



Legal Alert: Non-Enforcement Grace Period Extended for Certain Internal Claims and Appeals Standards

4/1/2011

On March 18, 2011, the Department of Labor ("DOL") Technical Release 2011-01 which provides for an extension of the enforcement grace period regarding certain standards for the internal claims and appeals procedures under the Patient Protection and Affordable Care Act (Affordable Care Act). Extension of the enforcement grace period was prompted by comments received from interested stake holders indicating that more time would be needed to implement the standards and the DOL's desire to avoid enforcement of standards scheduled to be modified in the near future.

The interim final regulations published on July 23, 2010 outline standards, in addition to existing DOL claims procedures, which must be followed when deciding internal claims and appeals for group health plans. (See Ford & Harrison Legal Alert "Health Care Reform Regulations – Internal Claims and Appeals and External Review Processes" dated October 19, 2010, <http://www.fordharrison.com/shownews.aspx?show=6692>). The internal claims and appeals standards under the interim final regulations were set to become effective for non-grandfathered plans with plan years beginning on or after September 23, 2010. However, DOL Technical Release 2010-02 provided an enforcement grace period until July 1, 2011 with respect to Standard No. 2 (regarding the time frame for making urgent care claims decisions); Standard No. 5 (regarding providing notices in a culturally and linguistically appropriate manner); Standard No. 6 (regarding broader content and specificity in notices); and Standard No. 7 (regarding substantial compliance). The enforcement grace period under Technical Release 2010-02 was effective so long as the plans were working in good faith to implement standards 2, 5, 6 and 7.

Technical Release 2011-01 extends the enforcement grace period until plan years beginning on or after January 1, 2012, with respect to Standards 2, 5 and 7. Additionally, plans are no longer required to work in good faith to implement such standards in order for the original enforcement grace period (through July 1, 2011) or the extended enforcement grace period (through plan years beginning on or after January 1, 2012) to apply.

Standard No. 6 requires broader content and specificity in adverse benefit determination notices including the requirement to:

(a) Disclose diagnosis codes and treatment codes and their corresponding meanings;

(b) Disclose information sufficient to identify a claim (other than diagnosis and treatment information);

(c) Disclose the reasons for an adverse benefit determination;

(d) Provide a description of available internal appeals and external review processes; and

(e) Disclose the availability of and contact information for any applicable office of health insurance consumer assistance program or ombudsmen.

With regard to Standard No. 6, Technical Release 2011-01 extends the enforcement grace period regarding the requirement to disclose diagnosis codes and treatment codes until plan years beginning on or after January 1, 2012. Further, plans will not be required work in good faith to implement this requirement in order for the original enforcement grace period or the extended enforcement grace period to apply.

The enforcement grace period with respect to the other requirements under Standard No. 6 will be extended from July 1, 2011 (i.e., the original enforcement grace period) until plan years beginning on or after July 1, 2011 (i.e., January 1, 2012 for calendar year plans.)

Employers' Bottom Line:

Technical Release 2011-01 provides further relief from implementing some, but not all of the standards required for the internal claims and appeals process under the interim final regulations issued on July 23, 2010. However, the Technical Release does provide additional time for plans to comply with the more difficult standards to implement under the interim final regulations by extending the enforcement grace period and by removing the requirement that plans must work in good faith to implement such standards in order for the enforcement grace period to apply. The DOL also indicated in the Technical Release that it anticipates further edits to Standards 2, 5, 6 and 7 in the near future. For now, employers with non-grandfathered group health plans (whether fully insured or self-funded) should continue to work with their brokers, third party administrators, and/or legal counsel to ensure their group health plan documents and procedures are amended to comply with Standards 2, 4, 6 and 7 on or before the end of the applicable enforcement grace period.

If you have any questions regarding this Legal Alert or need assistance with any of the Health Care Reform law changes, please contact Daniel T. Sulton at 864-699-1157 or dsulton@fordharrison.com or any member of Ford & Harrison's Employee Benefits Group. Additional information regarding Health Care Reform may be found on the Ford & Harrison LLP website at www.fordharrison.com.