

2010 ERISA Advisory Council Healthcare Literacy

Issue Chair: Theresa M. Atanasio

Issue Vice Chair: Michael F. Tomasek

Drafting Team: Sewin Chan, Karin Feldman, Mildeen Worrell

Description

With the certainty of significant rapid change to the healthcare landscape given the promulgation of the Patient Protection and Affordable Care Act and Health Care and Education Affordability Reconciliation Act (collectively “PPACA”), the importance of abating the uncertainty Americans experience in navigating the complex U.S. health care system is vitally important.

Prior to the passage of PPACA, with respect to health and welfare benefits, employees and other consumers have often struggled with the informed selection and use of healthcare coverage, products and services. The majority of workers have difficulties in making decisions about the extent and type of coverage appropriate, where to go for treatment and where they should start in addressing their existing medical conditions.

In addition to active employees, several studies have shown that retirees struggle with how much they will need to save in order to address health care concerns while in retirement, how to navigate employer retiree health plans, if available, Medicare and other government health care programs.

Under PPACA, the Secretary of Labor is tasked with developing standards for use by group health plans and group health issuers in compiling and providing participants a summary of benefits and coverage under the applicable plan or coverage. The Secretary is to consult with various interested parties throughout the industry to develop these materials. This summary of benefits and coverage must provide for uniform definitions of standard insurance and medical terms. In addition to the development of healthcare literacy materials by the Department of Labor, the House of Representatives has indicated that it plans to hold hearings on the impact of the reform on large employers. These initiatives illustrate a renewed focus on health care literacy and the impact of the new health care system on employees and employers.

Having studied Retirement Literacy and the Streamlining of Disclosures, the Council understands that oftentimes, no matter how brief and well-written, disclosures do not resonate with participants or promote a true understanding of benefit choices and limitations. Perhaps of the same mind, employers are increasingly utilizing behavioral economics techniques, establishing onsite clinics and creating innovative wellness program features to improve welfare plan participation and to maximize the value workers receive from their benefit plans.

The Council plans to study Health Care Literacy in order to (i) assist the Department of Labor (the “Department”) in its development of standards for use by group health plans and issuers, (ii) determine whether the Department should take proactive steps to assist employers in their innovative efforts to promote health care literacy and efficient employee use of available coverage outside of written disclosures or materials and/or (iii) whether the Department should provide tools or other resources to employees and retirees that promote health care literacy, and if so, in what form.

Objective and Scope

The Council's examination should culminate with recommendations for the Secretary of the Department of Labor in connection with the following:

What should be the standards for use by group health plans and group health issuers in compiling and providing participants a summary of benefits and coverage under the applicable plan or coverage?

What uniform definitions of standard insurance terms and medical terms should be used to best help consumers compare health insurance coverage and understand the terms of, and exception to, coverage?

How does the Department's current proposal to change the definition of "welfare benefit plan" impact the discussion regarding the aforementioned standards? What impact could any change in definition have on employers' ability to develop programs, tools and other vehicles that foster the best use of benefits or health care literacy in general?

Is the current information available to health care consumers adequate to help them make informed decisions regarding availability of options and the best choices for them and their families?

Aside from written disclosures and materials, what are best practices and effective tools in promoting true health care literacy?

Are there provisions under applicable regulations and guidance that could impede employers in providing innovative solutions, tools, information, wellness programs, behavioral economic initiatives, onsite clinics, etc.? And if so, what steps could the Department take to remove those impediments?

Should the Department provide guidance on best practices for using various behavioral economics techniques to facilitate improved outcomes in terms of choosing coverage and using coverage via deploying choice architecture, loss aversion, overcoming familiarity bias, hyperbolic discounting, etc.?

Should the Department provide tools to employees and retirees on its website that foster improved health behaviors and help bend the cost curve for everyone?

How can the Department facilitate a better understanding by employees of what they will need with respect to health care in retirement?

Should the Department provide information regarding the role of voluntary products, and in particular long-term care insurance? And if yes, what information and in what form?