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## UPDATED GUIDELINES FOR PREVENTIVE SERVICES

The Patient Protection and Affordable Care Act (PPACA) requires that certain preventive services be provided in network, and without a copay or deductible to participants and beneficiaries in non-grandfathered health plans. Federal agencies responsible for establishing the list of required preventive services have issued updated guidelines which reflect changes to these preventive services. Highlights of these updates are discussed below.

### Women's Preventive Services

Under Section 2713 of the Public Health Services Act, non-grandfathered health plans must provide preventive care and screenings for women as supported by the Health Resources and Services Administration (HRSA). The HRSA outlined nine services which must be provided in network and without cost-sharing to participants and beneficiaries for plan years beginning on or after December 20, 2017.

#### *Breast Screening for Average-Risk Women*

Women with an average-risk of breast cancer should begin receiving mammography screenings between the ages of 40 to 50 without cost sharing. Screenings should occur at least once every two (2) years, until at least age seventy-four (74).

#### *Breastfeeding Services and Supplies*

Women should have access to comprehensive lactation support, including counseling, education, and breastfeeding supplies for the period prior to, and following the birth of a child (i.e., the antenatal and postpartum period).

#### *Screening for Cervical Cancer*

The cervical cancer screening schedule for average-risk women ages 21 to 65 should follow the U.S. Preventive Services Task Force (the Task Force) guidelines as follows: for women ages 21 to 29, Pap smears are recommended every three (3) years; for women ages 30 to 65, HPV testing with Pap smears are recommended every five (5) years, or a regular Pap smear without HPV testing every three (3) years.

#### *Contraception*

The guidelines recommend providing adolescent and adult women access to a full-range of contraceptives. Contraceptive care should include counseling, initiation of contraceptive use, and follow up care. Contraceptive methods should include the full-range of female-controlled U.S. Drug and Food Administration-approved contraceptive methods, including:

- sterilization surgery for women
- surgical sterilization via implant for women
- implantable rods
- copper intrauterine devices
- intrauterine devices with progestin (all durations and doses)
- shots or injections
- oral contraceptives (progestin only or combined pill, extended or continuous use)
- contraceptive patches or sponges
- vaginal contraceptive rings
- diaphragms

## Updated Guidelines for Preventive Services (continued)

- diaphragms
- cervical caps
- female condoms
- spermicides
- emergency contraception (levonorgestrel and ulipristal acetate); and
- other methods as identified by the FDA.

Exemptions are permitted for women who are participants or beneficiaries in group health plans sponsored by qualifying religious employers.

### *Screening for Gestational Diabetes Mellitus*

Pregnant women should be screened for gestational diabetes mellitus after twenty-four (24) weeks of gestation, preferably with a 50-g oral glucose challenge test. Women with risk factors for diabetes mellitus should be screened earlier, ideally at the first prenatal visit.

### *Screening for Human Immunodeficiency Virus (HIV) Infection*

All women should be tested for HIV at least once during their lifetime. Women with increased risks of HIV infections should be screened annually, or more often as needed. Pregnant women should be screened for HIV when prenatal care starts. Rapid HIV testing should be available for pregnant women who arrive at the hospital in active labor, without a record of an HIV test.

### *Screening for Interpersonal and Domestic Violence*

When needed, adolescents and women should be screened at least annually, and as needed, for interpersonal and domestic violence which requires intervention services (e.g., counseling, education, and harm reduction strategies). Interpersonal and domestic violence includes, but is not limited to, physical or sexual violence, stalking, neglect, and psychological aggression.

### *Well-Woman Preventive Visits*

The guidelines recommend that women receive at least one preventive care visit per year, beginning with adolescence and thereafter annually, to ensure that women obtain certain recommended preventive services (e.g., preconception, prenatal, and interconception care for the period between pregnancies).

## Aspirin Use

The U.S. Preventive Services Task Force (the Task Force) updated its guidelines for required in-network aspirin coverage at no cost-sharing. Specifically, the Task Force recommends low-dose aspirin for the prevention of cardiovascular disease and colorectal cancer in adults ages 50 to 59 who:

- Have a ten (10) year cardiovascular risk of ten (10) percent or greater
- Are not at increased risk for bleeding
- Have a life expectancy of ten (10) years or more; and
- Are willing to take low-dose aspirin daily for at least ten (10) years.

This change is effective for plan years beginning on or after May 1, 2017.

## Statin Preventive Medication Use

The Task Force's recommendation requires plan sponsors to provide coverage of low to moderate doses of statins in-network and without charge for certain adults who:

- Are between 40 to 75 years of age
- Do not have a history of cardiovascular disease (e.g., symptomatic coronary artery disease or ischemic stroke)
- Have one or more cardiovascular disease risk factors (e.g., diabetes, hypertension, or smoking); and
- Have a calculated 10-year risk of a cardiovascular event of 10% or greater.

This change is effective for plan years beginning on or after December 1, 2017.

## Updated Guidelines for Preventive Services (continued)

### Action Required

Employers that sponsor non-grandfathered plans offering medical and prescription drug benefits should follow up with their benefit administrators to ensure these changes are implemented, and be aware of any associated changes in cost. Changes to the plan's drug or medical benefits should be communicated to plan participants.

**For more information, see:**

**U.S. Preventive Services A and B Recommendations, here:** <https://www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations/>

Statin Use for the Primary Prevention of Cardiovascular Disease in Adults, here:  
<https://www.uspreventiveservicestaskforce.org/Page/Document/UpdateSummaryFinal/statin-use-in-adults-preventive-medication1>

**Health Resources & Services Administration Press Release, here:**  
<https://www.hrsa.gov/about/news/pressreleases/161220womensguidelinesupdates.html>

**Women's Preventive Services Guidelines, here:**  
<https://www.hrsa.gov/womensguidelines2016/index.html>

## NEVADA PASSES DOMESTIC VIOLENCE LEAVE AND REASONABLE ACCOMMODATION LAW

On June 8, 2017, Nevada Governor Brian Sandoval signed Senate Bill 361 ("the Act"), which requires Nevada employers to provide leave and reasonable accommodations to employees if they or a family member have been victims of domestic violence. Highlights of the Act, which will become effective on January 1, 2018, are outlined below.

### Covered Employer

It is unclear whether the Act applies to employers located in Nevada, or employers with at least one (1) employee working in Nevada, even if the employer is located in a different state. The conservative approach would be for an employer to provide this leave to any covered employee who works in the state of Nevada.

### Covered Employee

A covered employee is an employee who has been employed by the covered employer for at least ninety (90) days and that employee or a family/household member has been the victim of domestic violence. However, an employee is not entitled to leave in cases where a family member is the victim of domestic violence and the employee was the perpetrator.

Family or household member includes a spouse, domestic partner, minor child, parent or other adult who is related within the first degree of consanguinity or affinity to the employee, and an adult who is or was actually residing with the employee when the domestic violence occurred.

### Amount and Type of Leave

The Act permits employees to take up to 160 hours of leave during the twelve (12) months immediately following the date the domestic violence occurred. The leave may be used consecutively or intermittently during that 12-month period.

An employer can decide whether to offer paid or unpaid leave under the Act.

If leave is taken pursuant to this Act, and that leave may also be taken under the Family and Medical Leave Act (FMLA), the leaves run concurrently, and the leave used is therefore deducted from the amount of leave available under FMLA.

### Permitted Uses of Leave

The Act permits employees to use leave for a list of reasons related to the domestic violence experienced by the employee or family/household member. Those reasons are as follows:

## Nevada Passes Domestic Violence Leave and Reasonable Accommodation Law (continued)

- the diagnosis, care, or treatment of a health condition
- to obtain counseling or assistance
- to participate in a court proceeding; or
- to establish a safety plan, including any action to increase the safety of the employee or the employee's family/household member.

An employee is not required to provide advance notice of when the employee initially takes leave under the Act. However, if an employee continues to utilize his/her leave, the employee is required to provide forty-eight (48) hours' advance notice to the employer of his/her intention to take that additional leave.

### Documentation and Confidentiality

An employer may require an employee taking leave under this Act to provide documentation to support that the employee is using the leave for a permitted reason. Types of documentation used to support the use of domestic violence leave include police reports, copies of applications for protection orders, affidavits, and/or documents from a physician.

If the employer requires the employee to provide documentation, the employer must keep that documentation confidential and those documents must be maintained pursuant to FMLA requirements.

### Notice and Recordkeeping Requirements

Pursuant to the Act, the Nevada Labor Commissioner will prepare a bulletin setting forth the right to benefits under the Act. The Labor Commissioner will then post the bulletin on the Office of Labor Commissioner website. Once the bulletin is available, employers are required to post the bulletin in a conspicuous location in each of the employer's workplaces.

Employers must keep confidential records of the amount of leave used by each employee. Records must be kept for two (2) years from the date of entry, and made available for inspection if requested by the Nevada Labor Commissioner. Employers should redact employee names before providing the records to the Nevada Labor Commissioner, unless the record request is made for the purpose of an investigation.

### Reasonable Accommodation Requirements

In addition to providing leave, the Act requires employers to make reasonable accommodations for employees who are victims of domestic violence, or when an employee's family/household member has been a victim of domestic violence. Reasonable accommodations can include, but are not limited to, the following:

- transferring or reassigning the employee
- modifying the employee's work schedule
- providing the employee with a new work telephone number; or
- other reasonable accommodations which will not create "undue hardship" and are considered necessary to ensure the safety of the employee, the workplace, the employer, and other employees.

### No Discrimination or Retaliation

The Act states that employers may not require an employee to find a replacement worker as a condition to taking leave, deny an employee the right to use leave, or retaliate against an employee for using leave. Employers who violate these rules are subject to fines of up to \$5,000, as well as potential criminal misdemeanor charges.

In addition, employers may not terminate, discriminate against, or threaten an employee because of any of the following reasons:

- an employee requested to use leave hours
- the employee participated as a witness or interested party in a court proceeding related to the domestic violence that led to the employee taking leave
- the employee requested an accommodation under the Act; and
- an act of domestic violence was committed against the employee in the workplace.

## Action Required

Although the effective date of the Act is not until January 1, 2018, employers with employees in Nevada should review and revise their leave policies, and implement any necessary changes by January 1, 2018.

For additional information see text of Senate Bill 361, here:

<https://legiscan.com/NV/text/SB361/id/1628891/Nevada-2017-SB361-Enrolled.pdf>

## QUESTION OF THE MONTH

### Do We Have to Provide SPDs to Health and Welfare Plan Participants Every Year?

**QUESTION:** In past years, we have provided participants with SPDs for our health and welfare plans (which are subject to ERISA) every year. Are we required to provide SPDs that often?

**ANSWER:** Health and welfare plan summary plan descriptions (SPDs) do not have to be routinely provided every year. In general, health and welfare plan SPDs must be furnished to participants when they first become covered by a plan and then at specific intervals thereafter. (“Participants” for this purpose includes employees or former employees who are or may become eligible for benefits or whose beneficiaries are or may be eligible for benefits—including COBRA qualified beneficiaries and covered retirees. For more information, see our Question of the Week.) Different deadlines apply in different situations; as discussed below, plan administrators may wish to furnish SPDs sooner than the outside limit. Here is an overview of the deadlines:

**Newly Covered Participants.** For a new participant in an existing plan, an SPD must be automatically furnished within 90 days after the participant first becomes covered.

**New Plans.** The plan administrator of a new plan must automatically furnish SPDs within 120 days after the plan is first established and becomes subject to ERISA. (For more about new plans, see our Question of the Week.)

**Five-Year Rule If Material Changes Made.** A plan administrator must automatically furnish an updated SPD at least every five years if any material changes were made within that five-year period. The updated SPD must be furnished no later than 210 days following the last day of the fifth plan year after a material change would have been reflected in the most recently distributed SPD, and must incorporate all the amendments that occurred during the five-year period. (Meanwhile, the material changes must have been communicated via SMMs; see our Question of the Week.)

**Ten-Year Rule If No Material Changes Made.** If no material changes were made during the immediately preceding ten-year period, a copy of the most recently distributed SPD must be furnished by the plan administrator within 210 days following the last day of the tenth plan year after a material change would have been reflected in the most recently distributed SPD.

Because the SPD provides participants with important information about their rights and responsibilities under the plan, it may be advisable to furnish SPDs soon after coverage begins. If a participant has not been notified of plan requirements, such as the need to follow the plan’s claims procedure, a court may not require the participant to comply with those obligations. Thus, furnishing SPDs as soon as practicable is generally in the plan’s best interest.

Finally, keep in mind that group health plans are subject to a variety of disclosure requirements in addition to the SPD, many of which have different distribution rules. For example, the summary of benefits and coverage (SBC) required under health care reform must be furnished in connection with enrollment materials. And if the SPD is used to convey information that is subject to an annual notice requirement, then the SPD must be distributed annually. Also, SPDs are among the materials that must be furnished to participants (and certain others) upon request.

Source: EBIA

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