PRESBYTERIAN

June 2, 2011

Ladies and Gentlemen:

This comment is submitted on behalf of Presbyterian Healthcare Services ("PHS"), a not-for-profit integrated healthcare delivery network in New Mexico. PHS and its for profit affiliate, Presbyterian Health Plan (collectively, "PHS") constitute one of the largest private employers in New Mexico with approximately 8,600 employees. All PHS employees have work email addresses. PHS also has computer kiosks where employees can access the PHS intranet.

The numbers in our comments refer to the questions raised in the RFI.

9. The current electronic disclosure safe harbor should be revised because the requirement that a participant can receive ERISA required disclosure by email only if using a computer is an "integral part" of his or her work duties, or if the participant affirmatively consents, is unduly restrictive. Even participants who do not use a computer at work can and do routinely receive email communications. Since 2002 when the safe harbor was issued, free email services such as gmail, yahoo and hotmail have become much more available and allow users to receive relatively large attachments (25 MB for gmail and yahoo, and 10 MB for hotmail).

Sending paper disclosures is costly. Our annual cost for the employee health plan enrollment alone is approximately $ 29,000 for printing and postage, plus an additional cost for collating and mailing. This does not include the expense of all of the other required disclosures for our other employee benefit plans.

PHS operations are almost fully electronic. For this reason, we think our employees are more accustomed to retaining and referring to electronic documents than paper documents. The following is a list of some of the electronic processes at PHS: patient records, Human Resources Department records, employee health plan enrollments, reimbursements and status changes, introductory meetings, employee credentialing, training, goal setting and performance reviews, payroll, employee emergency contact information, and welfare benefit plan beneficiary information.

It is very difficult to obtain the affirmative participant consent required by the current regulations' safe harbor alternative to the requirement that participants use the computer as an integral part of their work. We do not think that just because employees do not affirmatively consent means they are not receiving their email.

10. The safe harbor should be revised to allow all ERISA Title I disclosures to be provided by email (with a cover email explaining the significance of the document) after the initial disclosures described below are provided.

We suggest that the Plan Administrator be required to meet initial disclosure requirements (a), (b) and (c):

a. Letter Mailed to Last Known Address - The Plan Administrator mails a letter to the individual's last known address identifying the email address that will be used for all future ERISA Title I required disclosures, and the letter also includes:

The Plan Administrator's telephone and email contact information for individuals to:

- for active employees - opt out of electronic disclosure;
- for former employees and beneficiaries - opt into electronic disclosure;
- change the address to be used for electronic disclosure; or
- request a free paper copy of any disclosure.

b. Test Email to Email Address - For active employees who have not opted out, the Plan Administrator will send a test email to the email address it intends to use for ERISA communications; and

c. The Plan Administrator repeats (a) and (b) every five years, and when an employee leaves employment.

Any time an email is sent by the Plan Administrator, to test an email address or to furnish a disclosure electronically, if a reply message is received indicating the email was not received by the recipient, the individual is treated as though he or she opted out.

11. No, uniformity for electronic disclosure requirements is preferable because it is easier on plan administration.

12. Electronic disclosures that include any personal information such as responses to a claim for benefits or participant statements will be sent securely or encrypted.

13. No, again uniformity is preferable.

15. The Plan Administrator should decide whether disclosures are furnished electronically. Participants should be allowed to opt out.

17. Participants and beneficiaries should have the ability to contact the Plan Administrator anytime by email or telephone to opt out.

19. The affirmative consent requirement is an impediment to electronic disclosure and should be eliminated. The majority of employees will not respond to a request for affirmative consent due to inertia.

We do not think active employees would be materially harmed by eliminating the affirmative consent requirement, if there is a requirement to inform them in advance that disclosure will be made electronically.

21. Time sensitive disclosures should be sent with a high importance flag and the words "Time Sensitive" in the "Re:" line of the email.

30. It is highly preferable for there to be one standard for electronic disclosure of all employee benefit plan information, whether the required disclosure is an IRS or DOL requirement. One electronic disclosure requirement is best because it is easier on plan administration. In addition, one method facilitates combining IRS and DOL notices (such as the 401(k) plan safe harbor notice and qualified default alternative investment notice).

Respectfully,

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