

From: [John Mitchell](#)
To: [E-OHPSCA2715.EBSA](#)
Subject: Summary of Benefits - comments
Date: Wednesday, October 12, 2011 3:06:48 PM

Dear US Department of Labor,

PPACA requirements are putting a significant strain on the benefits industry and the current March 23, 2012 deadline for benefit summaries is fast approaching. We desire to help our clients be in full compliance with the regulations.

Many issues remain currently unresolved, and we respectfully request a delay in the effective date of the Summary of Benefits requirement. We think the implementation of the Summary of Benefits requirement should be done on the first day of the plan year after January 1, 2012. Below are some of the key issues we have discussed and find outstanding, most of which relate specifically to the differences between insured and self-funded plans:

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 frequently does not coincide with 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 help improve compliance for self-funded benefit plans.

Sincerely,

John D. Mitchell
President

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