

NATIONAL INSTITUTE AGENDA

MONDAY • OCTOBER 15, 2007

- 7:00 **Registration and Networking Breakfast**
- 7:15 **The Nuts and Bolts of ERISA Health Plans (Optional Session)**
This optional session is a basic overview of the key legal issues affecting ERISA health and welfare plans. It is designed for people relatively new to the benefits area or for those who simply want a quick refresher on the rules and legal issues.
Phyllis C. Borzi, O'Donoghue & O'Donoghue LLP
Richard L. Menson, McGuireWoods LLP
- 9:00 **Break**
- 9:15 **Welcoming Remarks from Co-Chairs**
Phyllis C. Borzi, O'Donoghue & O'Donoghue LLP
Richard L. Menson, McGuireWoods LLP
Carol A. Weiser, Sutherland Asbill & Brennan LLP
- 9:25 **Federal Legislative Update: What's Been Passed? What's on the Horizon?**
Will Congress expand the rules for Health Savings Accounts (HSAs)? What's the latest on drug reimportation legislation? Benefit mandates? Mental health parity? Genetic testing and nondiscrimination? Medical error and drug safety issues? Expanding coverage to the uninsured? Other proposals affecting employer-sponsored plans? This session teams key Congressional health staffers for a frank bipartisan bicameral assessment of Congressional activity and inactivity of interest to employers and other plan sponsors, health plans, and consumers.
Moderator: Phyllis C. Borzi, O'Donoghue & O'Donoghue LLP
Speakers: Christopher E. Condeluci, Tax and Benefits Counsel, Committee on Finance, Minority Staff, U.S. Senate
Michele Varnhagen, Labor Policy Director, Committee on Education and Labor, Majority Staff, U.S. House of Representatives
- 10:15 **Break**
- 10:30 **Department of Labor Update**
The Department of Labor is involved in many issues relating to Health and Welfare Plans. This session will cover the latest DOL guidance on issues facing health and welfare plans.
Moderator: Richard L. Menson, McGuireWoods LLP
Speaker: John J. Canary, Chief, Division of Coverage, Reporting and Disclosure, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), U.S. Department of Labor (Invited)
- 11:00 **IRS and Department of the Treasury Update**
This session will cover the latest guidance issued by the IRS and what guidance is expected in the upcoming months.
Moderator: Richard L. Menson, McGuireWoods LLP
Speakers: Kevin P. Knopf, Attorney-Advisor, Office of Benefits Tax Counsel, U.S. Department of the Treasury
Elizabeth A. Purcell, Assistant Branch Chief, Health and Welfare Branch, Office of Associate Chief Counsel (Tax Exempt and Government Entities Division), Internal Revenue Service
- 11:50 **Luncheon Address: A New Role for On-Site Medical Clinics**
On-site medical clinics seem to be making a comeback, not just for customers of retail establishments but also for employees, as employers seek creative ways to make their wellness programs more accessible or to provide a more cost-efficient and productive way to treat employees with minor emergency or chronic conditions. This session focuses on one company's use of this approach.
Speaker: Maya Crone, Associate General Counsel and Assistant Corporate Secretary, Freddie Mac
- 1:15 **Avoiding Discrimination Pitfalls for Wellness Programs**
The authors of the regulations will discuss what incentives can be offered and how to structure wellness programs under the recently issued final regulations.
Moderator: Carol A. Weiser, Sutherland Asbill & Brennan LLP
Speakers: Kevin P. Knopf, Attorney-Advisor, Office of Benefits Tax Counsel, U.S. Department of the Treasury
Amy J. Turner, Senior Health Law Specialist, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration (EBSA), U.S. Department of Labor (Invited)
Russell E. Weinheimer, Senior Attorney, Health and Welfare Branch, Office of Chief Counsel, (Tax Exempt and Government Entities Division), Internal Revenue Service

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2:15-4:05 **Concurrent Breakout Sessions**

2:15-3:05 **Recent COBRA Developments**

Even though two decades have passed since COBRA was enacted, issues related to continuation coverage requirements still are demanding the attention of plan administrators through the issuance of guidance and recent case law. Moreover, the applicability of COBRA to new approaches to the delivery of health benefits also requires careful scrutiny. This session will examine recent developments involving COBRA on all these fronts.

Moderator: **Carol A. Weiser**, *Sutherland Asbill & Brennan LLP*

Speaker: **Paul M. Hamburger**, *McDermott Will & Emery LLP*

What's New with Cafeteria Plans and HSAs

Choice is very important for health and welfare benefits. This session focuses on structuring, administrative and tax issues for cafeteria plans and tax issues for other welfare benefits. If updated cafeteria plan regulations have been proposed, as is expected, the proposed regulations will be discussed as well.

Moderator: **Diane J. Fuchs**, *Womble Carlyle Sandridge & Rice, PLLC*

Speakers: **T. David Cowart**, *Sonnenschein Nath & Rosenthal LLP*
Elizabeth A. Purcell, *Assistant Branch Chief, Health and Welfare Branch, Office of Associate Chief Counsel (Tax Exempt and Government Entities Division), Internal Revenue Service*

Consumer Driven Health Plans: Key Issues for Employers

As more employers consider moving toward some form of consumer-driven health plans, what are the key design, workforce and legal issues that they need to consider? This session is designed as a hands-on workshop with an in-house corporate expert regarding what employers need to focus on before, during and after they decide to implement a consumer-driven health plan.

Moderator: **Richard L. Menson**, *McGuireWoods LLP*

Speaker: **Tami L. Graham**, *Intel Corporation*

EEOC Update

A number of important issues are before the EEOC and the courts that impact on employee health benefit plans. This session will focus on some of these key questions and their impact on strategic benefits planning for plan sponsors.

Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*

Speakers: **Paul E. Boymel**, *Senior Attorney-Advisor, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission*
Dianna B. Johnston, *Assistant Legal Counsel, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission*

3:05 **Break**

3:15-4:05 **Providing Benefits to Domestic Partners: Evolving Legal Issues**

Who is a "spouse" for purposes of ERISA welfare plans? This session focuses on the developments in the definition of spouse and marriage and their impact on welfare plans as well as the tax and administrative issues in providing benefits to domestic partners.

Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*

Speakers: **Alden J. Bianchi**, *Mintz, Levin, Cohn, Ferris, Glousky and Popeo PC*
Frances E. Snyder, *Marriott International, Inc.*

What's New with Cafeteria Plans and HSAs (Repeat Session)

Moderator: **Diane J. Fuchs**, *Womble Carlyle Sandridge & Rice, PLLC*

Speakers: **T. David Cowart**, *Sonnenschein Nath & Rosenthal LLP*
Elizabeth A. Purcell, *Assistant Branch Chief, Health and Welfare Branch, Office of Associate Chief Counsel (Tax Exempt and Government Entities Division), Internal Revenue Service*

Outsourcing Plan Administration: Drafting Tips for Plan Sponsors

With more and more plan sponsors moving plan administration and human resource functions to outside vendors (both on-shore and off-shore), careful attention must be paid to drafting plan documents and contracts with vendors to avoid potential liability. This session will provide some practical tips on what should be in those documents and what plan sponsors need to focus on when they consider outsourcing important plan administration functions.

Moderator: **Sally Doubet King**, *McGuireWoods LLP*

Speaker: **Paul M. Hamburger**, *McDermott Will & Emery LLP*

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Pill Poppers Beware—Pharmacy Benefits

Prescription drug costs are an increasingly large part of the expense of a health plan, and more and more employers are turning to pharmacy benefit managers to help control these costs. This session will focus on tips for negotiating and drafting contracts with PBMs, as well as auditing the PBM.

Moderator: Carol A. Weiser, *Sutherland Asbill & Brennan LLP*

Speaker: Jean C. Hemphill, *Ballard Spahr Andrews & Ingersoll, LLP*

4:05 **Break**

4:15 Ethical Considerations in Health and Welfare Benefit Plans

The current health care delivery system poses many ethical challenges to employers and plan sponsors designing and maintaining health and welfare plans for their employers. Issues such as the selection of providers or networks, financial incentives and disclosure, the scope of covered treatment, and confidentiality of patient information may raise important ethical questions. This session will discuss the principles of legal ethics and rules that may apply to these situations.

Moderator: Richard L. Menson, *McGuireWoods LLP*

Speakers: Tami L. Graham, *Intel Corporation*

Sally Doubet King, *McGuireWoods LLP*

Steuart H. Thomsen, *Sutherland Asbill & Brennan LLP*

5:15 **Adjourn**

TUESDAY • OCTOBER 16, 2007

8:00 **Registration and Networking Breakfast**

8:20 Update on State Pay or Play Laws

Facing growing financial burdens of Medicaid and uncompensated care and frustrated with the lack of Federal interest in solving these problems on a nationwide basis, states have begun to try to address these issues on their own. Maryland and Massachusetts have taken different approaches to these problems, with Massachusetts being the first state to pass a comprehensive legislative solution, but ERISA preemption looms large over state activity. This session will focus on what Massachusetts and other states are doing, including adoption of pay or play legislation.

Moderator: Phyllis C. Borzi, *O'Donoghue & O'Donoghue LLP*

Speakers: Alden J. Bianchi, *Mintz, Levin, Cohn, Ferris, Glousky and Popeo PC*

Joy Johnson Wilson, *Director, Health Policy, National Conference of State Legislatures*

9:10 Making Your Plan Documents Work for You and Not Against You

Tips for drafting plan documents and summary plan descriptions, including whether to use one document or two and addressing plan sponsor and fiduciary concerns, based on the speaker's experience and the latest case law.

Moderator/

Speaker: T. David Cowart, *Sommerschein Nath & Rosenthal LLP*

Speaker: Carol A. Weiser, *Sutherland Asbill & Brennan LLP*

10:00 **Break**

10:15 Hot Topics in Health and Welfare Plan Litigation

A number of important ERISA cases involving health and disability benefit claims, class action issues, standard of review and remedies are before the courts. In addition, as states enact legislation to attempt to provide consumer protections for their residents, or broaden the state's financial base for financing Medicaid or uncompensated care by imposing taxes or other assessments on employers, suits are being brought challenging those enactments and raising ERISA preemption and other constitutional law defenses. This session focuses on some of the more significant recent court decisions, as well as predictions for future trends in ERISA litigation.

Moderator: Richard L. Menson, *McGuireWoods LLP*

Speakers: David R. Levin, *Drinker Biddle & Reath LLP*

Mary Ellen Signorille, *AARP Foundation Litigation*

12:00 **Lunch (On your own)**

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1:30-3:40 **Concurrent Breakout Sessions**

1:30-2:30 **Litigating Welfare Plan Claims**

What you do during the benefit claims procedure can make or break your case, whomever you represent. This session focuses on what you can do during the benefit claims procedure to enhance your case and approaches to welfare plan claim litigation once a lawsuit is filed.

Moderator: **Carol A. Weiser, Sutherland Asbill & Brennan LLP**

Speakers: **David R. Levin, Drinker Biddle & Reath LLP**
Mary Ellen Signorille, AARP Foundation Litigation

Implementing Medical Privacy and Security

Even though the initial compliance dates for HIPAA's privacy and security rules have come and gone, questions remain regarding both implementation of the rules and enforcement. Topics to be covered in this session include 1) privacy complaints and enforcement issues, 2) updating privacy and security assessments as circumstances change, and 3) understanding state law interaction with the federal rules, including state laws restricting social security number use.

Moderator/

Speaker: **Kathryn Bakich, The Segal Company**

Speaker: **Christina M. Heide, Senior Advisor, HIPAA Privacy Policy, Civil Rights Division, U.S. Department of Health & Human Services**

Managing Your Health and Welfare Benefit Plans Prudently: Fiduciary Concerns (Ethics Session)

Although most plan sponsors think the majority of activities they perform regarding their health plan issues involve settlor functions, a number of fiduciary issues also may be involved. As a threshold matter, this session will focus on where the line between settlor and fiduciary functions may be drawn. In addition, other potential fiduciary issues may need to be considered, such as: the vendor through which to offer benefits, to what extent does the financial ability of the employer affect the prudence of that choice, and how should vendor activities be monitored when functions are outsourced?

Moderator: **Richard L. Menson, McGuireWoods LLP**

Speakers: **Tami L. Graham, Intel Corporation**
Evan Miller, Jones Day

2:30 **Break**

2:40-3:40 **New Strategies for Providing Retiree Medical Benefits**

With the continued escalation of health care and prescription drug costs and the advent of HRAs, HSAs and the Medicare Prescription Drug Act, are employers rethinking their approach to providing retiree medical benefits?

Moderator: **Sally Doubet King, McGuireWoods LLP**

Speaker: **Marie D. Carter, Dominion Resources Services, Inc. (Invited)**

Subrogation, Reimbursement and Other Remedies

Now that the Supreme Court has decided *Sereboff v. Mid-Atlantic Services, Inc.*, what does that mean for plan recoveries? This session will focus on plans' efforts to collect money owed to plans by participants who seek money from third-party tortfeasors. How can plans be sure that a participant must honor a plan's subrogation provision? How much of the award can the plan collect? Can the plan only collect if a separate fund can be identified? What is the current state of the law in light of *Sereboff*?

Moderator: **Carol A. Weiser, Sutherland Asbill & Brennan LLP**

Speakers: **Nichelle L. Grey, Carday Associates, Inc.**
Eugene M. Holmes, McDermott Will & Emery LLP

Taking Your Medical Records With You: Personal Health Records

Do we need a different approach to privacy in the electronic medical record context? Why should employers care about it?

Moderator: **Phyllis C. Borzi, O'Donoghue & O'Donoghue LLP**

Speakers: **Kathryn Bakich, The Segal Company**
Melissa M. Goldstein, School of Public Health and Health Services and School of Medicine and Health Sciences, The George Washington University Medical Center

3:40 **Adjourn**