

While Federal and State governments do not mandate that employers provide health insurance coverage, they do require certain regulations be followed by those who do offer coverage. Historically, Congress deferred health insurance regulation to the states, but with the passage of the Employee Retirement Income Security Act of 1974 (ERISA) that changed. Health Insurance regulations continue to increase at both the State and Federal level. With the passage of more and more new health legislation regulations each year we realize that just keeping up with current changes in the law and how to address those changes can be very time consuming and frustrating to everyone involved.

In order to assist our clients in working through the current Federal and State regulations we have compiled a brief but concise piece on many of the laws that have been adopted or changed this year (2009). In addition, we have also included information on some legislation that has been in place for some time but may quite often be overlooked.

We encourage you to use the information as a quick reference guide to assist you in understanding these regulations and how they affect your organization. We will continue to provide updates from time to time as changes in these laws occur.

The information contained within this guide is a brief interpretation of the Federal and State regulations and is not legal advice. Please consult your legal counsel if you have specific questions regarding this information as it relates to your organization or your employee benefit programs.



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COBRA ARRA UPDATES – Federal Mandate

Group Size:	20 or more employees during prior calendar year
Self Funded/Fully Insured	COBRA Law applies to both
Employer Requirements:	New or revised COBRA notices must be sent to all employees involuntarily terminated 09/01/08 to 12/31/09. Extended Election notices must be sent to all employees involuntarily terminated 09/01/08 to 02/16/09. Employer must contribute 65% of COBRA cost for all Assistance Eligible Individuals electing COBRA coverage, but can then reduce payroll taxes to recover premiums paid.
Next Step for Employers:	Identify involuntarily terminated employees. Either send notices or contact COBRA vendor to determine their procedure.
Time Frame:	Assistance period generally begins 03/01/09 and runs for 9 months from the date of a qualifying termination, or end of COBRA period, if shorter
Penalties:	Determined by the Department of Labor (DOL); regular penalties for failure to timely give COBRA Notice apply
Source Links:	www.dol.gov and www.irs.gov

COBRA UPDATES / State Mini-COBRA

	INDIANA	KENTUCKY	OHIO	TENNESSEE
Group Size:	20 or more employees during prior calendar year	Applies to all Insured Group Health Plans	Employers with fewer than 20 employees	Applies to all Insured Group Health Plans
Self Funded or Fully Insured	Fully-Insured	Fully-Insured	Fully-Insured	Fully-Insured
Employer Requirements:	Employer must provide eligible employee with continuation notice within 10 days of qualifying event	Group Policy holder must provide notice to insurer that person has terminated membership in group; insurer provides notice to individual.	Provide notice to terminating employee of availability of continuation coverage. Group Policy holder must provide notice to insurer that person has terminated membership in group; insurer provides notice to individual.	No notice requirements contained in statute
Time Frame:	Ongoing	Ongoing	Ongoing	Ongoing
Penalties:	As determined by State Department of Insurance, if any	As determined by State Department of Insurance, if any	As determined by State Department of Insurance, if any	As determined by State Department of Insurance, if any
Source Links:	http://www.in.gov/idoi/	http://doi.ppr.ky.gov/kentucky/	http://www.insurance.ohio.gov/ConsumServ/COBRAContinuationCoverageElectionNotice.doc	http://tn.gov/commerce/insurance/index.shtml
ARRA/Subsidy:	Eligible for federal COBRA subsidy if became eligible for continuation coverage after February 17, 2009. No second election period if continuation coverage not elected.	Enacted an emergency regulation to mirror ARRA. Effective March 13, 2009, anyone eligible to elect Kentucky mini-COBRA continuation coverage between September 1, 2008 and February 17, 2009, but did not elect coverage, now has 2 nd chance to elect. Election period begins Feb. 17, 2009 and ends 60 days after insurer provides notice of election period.	H.B.2 changes insurance policies issued, delivered or renewed after April 1, 2009; insurance company picks up premium subsidy; no additional election period.	No independent state action regarding ARRA subsidy. Individuals who become eligible for continuation coverage under February 17, 2009 may take advantage of federal subsidy, but no additional enrollment period offered.

Michelle's Law (HR285)

Group Size: All Employers

Self Funded/
Fully Insured Both

Employer Requirements: Employers must allow seriously ill college students who are covered dependents to continue coverage up to one year (or until coverage would otherwise terminate, if earlier)

Next Step for Employers: Employers must notify employees of this change in a language they can understand. Any notice regarding a requirement for certification of student status must include a description of the requirements for continued coverage during a medically necessary leave of absence. Update plan documents as necessary.

Next Steps Provided by NL Update as changes occur

Time Frame: Effective for plan years and medically necessary leaves of absence beginning on or after 10/09/09 - Calendar year plans must comply beginning 01/01/10

Penalties: Potentially determined by DOL, IRS, Department of Health and Human Services

Source Links: <http://benefitslink.com/links/20081029-066370.html>

Code Section 125 (Cafeteria Plans)

Group Size:	All Employers
Self Funded/ Fully Insured	Both
Employer Requirements:	<ul style="list-style-type: none"> • New Regulations generally preserve existing rules, clarify previous changes and offer more formal guidance on many issues • Have a Written Plan Document/Summary Plan Description for Employees. (Can be under the same document) • Nondiscrimination Testing (Highly Compensated Employees vs. Non-Highly Compensated Employees) • Offer current Employees an opportunity to enroll in the plan PRIOR to the start of the plan year • Independent verification of all expenses for reimbursement (i.e., receipts for FSA expenses). • Limit mid-year election changes to permissible events
Testing Dates:	As of last day of the plan year (however, testing prior to beginning of plan year and mid-year are recommended)
Next Step for Employers:	Verify with Vendor all Documents are up to date and all testing has been done
Next Steps Provided by NL	Neace Lukens can assist clients in identifying VENDOR
Time Frame:	Ongoing
Finalization:	Proposed effective date 1/1/10. Final regulations expected to be issued this summer. However, these proposed regulations can be relied upon now
Penalties:	Entire Plan can be nullified if plan fails testing or plan's document and provisions are not followed
Source Links:	www.irs.gov www.benefitslink.com

Health Savings Accounts (HSA) Flexible Spending Accounts (FSA) Health Reimbursement Accounts (HRA)

	Health Savings Account (HSA)	Flexible Spending Accounts (FSA)	Health Reimbursement Account (HRA)
Group Size:	All	All	All
Self Funded or Fully Insured	Self Funded	Self Funded	Self Funded
Employer Requirements:	<ul style="list-style-type: none"> • Verify Section 125 Plan Document has been amended to allow salary deferrals (if applicable) • Verify individuals eligible for contributions • Administer contributions up to permitted annual limits • If employer contributions not made under a cafeteria plan, must meet comparable contribution requirements • If employee also covered by limited-purpose FSA, make sure programs are properly coordinated 	<ul style="list-style-type: none"> • Verify Section 125 Plan Document permits FSA contributions • Administer mid-year election rules properly • Substantiate all requests for reimbursement • Determine if permit the 2 ½ month grace period • Determine if need limited-purpose FSA • Determine whether to permit reimbursement for over-the-counter medications • Determine whether to permit use of electronic debit cards for reimbursement – follow requirements for the same • See Heart Act – Page 8 	<ul style="list-style-type: none"> • Substantiate all requests for reimbursement • If also sponsor an FSA, determine reimbursement ordering rules • Verify plan documents in order and compliant
Next Step for Employers:	Verify with Vendor all Documents up to date and process in place for verifying eligibility	Verify with Vendor all Documents up to date and process in place for verifying reimbursement request	Verify with Vendor all Documents up to date and process in place for verifying reimbursement request
Testing Dates:	Testing period under the comparability rules is the calendar year: however, comparability is determined on a month-by-month basis. If contributions made through Code Section 125 cafeteria plan, must pass Code Section 125 tests and then not subject to the comparability rules.	As of last day of the plan year (however, testing prior to beginning of plan year and mid-year are recommended)	Subject to Code Section 105(h) testing
Time Frame:	Ongoing	Ongoing	Ongoing
Penalties:	Employer subject to 35% excise tax on all HSA contributions if contributions not comparable	Reimbursements to highly compensated employees may be taxable income if nondiscrimination tests failed	Unclear, however, if fail to meet requirements, all reimbursements may be taxable income
Source Links:	www.treas.gov/offices/public-affairs/hsa/ www.benefitslink.com www.hsaed.com www.hsafinder.com www.hsa223.com	www.benefitslink.com	www.benefitslink.com

HEART Act (Hero's Earnings & Assistance Relief Tax)

Group Size:	All
Self Funded/ Fully Insured:	Self-funded medical flexible spending accounts
Employer Requirements:	Permits "Qualified Reservist Distributions" from medical flexible spending accounts without requirement to incur eligible medical expense to recover contributions
Next Step for Employers:	<ul style="list-style-type: none">• Determine if want to offer "Qualified Reservist Distributions" from medical flexible spending account program• If permit, plan document must be amended by end of plan year in which change is made• Coordinate with FSA vendor for administration and proper tax reporting• Communicate to employees
Time Frame:	Ongoing. Permissible design change – can be implemented in future year
Penalties:	Loss of favorable tax status of FSA / medical plan if not operated according to Plan's terms
Source Links:	www.irs.gov Code Section 125 regulations IRS Notice 2008-82

Code Section 105 (h)

Group Size:	All
Self Funded/ Fully Insured	Self Funded
Employer Requirements:	There are two nondiscrimination requirements that must be completed: (i) the plan cannot discriminate in favor of highly compensated employees as to eligibility to participate in the plan (eligibility test), and (ii) the benefits provided under the plan must not discriminate in favor of highly compensated employees (benefits test).
Next Step for Employers:	Perform eligibility and benefit testing on plans; or design plan to pass automatically
Testing Dates:	As of last day of plan year (however, testing prior to beginning of plan year and mid-year are recommended)
Next Steps Provided by NL	Neace Lukens can assist clients in identifying VENDOR
Time Frame:	Current and ongoing
Penalties:	The amount reimbursed to a highly compensated employee for benefits that are discriminatory must be included in his or her taxable income.
Source Links:	http://www.law.cornell.edu/uscode/uscode26/usc_sec_26_00000105----000-.html

Medicare Secondary Payor Reporting Requirement

Group Size:	Similar to those for Medicare Secondary Payor Reporting/Determinations; some variations may apply
Self Funded/ Fully Insured	Both
Employer Requirements:	Reporting requirement is actually on insurers and third party administrators. Employers of self-funded plans may have reporting obligation ONLY if also self-administering the plan. Although employers generally not responsible for reporting, will need to cooperate with vendors in order to provide the data necessary for reporting.
Next Step for Employers:	Talk with reporting vendors to determine if they have all the information they need; gather additional employee and dependent information as necessary
Next Steps Provided by NL	Monitoring Compliance by Carriers
Time Frame:	Generally effective Jan. 1, 2009; registration for group health plans begins Apr. 1, 2009
Penalties:	\$1,000 per day of noncompliance
Source Links:	http://www.cms.hhs.gov/mandatoryinsrep/

FMLA 2009 UPDATES

Group Size:	50 or more employees on each working day in at least 20 or more calendar weeks in the current or preceding calendar year
Self Funded/ Fully Insured	Both
Employer Requirements:	FMLA expanded to include military family leave: (a) 12 weeks of leave in 12-month period for issues related to a family member's active service; (b) 26 weeks of leave in 12-month period to care for service member injured in the line of military duty or undergoing outpatient medical treatment or injury or who is on the temporary disability retired list for a serious injury or illness
Next Step for Employers:	<ul style="list-style-type: none">• Review current FMLA policies and update for new military leaves• Determine what type of certification will be required for military leave• Comply with notice requirements
Next Steps Provided by NL	Monitor and supply updates
Time Frame:	Ongoing
Penalties:	Department of Labor can file suit for enforcement or recover damages; eligible employee can file suit for damages and other equitable relief (e.g., employment, reinstatement, promotion, etc.)
Source Links:	http://www.dol.gov/dol/topic/benefits-leave/fmla.htm

Wellness Programs

	HIPAA	ADA
Group Size:	Group health plans covering 2 or more employees on first day of plan year; health insurance issuers offering group health insurance coverage also must comply	15 or more employees on 20 or more calendar weeks in current or preceding calendar year
Self Funded or Fully Insured	Both	Both
Employer Requirements:	<ul style="list-style-type: none"> • Determine if stand-alone program or part of group health plan • Determine if participation-only or standard-based program • Rewards may be no more than 20% of the cost of coverage • Program must be designed to promote health or prevent disease • Individuals must be able to qualify for reward once per year • Must offer reasonable alternative to meet required standards • Must disclose alternative standards (or waivers) 	<ul style="list-style-type: none"> • ADA generally prohibits discrimination against individuals with disabilities • Program that requires disabled individuals to participate in order to gain benefits may be problematic • Employer limited in situations where may require physical exams or answers to medical questions – may be problematic depending on how wellness program structured
Next Step for Employers:	<ul style="list-style-type: none"> • Verify plan design and compliance with requirements • May be difficult to comply with both HIPAA's and the ADA's requirements 	<ul style="list-style-type: none"> • Verify plan design and compliance with requirements • May be difficult to comply with both HIPAA's and the ADA's requirements
Time Frame:	Ongoing	Ongoing
Penalties:	Jointly enforced by the IRS, DOL and HHS; penalties can include excise taxes and per day penalties for noncompliance	
Source Links:	<ul style="list-style-type: none"> • Treasury Regulations Section 54.9802-1 • Department of Labor Regulations Section 2590.702(f) • Health and Human Services Regulations Section 146.121(f) • Department of Labor Field Assistance Bulletin 2008-02 	<ul style="list-style-type: none"> • Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, EEOC (Jan. 1992), Chapter VI, available at: http://www.adata.org/adaportal/employment/Browse_IAM_I/Chapter_VI_6-6.html

*It may be difficult for employer wellness programs to comply with both the ADA's and HIPAA's requirements regarding wellness programs.

Children's Health Insurance Program Reauthorization Act (CHIPRA)

Group Size:	All
Self Funded/ Fully Insured	Both
Employer Requirements:	<ul style="list-style-type: none"> • Adds two new special enrollment rights under HIPAA's portability requirements • Modify plan documents if necessary
Next Step for Employers:	<ul style="list-style-type: none"> • Update special enrollment rights notices • Administer plans in operational compliance with new special enrollment rights • Determine if going to accept State-subsidy or not • Determine if going to change enrollment period for all special enrollment rights to 60 days, or administer different periods (e.g., 30 and 60 days), based on the special enrollment reason
Next Steps Provided by NL	Assist clients with updates of Plan Documents
Time Frame:	Effective April 1, 2009; Notice requirements effective for plan years after notice guidance is issued (expected to be by February 4, 2010)
Penalties:	\$100 per day for failing to comply with employee notice requirement; \$100 per day for failing to disclose required information to a state; each violation with respect to any single participant is a separate violation
Source Links:	<p>Public Law 111-3 www.cms.gov http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=11_cong_bills&docid=f:h2eas.txt.pdf</p>

Mental Health Parity / the "Wellstone Act"

Group Size:	Greater than 50 employees * *Possible to get an exemption based on increased cost to comply, but have to show cost of complying first.
Self Funded/ Fully Insured	Both
Employer Requirements:	The Act amends the Mental Health Parity Act of 1996 to require that a group health plan of 51 or more employees (or coverage offered in connection with such a plan)—and which provides both medical and surgical benefits and mental health or substance use benefits —provides parity in the financial requirements and any treatment limitations applicable to mental health/substance use disorder benefits can be no more restrictive than the predominant requirements and limitations placed on substantially all medical/surgical benefits.
Next Step for Employers:	Review / revise plan design to comply; update plan documents
Next Steps Provided by NL	Assist clients with updates of Plan Documents
Time Frame:	Generally effective for plan years beginning after 10-3-09 (e.g., 1-1-10 for calendar year plans)
Penalties:	As under the 1996 law, Labor, HHS, and Treasury will continue to coordinate enforcement of the Federal parity requirements, and are required to issue regulations to implement the Act not later than one year after the enactment date. Treasury may continue to impose an excise tax on any plan for failure to comply with the requirements of the Act.
Source Links:	Mental Health America. Mental Health America: Equity Campaign Parity Legislation. "Mental Health America" Home. 26 Feb. 2009 http://takeaction.mentalhealthamerica.net

For a copy of the new law, see:
<http://www.govtrack.us/congress/bill.xpd?bill=h110-1424>

DOL ERISA 5500 Filing – *2010 Electronic Filing*

Group Size:	100 + Employees at beginning of Plan Year, or any plan with a trust
Self Funded/ Fully Insured	Both
Employer Requirements:	<ol style="list-style-type: none"> 1. Groups with 100+ employees at beginning of plan year are required to file on an annual basis 2. Groups have 7 months from last day of plan year to file with the DOL without penalties assessed for late filing; can apply for 2-1/2 month extension 3. Government organizations, churches are exempt for DOL Filing Requirements - Non profit organizations are not exempt and must file annually 4. Groups who are non-compliant for prior year may become compliant by filing under the Delinquent Filer Voluntary Compliance Program (DFVC)
Next Step for Employers:	<ol style="list-style-type: none"> 1. Collect Schedule A forms from all carriers during plan year 2. Prepare 5500 filing online via DOL Website or 3rd party vendor 3. File complete forms with the DOL by end of last day of 7month after end of plan year 4. Maintain original source documents and filings for 6 years from date of filing
Next Steps Provided by NL	Neace Lukens can assist clients with 3 rd party vendor preparation of Annual 5500 filing compliance
Time Frame:	<p>Form 5500 is due by the last day of the seventh (7th) month following the end of the plan year.</p> <p>If the filing cannot be made in time, a 2 1/2 month extension can be applied for by submitting a Form 5558</p>
Finalization:	Client is responsible for review of the filing, signing forms where indicated and mailing of the completed form to the Department of Labor (DOL) within allowed time frame.

** For Plan years beginning on or after January 1, 2009 (and filing in 2010) the DOL has issued a ruling requiring that all Forms 5500 be filed electronically. Short plan year filers whose due date to file their Form 5500 is before January 1, 2010, will be given an automatic extension to electronically file their Form 5500 within 90 days after the 2009 electronic filing system is available. In other words, the DOL would like 2009 short plan year filings to wait and file their 2009 Form 5500 until they can be filed under the new electronic filing system. NOTE: Though the DOL will require electronic filing, the Form 5500 Instructions reiterate the plan sponsor's duty of recordkeeping and obligation to make the latest annual report available for examination. Additionally, after the plan sponsor electronically files, they must still maintain a signed, printed copy of each completed filing. As of this publication still awaiting final release from DOL on process for new electronic filing system.

DOL ERISA 5500 Filing –
Continued

- Penalties:
1. No penalties are assessed for groups in good standing and annual filing record.
 2. Penalties under the Delinquent Filer Voluntary Compliance Program (DFVC) will be assessed based on the "Per Plan" maximum penalty and plan size. If a plan has less than 100 participants at the beginning of the plan year, the penalty is \$10 per day that the Form 5500 is filed late, not to exceed the greater of \$750 per Form 5500 or if multiple reports are late, \$1,500 per plan. If a plan has more than 100 participants at the beginning of the plan year, the penalty is \$10 per day that the Form 5500 is filed late, not to exceed the greater of \$2,000 per Form 5500 or \$4,000 for multiple delinquent filings for the same plan.
 3. Failure to file under the DFVC program can result in significant penalties. The DOL can assess up to \$1,100/per day for every day the filing is late with no maximum. The DOL can also assess civil and criminal penalties for not filing. If the DOL "catches" the delinquency, the plan sponsor loses the opportunity to file under the DFVC program and is subject to the penalty discretion of the DOL. Additional penalties may be applied by the IRS.
 4. The DOL has stated that they will not grant waivers of penalties under the DFVC.

Source Links: www.dol.gov/ebsa
www.irs.gov/pub/irs-pdf/f5558.pdf
www.freeERISA.com

HIPAA Privacy and Security

	Privacy	Security
Group Size:	All - compliance dates determined based on "large" or "small" group health plan	All - compliance dates determined based on "large" or "small" group health plan
Self Funded/ Fully Insured	Both - level of compliance may vary based on self-funded vs. fully-insured and level of involvement with protected health information "PHI"; "Covered Entity" is the employer's group health plan - "group health plans" include medical, dental, vision, prescription drug, substance abuse, mental health, medical flexible spending accounts and possibly EAPs	Both - level of compliance may vary based on self-funded vs. fully-insured and level of involvement with electronic protected health information "EPI"; "Covered Entity" is the employer's group health plan - "group health plans" include medical, dental, vision, prescription drug, substance abuse, mental health, medical flexible spending accounts and possibly EAPs
Employer Requirements:	<ol style="list-style-type: none"> 1) Protect PHI in any form (verbal, written, electronic) 2) Requires new policies and procedures to manage collection, storage, handling and transmission of PHI 3) Requires development of contracts and agreements with Business Associates that handle PHI 4) Gives employees new rights over their PHI 	<ol style="list-style-type: none"> 1) Protect EPHI in any form (verbal, written, electronic) 2) Requires new policies and procedures to manage collection, storage, handling and transmission of EPHI 3) Requires amendment of contracts and agreements with Business Associates that handle PHI
Next Step for Employers:	Continue monitoring and update policies / procedures as changes occur	Train employees! <ol style="list-style-type: none"> 1) Manage Passwords - a) Have staff members choose and remember b) Change passwords regularly c) Notify IT Department if concerned that password is being improperly used by someone else 2) Identify and keep out malicious software 3) use workstations properly 4) Know sanction policies 5) Learn and follow policies and procedures
Next Steps Provided by NL	Further and ongoing communication to our clients.	Further and ongoing communication to our clients.

HIPAA Privacy and Security (Continued)

	Privacy	Security
Time Frame:	Ongoing	Ongoing
Penalties:	General - \$100 / day/ incident, up to \$25,000/ year Criminal penalties - \$50,000 + one year prison False pretenses - Up to \$100,000 + 5 years	General - \$100 / day/ incident, up to \$25,000/ year Criminal penalties - \$50,000 + one year prison False pretenses - Up to \$100,000 + 5 years
Source Links:	www.cms.hhs.gov/hipaa www.benefitslink.com	www.cms.hhs.gov/hipaa www.benefitslink.com

NOTE: Also review The HITECH Act Information below:

The American Recovery and Reinvestment Act of 2009 (ARRA) made several major changes to the HIPAA Privacy and Security rules, mandating that a new set of regulations be issued by the Department of Health and Human Services (HHS).

Covered entities, business associates and other entities will be subject to more rigorous standards when it comes to Protected Health Information (PHI). ARRA also addresses health information technology (HIT). The HIT and HIPAA provisions may be found in the Health Information Technology for Economic and Clinical Health Act (HITECH Act).

Major changes:

1. Notice of security breaches
2. HIPAA applies to Business Associates
3. "Minimum Necessary" changes
4. Stiffer penalties for noncompliance
5. Criminal Enforcement

HITECH Act

Group Size:	All
Self Funded/ Fully Insured	Both <ul style="list-style-type: none"> Level of compliance may vary based on self-funded vs. fully-insured and level of involvement with protected health information "PHI" and business associates "BAs"
Employer Requirements:	Notify BAs of compliance obligations
Next Step for Employers:	<ul style="list-style-type: none"> Update HIPAA policies and procedures and Notice of Privacy Practices, if necessary Update Plan documents if necessary Revise Business Associate Agreement documents Secure new or amended BA Agreements with all BA vendors Train group health plan's "workforce" related to any changes, if necessary
Next Steps Provided by NL	Assist with updating plan documents and ongoing updates
Time Frame:	February 17, 2010
Penalties:	<ul style="list-style-type: none"> HHS may conduct periodic audits State attorneys general may bring lawsure for HIPAA violations – damages calculated as number of violations x \$100, not to exceed \$25,000 for all identical violations in a calendar year Individuals may now be entitled to portion of HHS civil penalty collected or monetary settlements
Finalization:	Effective and compliance dates range from February 17, 2009 through January 1, 2014, depending on the subject matter. Additional guidance and regulations to be issued by the agencies involved, as applicable.
Source Links:	Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L.111-5)

NOTE: HITECH Act Information below:

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