

Welfare Benefits Plan Compliance Checklist

The year promises major reform and welfare benefit plan administrators have been given the task of implementing many of the changes. With so many changes and increased pressure, welfare plan administrators and sponsors need tools to help track and prioritize their responsibilities. This checklist summarizes the major compliance deadlines for welfare plan administrators beginning in 2009. The checklist will be periodically updated to reflect new rules and new guidance, so check http://www.marinlegal.com/pdfs/Welfare_Plan_Checklist.pdf for updates.

Due Dates For Calendar Year Plans (alternative due dates)	Compliance Item	Brief Summary of Requirements	Tasks and Compliance Links
January 1, 2009	ADA Amendments Expand Disability	<ul style="list-style-type: none"> Any condition that substantially limits a major life activity will be considered a disability, even if the individual can offset or compensate for the disability with mitigating measures Prohibits consideration of mitigating measures such as medication, medical supplies, etc., but not eyeglasses and corrective lenses, in the determination of whether an impairment substantially limits a major life activity 	<ol style="list-style-type: none"> Review any covered plans and employment policies to determine whether definitions need to be changed Review current ADA requests Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008
January 1, 2009	New Bicycle Commuting Benefit Available	<ul style="list-style-type: none"> Employers have the option to provide employees with tax free reimbursement of bicycle commuting expenses Up to \$20 per month that an employee regularly uses a bicycle for a substantial portion of travel between work and home Cannot receive other commuter benefits Cannot be part of a cafeteria plan Cannot fund with salary reductions 	<ol style="list-style-type: none"> Consider implementing new bicycle benefit Create system for cross checking use against other commuter fringe use Create new enrollment form or modify existing qualified transportation form to include bicycle benefit IRS Publication 15-B
February 17, 2009	The America Recovery and Reinvestment Act of 2009 Enhanced HIPAA Title II Enforcement	<ul style="list-style-type: none"> State Attorneys General may sue Willful neglect will trigger tiered penalties and OCR of HHS must investigate <ul style="list-style-type: none"> -individual violations \$100-\$50,000 -annual maximum \$50,000-\$1,250,000 Injured individual may receive penalties Employees can be criminally liable Sale of PHI is an unfair and deceptive act or practice under Federal Trade Commission unless: <ul style="list-style-type: none"> -Sale is for public health activities or for research where the price is not more than preparation and transmittal cost, or -Individual authorizes the sale 	<ol style="list-style-type: none"> Locate HIPAA Privacy and Security Policies and Procedures Remediate any items that have been left without clear procedures Update any changes in procedures since last draft Implement any required remedial training HR 1 Conference Report see HIPAA provisions beginning on page 473
(Due within 60 days of the end of the Plan Year)	CMS Online Notification	<ul style="list-style-type: none"> All health plans must annually disclose to CMS whether their prescription drug coverage is creditable Post May 14, 2006 Model Notices to Medicare eligible individuals posted at www.cms.hhs.gov/creditablecoverage 	General CMS Medicare Part D Creditable Coverage Information Disclosure to CMS For Creditable Coverage



Welfare Benefits Plan Compliance Checklist

Due Dates For Calendar Year Plans	Compliance Item	Brief Summary of Requirements	Tasks and Compliance Links
March 1, 2009	The America Recovery and Reinvestment Act of 2009 Temporary Commuter Benefit Increase	<ul style="list-style-type: none"> • March 1, 2009-December 31, 2010 • Increases the \$120 per month maximum exclusion for transit passes and expenses associated with vanpooling to equal the \$230 per month exclusion for parking • Does not affect qualified bicycle commuting reimbursement • 2010 amounts may be adjusted for inflation 	<ol style="list-style-type: none"> 1. Amend qualified transportation fringe benefit plan material to provide increased benefit 2. Watch for changes in 2010 3. Calendar return to pre-March 1, 2009 amount in case increase is not extended <p>See BART website for summary</p>
March 1, 2009	The America Recovery and Reinvestment Act of 2009 COBRA Subsidy Start Date	<ul style="list-style-type: none"> • Employee (and families of employees) who are involuntarily terminated from September 1, 2008 through December 31, 2009 are eligible for the subsidy • COBRA premiums for qualified beneficiaries eligible for the subsidy who elected COBRA coverage prior 2/17/2009 will be reduced by 65% for 9 months • COBRA qualified beneficiaries eligible for the subsidy as a result of a termination prior to 2/17/2009 that did not elect COBRA coverage are given an additional 60 days to elect COBRA and to receive the premium subsidy, with COBRA coverage beginning March 1, 2009, but the COBRA period is measured from the COBRA qualifying date • Phase-out begins for AGI between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers) 	<ol style="list-style-type: none"> 4. Compile information 5. Review COBRA files to ensure information and data is accurate 6. Review coding on reasons for termination to ensure information is accurate 7. Create address list for Subsidy Notice 8. See April 18, 2009 for Model Notices <p>COBRA Q&A: Admin. & Eligibility</p> <p>COBRA Continuation Coverage Assistance Under ARRA09</p>
April 1, 2009	Children's Health Insurance Program Reauthorization Act of 2009 Special Enrollment Rights	<ul style="list-style-type: none"> • Group health plans must permit employees and dependents who are "eligible but not enrolled for coverage" under an employer plan to enroll if: the employee's or dependent's Medicaid or CHIP coverage is terminated as a result of loss of eligibility; or the employee or dependent becomes eligible for a Medicaid or CHIP subsidy • Notice of event required within 60 days of special enrollment 	<ol style="list-style-type: none"> 1. Amend cafeteria plan to include this change of status event upon 60 days notice 2. Revise special enrollment procedures to accommodate change 3. Consider adding a sentence to group health plan special enrollment rights description <p>Technical Explanation of the Code Provisions of HR 2</p>
April 18, 2009	The America Recovery and Reinvestment Act of 2009 Expected due date of Notice of COBRA Subsidy	<ul style="list-style-type: none"> • DOL model notice of subsidized COBRA premiums mailed by April 18, 2009 • Four Notices <ul style="list-style-type: none"> -General COBRA (Full) on after 2/17/09 -General COBRA Notice (Abbreviated) elected COBRA based on election notice delivered prior to 2/17/09 -Alternative Notice for state extensions -Notice in Connection with Extended Election Period for assistance eligible individuals that did not elect COBRA or terminated COBRA 	<ol style="list-style-type: none"> 1. Create mailing list as described above prior to effective date 2. Update COBRA Notices 3. Mail required additional notices by effective date 4. Watch for guidance on claiming credit <p>Notices</p>



Welfare Benefits Plan Compliance Checklist

Due Dates For Calendar Year Plans	Compliance Item	Brief Summary of Requirements	Tasks and Compliance Links
April 30, 2009	New Form 941 Deadline	<ul style="list-style-type: none"> Line 12a is the line to claim COBRA subsidy reimbursement Line 12b reports subsidy eligible individuals Resulting overpayments can be applied to the next return or refunded Claiming overpayment at the end of the quarter instead of offsetting employment tax payments is permitted Employer may refund employee overpayment (within 60 days) or apply against future payment that is reasonably believed will be used within 180 days 	<ol style="list-style-type: none"> Determine which quarter to apply subsidy reimbursement to and file Form 941X if necessary (current or future periods) Expect offset for unpaid employment taxes Review forms and contact payroll services to coordinate Proof of employee 35% payment, employer 65% payment and attestation to involuntary termination must be recorded <p>COBRA Questions and Answers: Form Preparation</p>
April 30, 2009	Online Registration for MSP Reporting	<ul style="list-style-type: none"> Applied to RRE or Responsible Reporting Entities <ul style="list-style-type: none"> -any entity serving as an insurer or third party administrator for a group health plan and, -in the case of a group health plan that is self-insured and self-administered, a plan administrator or fiduciary HRA reporting delayed until 4th Quarter 2010. 	<ol style="list-style-type: none"> Contact TPA and insurers to determine what information they will need Clarify plan's obligation regarding information needed for reporting Self-funded self-administered plans must register <p>Link to Registration Process</p>
July 31, 2009 (Due within 7 months of the end of the Plan Year)	DOL Form 5500	<ul style="list-style-type: none"> All ERISA plans with 100+ participants Separate 5500 for each plan based on plan documentation Small unfunded or insured plan exemption if less than 100 participants at the beginning of the Plan Year 	<ol style="list-style-type: none"> Consider adopting a wrap document to reduce administrative costs Avoid using TPA as conduit for premiums in plan relying on small insured plan exemption <p>5500 Forms and Instructions</p>
September 30, 2009 (Due within 2-months of the Form 5500 Deadline)	DOL Summary Annual Report (SAR)	<ul style="list-style-type: none"> All form 5500 filers except totally unfunded plans Generally, same distribution as SPD 	<p>Overview of ERISA Title I Basic Disclosure Requirements</p>
October 1, 2009	Deadline for New Group Health Plan MSP Reporting	<ul style="list-style-type: none"> All GHP RREs will be submitting Section 111 production files by this date Information will identify situations where group health plans are or have been primary to Medicare Will submit information to HHS based on instructions provided \$1,000 per day penalty for noncompliance 	<p>Introduction to Section 111 Mandatory Medicare Secondary Payer Reporting</p>
November 15, 2009	Medicare Part D Employee Disclosure of Creditable Coverage	<ul style="list-style-type: none"> Annual notice to all participants by November 15th May be before November 15th, often included as part of open enrollment 	<p>Creditable Coverage Guidance & Model Disclosure Notices</p>



Welfare Benefits Plan Compliance Checklist

Due Dates For Calendar Year Plans	Compliance Item	Brief Summary of Requirements	Tasks and Compliance Links
January 1, 2010 (Plan Years beginning or after May 21, 2009)	GINA-	<ul style="list-style-type: none"> • Bans the use of genetic information for health insurance and employment purposes • Prohibits group health plans and health insurance issuers from discriminating on the basis of genetic information with respect to eligibility, premiums, and contributions 	<ol style="list-style-type: none"> 1. Review plan structure for any violations 2. Review any health assessment questions to eliminate any questions that relate to genetic predispositions 3. Adopt amendments <p>Proposed Regulations</p>
January 1, 2010 (First plan year after October 1, 2009/ later of January 1, 2010 or the collective bargaining agreement's expiration date if collectively bargained)	The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008	<ul style="list-style-type: none"> • Requires full parity between mental health/substance abuse benefits and the medical/surgical benefits offered under a group health plan <ul style="list-style-type: none"> -Financial requirements and treatment exceptions -Network requirements -Cost sharing -Medical necessity • Does not require plans to provide mental health or substance abuse benefits • Applies to group health plans with over 50 participants 	<ol style="list-style-type: none"> 1. Review mental health and substance abuse benefits in health plans 2. Check EAP document for any EAP that is a group health plan to make sure that no health coverages provide greater benefits than substance abuse and mental health 3. Place "savings" language in wrap SPD <p>CMS Summary of MHPA</p>
January 1, 2010 (First plan year beginning after October 7, 2009)	Michelle's Law	<ul style="list-style-type: none"> • H.R. 2851 • Applies to group health plans • Requires group health plans to continue coverage for dependent college students who take medically necessary medical leave for up to one year or, if earlier, the date on which coverage would otherwise end under the plan • Notice must be included with disclosures related to certification of student status 	<ol style="list-style-type: none"> 1. Review dependent eligibility information in plans and student status certifications and forms 2. Amend dependent health plan eligibility and forms 3. Consider conforming amendments for other coverage types 4. Amendments adopted before the rules take effect <p>Congressional Research Service Summary</p>
February 17, 2010	The America Recovery and Reinvestment Act of 2009 HIPAA Title II Breach Notification Becomes Effective	<ul style="list-style-type: none"> • Breach Notification by Covered Entity for unauthorized PHI use, access, or disclosure • By first class mail (or e-mail if agreed to by the individual) to each individual whose PHI has been breached • no unreasonable delay with 60 day outside limit on notice • Conspicuous notice on Website, print, or broadcast media and toll-free access if: <ul style="list-style-type: none"> -contact information is outdated, and -breach impacts more than 10 individuals • In prominent newspaper or broadcast media and to HHS if breach involves <ul style="list-style-type: none"> - 500 or more individuals, and -unencrypted PHI • Annually to Secretary of HHS for unencrypted PHI (less than 500) 	<ol style="list-style-type: none"> 1. Review HIPAA policies and procedures addressing breach notification 2. Update breach notification procedures 3. Add breach notification in states where state law didn't already require notifications 4. Review encryption procedures and policies and consider revisions in light of new disclosure requirements <p>HR 1 Conference Report see HIPAA provisions beginning on page 473</p>



Welfare Benefits Plan Compliance Checklist

Due Dates For Calendar Year Plans	Compliance Item	Brief Summary of Requirements	Tasks and Compliance Links
February 17, 2010	The America Recovery and Reinvestment Act of 2009 HIPAA Title II Becomes Directly Applicable to Business Associates	<ul style="list-style-type: none"> Business Associates must implement safeguards and adopt written policies and procedures Direct civil and criminal liability Business Associate Agreements must be revised Business Associate now must cure Covered Entity breach Data transmission requires Business Associate Agreements (impacting health information organizations and exchanges) 	<ol style="list-style-type: none"> 1. Collect all business associate agreements and contracts that address HIPAA privacy and security 2. Negotiate changes to indemnifications and impacted provisions 3. Self-funded health plans will want to coordinate with TPA to make sure policies and procedures are consistent <p>HR 1 Conference Report see HIPAA provisions beginning on page 473</p>
February 17, 2010	The America Recovery and Reinvestment Act of 2009 HIPAA Privacy and Security Changes	<ul style="list-style-type: none"> Individuals can prohibit disclosure to a health plan for items paid out of pocket plus other clarifications and enhancement on individual rights New “minimum necessary” standards Additional accounting requirements for electronic health information with accountable period changed to three years 	<ol style="list-style-type: none"> 1. Update HIPAA Title II policies and procedures 2. Re-train all employees with access to PHI <p>HR 1 Conference Report see HIPAA provisions beginning on page 473</p>
January 1, 2011 (First Plan Year beginning after the date on which model notices are issued)	Children’s Health Insurance Program Reauthorization Act of 2009 Notice of Subsidy and Special Enrollment Rights	<ul style="list-style-type: none"> Notices of subsidy and enrollment rights Model by DOL and HHS required by February 4, 2010 Group health plans required to distribute notices, but may coordinate notice with <ul style="list-style-type: none"> -Eligibility for enrollment under the plan -Open enrollment materials, or -Summary Plan Description \$100 a day for failure to comply with the notice and disclosure requirements Applies for each violation per participant or beneficiary 	<ol style="list-style-type: none"> 1. Add model notices to SPD and open enrollment material 2. Watch for interaction with state law and state based notice requirements <p>Technical Explanation of the Code Provisions of HR 2</p>

Links

- [Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008](http://www.eeoc.gov/ada/amendments_notice.html) www.eeoc.gov/ada/amendments_notice.html
- [IRS Publication 15-B](http://www.irs.gov/publications/p15b/ix01.html) www.irs.gov/publications/p15b/ix01.html
- [HR 1 Conference Report](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr016.111.pdf) http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr016.111.pdf
- [General CMS Medicare Part D Creditable Coverage Information](http://www.cms.hhs.gov/creditablecoverage/) www.cms.hhs.gov/creditablecoverage/
- [Disclosure to CMS For Creditable Coverage](http://www.cms.hhs.gov/CreditableCoverage/45_CCDisclosureForm.asp) www.cms.hhs.gov/CreditableCoverage/45_CCDisclosureForm.asp
- [BART website](http://www.bart.gov/news/articles/2009/news20090220b.aspx) www.bart.gov/news/articles/2009/news20090220b.aspx
- [COBRA Continuation Coverage Assistance Under The American Recovery And Reinvestment Act Of 2009](http://www.dol.gov/ebsa/COBRA.html) www.dol.gov/ebsa/COBRA.html
- [Technical Explanation of the Code Provisions of HR 2](http://www.house.gov/jct/x-3-09.pdf) www.house.gov/jct/x-3-09.pdf
- [Notices](http://www.dol.gov/ebsa/COBRAmode notice.html) http://www.dol.gov/ebsa/COBRAmode notice.html
- [COBRA Questions and Answers: Form Preparation](http://www.irs.gov/newsroom/article/0,,id=205373,00.html) http://www.irs.gov/newsroom/article/0,,id=205373,00.html
- [Link to Registration Process](http://www.cms.hhs.gov/MandatoryInsRep/) www.cms.hhs.gov/MandatoryInsRep/
- [5500 Forms and Instructions](http://www.dol.gov/EBSA/5500MAIN.HTML) www.dol.gov/EBSA/5500MAIN.HTML
- [Overview of ERISA Title I Basic Disclosure Requirements](http://www.dol.gov/ebsa/pdf/rdguide.pdf) www.dol.gov/ebsa/pdf/rdguide.pdf
- [Introduction to Section 111 Mandatory Medicare Secondary Payer Reporting](http://www.cms.hhs.gov/MandatoryInsRep/Downloads/IntroToSection111.pdf) www.cms.hhs.gov/MandatoryInsRep/Downloads/IntroToSection111.pdf
- [Creditable Coverage Guidance & Model Disclosure Notices](http://www.cms.hhs.gov/CreditableCoverage/08_CCAfterJanuary1.asp#TopOfPage) www.cms.hhs.gov/CreditableCoverage/08_CCAfterJanuary1.asp#TopOfPage
- [Proposed Regulations](http://edocket.access.gpo.gov/2009/pdf/E9-4221.pdf) http://edocket.access.gpo.gov/2009/pdf/E9-4221.pdf
- [CMS Summary of MHPA](http://www.cms.hhs.gov/healthinsreformforconsume/04_thementalhealthparityact.asp) www.cms.hhs.gov/healthinsreformforconsume/04_thementalhealthparityact.asp
- [Congressional Research Service Summary](http://www.govtrack.us/congress/bill.xpd?bill=h110-2851&tab=summary) www.govtrack.us/congress/bill.xpd?bill=h110-2851&tab=summary