

# EMPLOYEE BENEFIT ADVISOR

Quarterly Newsletter

January 2009

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*As always we welcome your comments and suggestions regarding this issue of Employee Benefit Advisor. For more information on this publication or on articles or information contained within this publication, please contact your Sales Representative, Account Manager or visit the Mourad Agency web site at [www.aemourad.com](http://www.aemourad.com).*

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## NEWS & VIEWS

### Updated Website

Effective January 1, 2009, we are pleased to announce our redesigned website to offer our clients and prospective client's access to more information and relevant news about our agency and the services we provide. Our customers will now be able to:

- View information about our agency and services we provide
- Access your Mywave site
- View company newsletters and legislative briefs
- Request to be added to our newsletter list
- Sign up for upcoming seminars
- Request an insurance quote
- View and bind individual coverage through Blue Cross
- And much more....

We invite you to visit our new site at [www.aemourad.com](http://www.aemourad.com).

### FMLA Final Regulations Issued

Recently the Department of Labor issued final revisions to the FMLA regulations, which will take effect on January 15, 2009. Specific changes include the following:

- 1) **Waivers.** FMLA claims can be waived by employees without court or Department of Labor approval.
- 2) **Qualifying Exigency Leave.** For leave related to a family member's active military duty, "qualifying exigency" is broadly defined to include such things as child care, school activities, financial and legal arrangements, counseling, and rest and recuperation.
- 3) **Light Duty.** Time spent performing light duty work does not count against an employee's FMLA leave entitlement.
- 4) **Definition of Serious Health Condition.** The new rules change the various definitions to impose time requirements on when the initial and second medical visits must take place, and defines periodic visits for chronic conditions.
- 5) **Who May Contact the Employee's Doctor.** HR professionals, health care providers, management officials – but never an employee's direct supervisor.

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- 6) **Recertification.** Employer may request recertification of an ongoing condition every six months in conjunction with an absence.
- 7) **Employer Notice.** The time period for employers to provide the various notices is extended from 2 to 5 days.
- 8) **Employee Notice.** Employee notification must comply with the employer's usual procedures for reporting an absence, absent unusual circumstances.



## LEGISLATIVE INSIGHT

### Newborns' and Mothers' Health Protection Act: Final Regulations

The Newborns' and Mothers' Health Protection Act (NMHPA) was enacted in 1996 to provide protections to mothers and their newborn children with respect to the length of hospital stays after childbirth. Under the NMHPA, group health plans may not restrict mothers' and newborns' benefits for such hospital stays to less than 48 hours following a vaginal delivery and 96 hours following a delivery by cesarean section.

In October 2008, **final regulations** relating to the NMHPA were jointly issued by the Internal Revenue Service (IRS), Department of Labor (DOL) and Department of Health and Human Services (HHS). The final regulations replace the interim final regulations that were issued in 1998 but do not substantially change them.

This issue of the Legislative Brief will provide you with an overview of the final NMHPA regulations.

#### Effective Date

The final NMHPA regulations are effective for plan years beginning on or after **January 1, 2009**. Until then, the interim regulations continue to apply.

#### Hospital Stays and Benefits Not Mandatory

The NMHPA sets limits on benefits that are provided for hospital stays after childbirth. However, nothing in the law or the final regulations requires a mother to give birth in a hospital or stay in the hospital for a specific period of time after giving birth. Also, a group health plan is not required to provide any benefits for hospital stays related to childbirth. However, if the plan provides such benefits, it must comply with the NMHPA's minimum requirements.

#### Hospital Length of Stay

The final regulations clarify when a hospital stay connected with childbirth begins. When a delivery occurs in the hospital, the stay begins at the time of delivery, not at the time of admission or beginning of labor. If there are multiple births, it begins at the time of the last delivery. For deliveries that occur outside of the hospital, the stay begins at the time the mother or newborn is admitted. The decision of whether a hospital stay is connected with childbirth is a medical decision to be made by the attending provider.

#### Attending Provider Definition

The regulations provide an exception to the NMHPA's general rule regarding length of hospital stay for situations where the attending provider, in consultation with the mother, decides to discharge the mother or newborn earlier than 48 or 96 hours, as applicable. The attending provider is defined as "an individual who is licensed under applicable state law to provide maternal or pediatric care and who is directly responsible for providing such care to a mother or newborn child." The final regulations definitively state that the definition of attending provider does not include a plan, hospital, managed care organization or other issuer.

#### Prohibition on Incentives

The NMHPA contains a number of prohibitions designed to prevent benefits from being improperly limited. The regulations clarify that a group health plan may not deny a mother or her newborn coverage under the plan to avoid the NMHPA's requirements or provide payments or rebates to a mother to encourage her to accept lesser benefits than those provided for by the NMHPA. A group health plan also may not penalize an attending provider for giving care in accordance with the NMHPA or provide incentives to induce an attending provider to discharge a mother or newborn before the end of the required time period. However, a group health plan may negotiate with an attending provider the compensation for care provided for hospital stays related to childbirth in general.

#### Authorization and Benefit Restrictions

The final regulations state that a plan may not require a physician or other health care provider to obtain authorization for prescribing a hospital stay in accordance with the NMHPA. In addition, a group health plan may not restrict benefits for a portion of a hospital length of stay provided for by the NMHPA in a way that is less

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favorable than benefits for a previous portion of the stay. The regulations do not prohibit imposing cost sharing, such as deductibles or coinsurance, on hospital stays related to childbirth. However, the cost sharing must be consistent for the entire stay and cannot be higher for a later portion of the mandated length of stay.

## Notice Requirements

The notice requirements with respect to the NMHPA differ depending on the type of plan or coverage involved. The regulations explain the differences as follows:

- **ERISA Plans.** ERISA's rules for Summary Plan Descriptions (SPDs) require all group health plans to describe the federal or state law requirements applicable to the plan relating to hospital lengths of stay in connection with childbirth for the mother or newborn. Model language regarding the NMHPA is included in the SPD rules.
- **State and Local Government Plans.** Plans that are subject to the NMHPA must provide a notice with specific language describing the federal requirements. The final regulations clarify that the notice can either be included in the plan document that describes benefits or in the type of document the plan generally uses to inform participants and beneficiaries of plan benefit changes. Unless an exception applies, the notice must be provided within 60 days of the first day of the plan year after January 1, 2009. Further, any time a plan distributes one or both of these documents after providing the initial notice, the applicable statement must be included in one or both documents.
- **Health Insurance Issuers in the Individual Market.** Health insurance issuers in the individual market must also provide notice in the insurance contract containing specific language regarding the federal rules. The notice must be provided in the form of a copy of the contract or an amendment or rider to the contract no later than **December 19, 2008**. However, if the issuer has already provided the notice, it need not provide it again before the deadline.

## Application to States

The NMHPA and the final regulations do not apply to health insurance coverage (and group health plans that provide benefits only through health insurance coverage) in certain states that have adopted laws similar to the NMHPA. The final regulations clarify that a state law qualifies for this exception if it requires the health insurance coverage to do one of the following:

- Provide for at least a 48-hour hospital length of stay after childbirth (96 hours for a cesarean delivery);
- Provide for maternity and pediatric care in accordance with guidelines for care following childbirth established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics or any other established professional medical association; or
- Require, in connection with coverage for maternity care, that the hospital length of stay decision is made by the attending provider in connection with the mother or with the mother's consent.

Please contact your Account Manager with any questions or to receive further information.

## RX CORNER

### Home Delivery Pharmacy Customers More Likely to Take their Medicine and Choose Money-Saving Generic Drugs

Consumers are more likely to take their medications as directed and choose a money-saving generic drug when using a home delivery pharmacy instead of a retail pharmacy, according to the results of two new studies from pharmacy benefit manager Express Scripts.

In one study, compliance, or taking a medication as prescribed by a doctor, was nearly eight percentage points higher for home delivery pharmacy patients taking medications to treat high blood pressure. These patients were 78.6 percent compliant, but those using a retail pharmacy were 70.8 percent compliant. In addition to cost savings, home delivery promotes better medication compliance through patient communications such as refill reminders by phone or e-mail, renewal assistance, a convenient reorder process, and less frequent re-ordering.

In the second study – a letter alerting patients to the availability of a generic alternative – the likelihood of choosing generics in home delivery was 34 percent greater compared to the impact in retail. The letters were sent following the introduction of generic Ambien® (zolpidem) in 2007. Express Scripts estimates that use of generic sleeping aids will increase to 70 percent of all sleeping aid prescriptions in 2008. However, even that increase will not capture the \$1.5 billion in additional savings available nationwide for commercial and government-paid plans from realizing the category's full generic potential of 95 percent.

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## First-Time Generics

Generic Drug Name	Brand Name	Approval Date	Use(s)
Indomethacin for Injection, USP 1 mg/vial	Indocin I.V., 1 mg/vial	7/16/08	Pain & Inflammation
Doxycycline for Oral Suspension, USP, 25 mg/5 mL	Vibramycin for Oral Suspension, 25 mg/5 mL	7/16/08	Infections
Nisoldipine Extended Release Tablets, 20 mg, 30 mg, 40 mg	Sular Extended-Release Tablets	7/25/08	High blood pressure
Mycophenolate Mofetil Capsules, 250 mg/Tablets 500 mg	Cellcept Capsules, 250 mg	7/29/08	Preventing rejection in organ transplants
Divalproex Sodium Delayed-Release Tablets USP, 125 mg, 250 mg, 500 mg (Valproic acid activity)	Depakote Delayed-Release Tablets	7/29/08	Anticonvulsant, Treating mania, Preventing migraines
Eplerenone Tablets, 25 mg, 50 mg	Inspra Tablets, 25 mg, 50 mg	7/30/08	Heart Disease
Galantamine Tablets USP, 4 mg, 8 mg, 12 mg	Razadyne Tablets	8/28/08	Alzheimer's Disease, Memory Impairments

The change went into effect November 1, 2008. Members can still fill their first prescription for up to four weeks. After the first fill, BCN will send out a letter advising members that they'll need to join Quit the Nic to refill their Chantix prescription.

The new requirement affects BCN commercial members only.

- For BCN Advantage<sup>SM</sup> members, enrollment in Quit the Nic isn't required for them to receive coverage.
- BlueCaid members have always been required to join Quit the Nic to receive coverage for Chantix prescriptions.

### Quit the Nic

The Blue's free *Quit the Nic* program offers tools and educational materials that help members become nonsmokers with the help of specially trained nurses, who coach them over the phone. To enroll, members call 800-811-1764. The hours are 9 a.m. to 9 p.m., Monday through Saturday.

## Blues make the case to Michigan AG for Individual Market Reform

Blue Cross Blue Shield of Michigan is asking Attorney General Mike Cox to stand behind stronger, new consumer-friendly regulations of commercial health insurance carriers that are included in a compromise on health insurance reform made public this week by the chair of a bipartisan conference committee of the Michigan House and Senate.

"The Attorney General's office has a vested interest in ensuring that all Michigan consumers are protected in the marketplace. This includes people who seek health coverage from for-profit insurance carriers," said Andrew Hetzel, BCBSM vice president of corporate communications.

"Blue Cross is inviting Attorney General Cox to stand with us in supporting stronger regulation of for-profit insurance companies in Michigan, and ending some of their most anti-consumer practices."

Here are just some of the consumer-friendly elements of the draft compromise:

- It prohibits insurers from jacking up rates because of a change in medical status.
- It protects women by prohibiting gender-setting of premiums.

## BLUE CROSS UPDATES & CHANGES

### Blue Alert

BCN implements new requirements for Chantix<sup>®</sup>

BCN commercial members who want coverage for Chantix, the popular smoking cessation drug, now need to enroll in Quit the Nic.

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- It financially discourages insurers from rejecting applicants.
- It reduces the waiting period for pre-existing conditions from 12 months to six.
- It prohibits insurers from taking more than 10 percent profit on senior products.
- It continues the Attorney General's authority to challenge Blue Cross rate filings.
- It empowers the Insurance Commissioner to order refunds for price gouging.

It preserves Blue Cross community rating and its "insurer of last resort" status.

## Henry Ford docs joining BCN network

Henry Ford Medical Group primary care physicians are about to become a part of Blue Care Network's provider network.

While BCN currently has contracts with Henry Ford specialists, this new move will add more than 200 new primary care physicians to the network and allow the HMO to offer services in 26 new locations. The change is effective Jan. 1, 2009.

### *Briefly...*

Members can select a Henry Ford PCP in November using the NPI number assigned. However, if a member sees a Henry Ford PCP prior to Jan. 1 effective date, any services received will be considered out-of-network.

BCN will now become the only HMO with provider group participation from all major hospitals in southeast Michigan.

**NOTE:** This applies to BCN commercial only, not BCN Advantage<sup>SM</sup> or BlueCaid. It also doesn't apply to BCN groups with a tiered or high performance network.

We've created a [list of the participating providers \(PDF\)](#) who will become part of the network Jan. 1. In addition, we'll post the list on [MiBCN.com](#) until some time in November when we load the providers into the online search at [MiBCN.com/find](#).

Blue Cross Blue Shield of Michigan and Blue Care Network of Michigan are nonprofit corporations and independent licensees of the Blue Cross and Blue Shield Association.

**If your e-mail address has changed, send an update with your name, agent number, old e-mail and new e-mail to [bluealert@bcbsm.com](mailto:bluealert@bcbsm.com)**

## LIVE WELL, WORK WELL

### Snack Your Way to Health!

Yes... it IS possible! According to Forbes.com, 19% of all food consumed in America is considered a snack food. However, that is not necessarily a bad thing. The research firm NPD Group conducted a study which showed that 51% of all Americans consistently snack on foods considered "healthy," which is up from 44% in 2004. The products considered the best choices for the average American snacker are the popular 100-calorie "snack packs." This is because the portions are already measured out, preventing overindulgence while satisfying the stomach.

As snacking continues to surge in popularity, food manufacturers are producing such products as organic dried fruit and vegetable snacks, 50-calorie portion-control beef jerky (a great source of protein), and cereal bars that contain the U.S. Department of Agriculture's entire recommended daily allowance of fruits and vegetables. So, what are you waiting for? Snack on!

