of each of the benefits available under the Plan. PDs must contain participation rules; election procedures; manner of contributions; max. amt. of contributions; outline the Plan year; explain ordering rules for use of non elective and elective PTO; and its compliance with additional FSA requirements & provisions about grace period rules (if applicable).
- **SPD:** in contrast, a SPD must be furnished to Plan participants (unlike the PD, which may be requested in writing) and contains key data about the Plan (i.e. summaries). Rules exist on how to properly furnish the SPD, including timing and language parameters.
- **10 Required SPD Categories:** Plan identifying and eligibility provisions; detailed descriptions of Plan benefits; circumstances causing loss or denial of benefits; amendment & termination provisions; COBRA rights & obligations (as applicable); Plan contributions & funding and claims procedures; and statements of ERISA rights and coverage for newborns & mothers
- Courts are split on whether Plans may combine their PD & SPD into one document. If a Plan Sponsor uses a combined document, include a prominent statement within it that the document is designed to serve as both the PD & SPD. A best practice is to maintain two separate documents.
- **Wrap Doc.:** the purpose of a Wrap Doc. is to supplement required ERISA data often missing from fully insured Plan insurance booklets. A Wrap Doc. "wraps" around the certificate of coverage or booklet to fill in ERISA's required disclosures to participants. The Wrap Doc. may also include non-ERISA benefits & serve to "wrap" multiple Plans into a "mega" Wrap Doc. to reduce administrative burdens. The schematic* below is useful in visualizing how Wrap Docs. function.

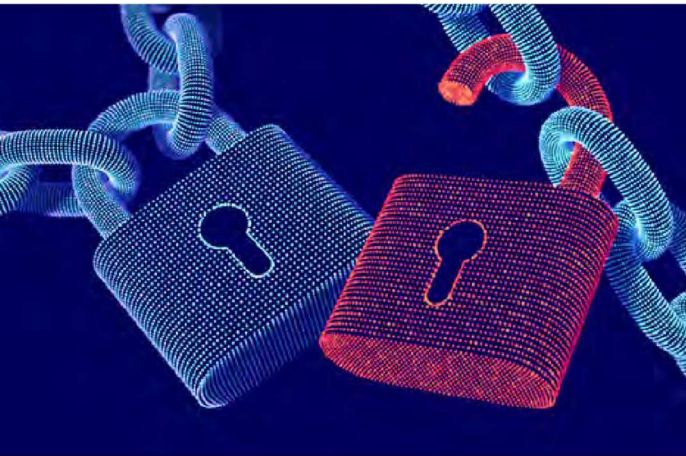
Whatever combination of documents chosen, clear drafting & organization is critical for compliant programs. Employers & Advisers should establish policies, processes, & procedures for annually reviewing documentation for all welfare plans to meet ERISA regulations.



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Business Associate Hit with \$350K Penalty for PHI Breach

Business Associates (BAs) of GHPs must implement provisions of the HIPAA Security Rule, and sometimes the Privacy Rule, depending on service agreements. On May 16th, the Office of Civil Rights (OCR) released news that an Arkansas BA failed to secure a server; have appropriate BA Agreements (BAA) in place; and did not conduct a security risk analysis. Because of these failures, the BA suffered a breach of 230,000+ persons' protected health information (PHI). Read the OCR's Release for details.



Such breaches are less likely to occur by establishing & maintaining a comprehensive HIPAA compliance program. Elements of a strong program include continuing education; verifying BAAs exist with all Plans; implementing security measures such as dual factor authentication; conducting a risk analysis; and creating Privacy & Security Policies.

Agencies: review your HIPAA compliance practices, including a risk analysis, as you advise Employers. Agencies may access BAA templates for use with clients & providers on the EB SharePoint site or by contacting compliance@patriotgis.com.

Texas Court Reinstates ACA Preventive Services Mandate

In last month's newsletter, we reported that on May 15th, the 5th Circuit Court of Appeals placed an administrative stay on a Texas lower court's March 30th decision in *Braidwood* to vacate certain elements of the Affordable Care Act's (ACA) preventive services coverage requirements.

On June 12, 2023, the Court of Appeals issued a stay on that ruling. While in effect, plan sponsors are required to cover affected services. Employers who considered or were actively modifying Plans to comply with the lower court's decision should place such actions on hold until the case is decided.

[Access ACA education & forms on the Department of Labor's website.](#)