

From: [Doug Lemmerman](#)
To: [E-OHPSCA2715.EBSA](#)
Cc: [Ben Yeager](#); [Dennis Casey](#)
Subject: Summary of Benefits comment
Date: Wednesday, October 12, 2011 5:26:05 PM

Dear Department of Labor,

I work for a third party administrator that administers about forty self-funded ERISA medical plans with about 20,000 covered employees and their dependents. I note that time was allowed for comment on the recent release of guidance on the Summary of Benefits and Coverage. Given the format of the template summary and the effective date for its implementation, please consider my comments below. With several key issues unresolved, we are requesting a delay in the effective date of the Summary of Benefits requirement for at least a year, and then have it applicable only at renewal of the group to allow time for the following issues to be resolved/corrected.

1. It appears that the proposed Summary of Benefits template was created from the fully-insured point of view, but the vast majority of US health plans are self-funded. The error is understandable since NAIC works with state insurance departments in their management of the fully-insured health marketplace, so its approach envisions fully-insured plans. Under ERISA's preemption provisions, state insurance departments generally do not have authority over self-funded welfare benefit plans.
2. The terminology used in self-funded programs is not the same as that used by insurance carriers in their fully-insured policies of insurance.
3. The template is not user friendly for the self-funded plan sponsor nor for third party administrators that will be managing the process for their employer clients. Using the template in the suggested version from the NAIC, with persons who will be covered by a self-funded program, could lead them to believe that the program they are looking at is a fully-insured program, which it would not be. Providing a self-funded version of the Summary will help dissuade them of such a belief. Keeping this clarification has been a priority of NAIC for years, so proceeding with the template would be a step backward.
4. Finally, a lot of employee time will be required to create these Summaries. In the self-funded market each plan has customized features. They are not the standard plans used by many insurance carriers. Each summary will have to be individually crafted at a significant expense to the self-funded employer. If an employer has an indemnity plan, PPO plan, and a High Deductible HSA-compatible plan, with 4 tiers of coverage each (single, single and spouse, single and children, and family) the number of separate Summaries multiplies quickly.

We thank you for your consideration to give us the time and opportunity to improve compliance with the changes that fit self-funded benefit plans and we look forward to

a positive response to our suggestions.

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