Employee Benefits: End of the Year Checklist & Clean-Up

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Discussion

- Introductions
- INCompliance Benefits Consulting
- Benefit Plan Compensation
- Discussion – Employee Benefits End of the Year Clean Up Issues

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INCompliance Benefits Consulting

- INCompliance is a consulting firm wholly-owned by, and affiliated with Bricker & Eckler LLP
- INCompliance provides employee benefits consulting services alongside benefits legal services provided by Bricker & Eckler
- A new & better way to provide benefits services

Value Proposition - Client's benefits consultants and benefits attorneys work together in a holistic approach to streamline communication, improve efficiency, lower cost and provide better client service

- The client always comes first
  - No acceptance of override payments
- Confidence in, and trust between, the plan sponsor and its benefits consultants and attorneys

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Expertise & Services Provided

Account Management

•Day-to-day vendor management

•Plan implementation

•Project management

Financial

•Benefit plan underwriting and pricing

•Funding evaluation: self-funded, fully insured, minimum premium

Management

•Sales and service teams

•Customer service and claims team management

Contractual

•Policy and contract language negotiation

•Contract and benefit booklet review

Proposal Issuance and Analysis

•Request for proposal preparation

•Analysis of financial offer, plan administration, network/utilization management, cost control programs, claims/customer service, account management and plan administration.

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Benefits Consulting Team

Tom Scurfield, CEBS

- Consultant – 35+ years experience
- Past Experience
  - Senior Vice President and Health & Welfare Practice Leader for Aon – Cleveland
  - General Manager and Region Head of Sales Middle Market East Region – Aetna
  - Vice President – innovator and driver of consumer-driven health plans – Definity Health
  - Regional Vice President, National Accounts – Aetna
  - BA, Ohio Wesleyan University
  - Certified Employee Benefits Specialist, Chartered Life Underwriter

Kathy Butera

- Consultant – 25+ years experience
- Past Experience
  - Vice President – Aon Risk Services
  - National Account Executive – Aetna
  - Account Manager – Definity Health
  - Provider Relations Representative, Account Executive, Supervisor Consumer Affairs – Blue Cross & Blue Shield of Ohio
  - BA, Mount Union College; MBA, Cleveland State University

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Common Issues with Current Broker/Consulting Model

- Compensation/commissions paid by vendors not plan sponsor
  - Broker/consultant compensation incentives for meeting vendor sales volume target and for retaining business with vendors
- Lack of transparency in fees and services
  - Most plan sponsors do not know broker/consultants total compensation for their plan

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Understanding Health Plan Broker/Consultant Compensation

Real World Example

- Client with 300 employees covered in its health plan, also offers dental, vision, life and disability.
- Consultant compensation:
  - Paid $51,000 in direct commissions annually
  - Received $49,000 in incentive compensation from insurance company for retaining business with them.
- Consultant incentivized to place client's benefits with providers that provide greatest override commission, not the provider who best fits the needs of the client.

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Understanding Fees Paid

- Insured benefits
  - Commissions should be listed on Schedule A
- Self insured benefits: Some fees will be listed on Form 5500, Schedule C, but not always.
  - Stop loss is not a benefit, therefore Schedule A not required and stop loss commissions may be hidden
- Recommend broker/consulting agreement include language prohibiting broker from accepting any vendor incentive compensation.
- Ask your broker/consultant for full disclosure of all commissions and vendor incentive compensation they receive.

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Open Enrollment Clean Up

- Most done electronically - Double check for employees with no access to computer at work to make sure electronic distribution rules for documents were followed.
  - E.g., Janitors, bus drivers
- Notices and Summaries Sent
  - Summary of Benefits and Coverage (SBC)
  - Notice of special enrollment rights under HIPAA
  - Women's Health and Cancer Rights Act Notice
  - CHIP notice
  - Updated COBRA notices
  - Notice of Exchange
  - HIPAA Notice of Privacy Practices
  - Medicare Part D notice
  - Newborns' and Mothers' Health Protection Act Notice
  - Wellness program notice
  - Mental Health Parity & Addiction Equity Act Notice

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Open Enrollment Clean Up

- Dealing with missing (or non) elections
  - Are prior year elections carried over, or is the lack of an election treated as an election for no benefits?
  - Does this match the Plan document?
- Confirm Nondiscrimination testing performed, written report received
- Health SPD reviews
  - Changes made in prior years, carried over to new document?
  - Changes for this year added?
- Documentation for spousal surcharges received for each participant?
- Confirm Stop-loss eligibility provisions match plan eligibility
  - Ensures stop-loss coverage will apply for all employees enrolled
- Calendar a self-audit for next year

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Open Enrollment Clean Up

- Service Agreements with Consultant/Broker
  - Language prohibiting override compensation?
    - If not, is there language requiring the consultant to provide in writing all compensation received, including overrides? Most contracts state information will only be provided upon request
  - Do indemnification and confidentiality provisions apply to both parties (not just the client indemnifying the Consultant)
- Eligibility Data Loading
  - Confirm plan revisions and eligibility are loaded in plan administrators system so plan is ready to go on January 1
  - Plan Set-Up Completed?
  - ID Card Mail Date
    - Confirm employees will have new cards so they can use pharmacy immediately in new year (prescriptions may be needed on January 1st or 2nd)

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Public Schools

- Signed cafeteria plan documents
  - Can ***only be*** prospective
- American Fidelity document review issues
  - CBA, Health Plan, etc.
- Cash Opt-out Language

For employers subject to ERISA, have you updated the Wrap Plan document?

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SECTION 12 - WHEN COVERAGE ENDS

What this section includes:

- Circumstances that cause coverage to end.
- How to continue coverage after it ends.

Your entitlement to Benefits automatically ends on the date that coverage ends, even if you are hospitalized or are otherwise receiving medical treatment on that date.

When your coverage ends, [redacted] will still pay claims for Covered Health Services that you received before your coverage ended. However, once your coverage ends, Benefits are not provided for health services that you receive after coverage ended, even if the underlying medical condition occurred before your coverage ended.

Your coverage under the Plan will end on the earliest of:

- The last day of the month your employment with the Company ends.
- The date the Plan ends.
- The last day of the month you stop making the required contributions.
- The last day of the month you no longer meet the eligibility requirements, either under the traditional definition or look-back definition.
- The last day of the month UnitedHealthcare receives written notice from [redacted] to end your coverage, or the date requested in the notice, if later.
- The last day of the month you retire or are pensioned under the Plan, unless specific coverage is available for retired or pensioned persons and you are eligible for that coverage.

Coverage for your eligible Dependents will end on the earliest of:

- The date your coverage ends.
- The last day of the month you stop making the required contributions.
- The last day of the month UnitedHealthcare receives written notice from [redacted] to end your coverage, or the date requested in the notice, if later.
- The date which your legally married spouse, domestic partner or child is no longer considered an eligible dependent.
- The last day of calendar year your Dependents no longer qualify as Dependents under this Plan.

Other Events Ending Your Coverage

The Plan will provide at least thirty days' prior written notice to you that your coverage will end on the date identified in the notice if you commit an act, practice, or omission that constituted fraud, or an intentional misrepresentation of a material fact including, but not limited to, knowingly providing incorrect information relating to another person's eligibility

shall not be effective prior to the date such form is submitted to the Employer. Any Election Form submitted by a Participant in accordance with this Section shall remain in effect until the earlier of the following dates: the date the Participant terminates participation in the Plan; or, the effective date of a subsequently filed Election Form.

A Participant's right to elect certain benefit coverage shall be limited hereunder to the extent such rights are limited in the Policy. Furthermore, a Participant will not be entitled to revoke an election after a period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage unless both the revocation and the new election are on account of and consistent with a change in status, or other allowable events, as determined by Section 125 of the Internal Revenue Code and the regulations thereunder.

3.03 TERMINATION OF PARTICIPATION: A Participant shall continue to participate in the Plan until the earlier of the following dates:

a. The date the Participant terminates employment by death, disability, retirement or other separation from service; or
b. The date the Participant ceases to work for the Employer as an eligible Employee; or
c. The date of termination of the Plan; or
d. The first date a Participant fails to pay required contributions while on a leave of absence.

3.04 SEPARATION FROM SERVICE: The existing elections of an Employee who separates from the employment service of the Employer shall be deemed to be automatically terminated and the Employee will not receive benefits for the remaining portion of the Plan Year.

3.05 QUALIFYING LEAVE UNDER FAMILY LEAVE ACT: Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying unpaid leave under the Family and Medical Leave Act of 1993 (FMLA), to the extent required by the FMLA, the Employer will continue to maintain the Participant's existing coverage under the Plan with respect to benefits under Section V and Section VIII of the Plan on the same terms and conditions as though he were still an active Employee. If the Employee opts to continue his coverage, the Employee may pay his Elective Contribution with after-tax dollars while on leave (or pre-tax dollars to the extent he receives compensation during the leave), or the Employee may be given the option to pre-pay all or a portion of his Elective Contribution for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation (including unused sick days or vacation) by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year), or via other arrangements agreed upon between the Employee and the Administrator (e.g., the Administrator may fund coverage during the leave and withhold amounts upon the Employee's return). Upon return from such leave, the Employee will be permitted to reenter the Plan on the same basis the Employee was participating in the Plan prior to his leave, or as otherwise required by the FMLA.

SECTION IV

CONTRIBUTIONS

4.01 EMPLOYER CONTRIBUTIONS: The Employer may pay the costs of the benefits elected under the Plan with funds from the sources indicated in Item E of the Adoption Agreement. The Employer

How to Enroll

To enroll, call Human Resources at [redacted] within 31 days of the date you first become eligible for medical coverage under this Plan. If you do not enroll within 31 days, you will need to wait until the next annual Open Enrollment to make your benefit elections, unless you experience a change in status event as summarized below in Changing Your Coverage.

Each year during annual Open Enrollment, you have the opportunity to review and change your medical coverage election. Any changes you make during Open Enrollment will become effective the following July 1.

Important
If you wish to change your benefit elections following your marriage, birth, adoption of a child, placement for adoption of a child or other status change, you must contact Human Resources within 31 days of the event. Otherwise, you will need to wait until the next annual Open Enrollment to change your elections.

When Coverage Begins

Once Human Resources receives your properly completed enrollment, coverage will begin on the first day of the month following your date of hire. Coverage for your Dependents will start on the date your coverage begins, provided you have enrolled them in a timely manner.

Coverage for a Spouse or Dependent stepchild that you acquire via marriage becomes effective the date of your marriage, provided you notify Human Resources within 31 days of your marriage. Coverage for Dependent children acquired through birth, adoption, or placement for adoption is effective the date of the family status change, provided you notify Human Resources within 31 days of the birth, adoption, or placement.

If You Are Hospitalized When Your Coverage Begins

If you are an inpatient in a Hospital, Skilled Nursing Facility or Inpatient Rehabilitation Facility on the day your coverage begins, the Plan will pay Benefits for Covered Health Services related to that Inpatient Stay as long as you receive Covered Health Services in accordance with the terms of the Plan.

You should notify UnitedHealthcare within 48 hours of the day your coverage begins, or as soon as is reasonably possible. Network Benefits are available only if you receive Covered Health Services from Network providers.

Changing Your Coverage

You may make coverage changes during the year only if you experience a change in status. The change in coverage must be consistent with the change in status (e.g., you cover your Spouse following your marriage, your child following an adoption, etc.). The following are considered status changes for purposes of the Plan:

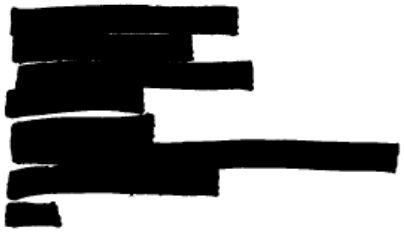
- your marriage, divorce, legal separation or annulment;
- the birth, adoption, placement for adoption or legal guardianship of a child;

SECTION 125 FLEXIBLE BENEFIT PLAN
ADOPTION AGREEMENT

The undersigned Employer hereby adopts the Section 125 Flexible Benefit Plan for those Employees who shall qualify as Participants hereunder. The Employer hereby selects the following Plan specifications:

A. EMPLOYER INFORMATION

Name of Employer:
Address:



Employer Identification Number:
Nature of Business:
Name of Plan:

Plan Number:

B. EFFECTIVE DATE

Original effective date of the Plan:	January 1, 2010
If Amendment to existing plan, effective date of amendment:	January 1, 2016

C. ELIGIBILITY REQUIREMENTS FOR PARTICIPATION

Eligibility requirements for each component plan under this Section 125 document will be applicable and, if different, will be listed in Item F.

Length of Service:	Enrollment for benefits is only allowed at the start of the new plan year.
Retiree Wording:	N/A
Minimum Hours:	All employees with All employees contracted to work 6 hours or more during the entire school year. hours of service or more each week. An hour of service is each hour for which an employee receives, or is entitled to receive, payment for performance of duties for the Employer.
Age:	Minimum age of 0 years.

Typo + does not match — Collective bargaining agreement

D. PLAN YEAR

The current plan year will begin on January 1, 2016 and end on December 31, 2016. Each subsequent plan year will begin on January 1 and end on December 31.

SAMPLE PLAN DOCUMENT
SECTION 125
FLEXIBLE BENEFIT PLAN

Version 10/14 of the Sample Plan Document includes the following changes:

Added 4.02(h) – Cancellation due to reduction in hours of service

Added 4.02(i) – Cancellation due to enrollment in a Qualified Health Plan

The attached plan document and adoption agreement are being provided for illustrative purposes only. Because of differences in facts, circumstances, and the laws of the various states, interested parties should consult their own attorneys. This document is intended as a guide only, for use by local counsel.

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Fiduciary End-of-the-Year Checklist

- Review Fees
  - For both retirement plans and health/welfare plans
- Signed Copies of all Documents
  - Wrap or cafeteria plan amendments or restatements
    - With a Wrap Plan you only need to file 1 Form 5500
  - If none, make a note in the minutes
- Committee Charter Reviewed
- Investment Policy Statement
- Fiduciary Training Completed
- Vendor Performance Reviewed

1094/1095 Reporting

- Due January 31
  - No extension yet as in past years
  - No more Transition Relief
- While the IRS made no substantial changes to Form 1095-C, the “Instructions for Recipient” include a new paragraph with a link to an IRS webpage on the ACA’s tax provisions for individuals and families.
- The instructions confirm employers must provide Forms 1095-C to employees by January 31, 2018, and file Forms 1094-C and 1095-C with the IRS by April 2, 2018, because March 31 falls on a Saturday (paper filings are due by February 28, 2018).
- According to the 2017 draft instructions, if the amount of the employee required contribution on line 15 of Form 1095-C is off by $100 or less, it may fall under a safe harbor for certain de minimis errors. In that case, the employer need not correct the form to avoid penalties. (Additional information on this safe harbor is in IRS Notice 2017-9.)
- The IRS verified that there is no Series 2 indicator code for line 16 of Form 1095-C to indicate that a full-time employee did not enroll in or waived the coverage offered.
- The instructions provide reporting penalty amounts for 2017.
- The instructions indicate the “Plan Start Month” continues to be optional and can be left blank on Form 1095-C.
- Paper returns must be printed in landscape format.

Employer Mandate Penalty: Form 226J

- Letters being sent out
- If received, review records and can appeal penalty

Questions?

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