

Corporate & Financial Weekly Digest

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New Regulations Released Regarding Health Care Reform

On June 22, interim final regulations were issued regarding the “Patient’s Bill of Rights” requirements of the Patient Protection and Affordable Care Act of 2010 (PPACA), Pub. L. No. 111-148. These regulations were released jointly by the Departments of Health and Human Services, Labor (DOL) and Treasury. The regulations provide examples, safe harbors and other provisions helpful to the implementation of PPACA.

These rules are generally applicable to all group health plans for plan years starting on or after September 23, 2010, including “grandfathered” plans. This includes the annual dollar limits, the lifetime dollar limits, prohibition on preexisting condition exclusions and prohibition on coverage rescissions. However, the “patient protection” provisions do NOT apply to grandfathered plans.

Prohibition Against Lifetime and Annual Limits—PPACA prohibits plans from imposing annual limits or lifetime limits on the dollar amount of “essential health benefits.” The regulations do not provide guidance regarding what is or is not considered an “essential health benefit,” but permit good-faith efforts to comply with a reasonable interpretation of that term. The prohibition against annual limits will be phased in until 2014. The dollar value of “essential health benefits” must be no less than \$750,000 for plan years beginning on or after September 23, 2010; no less than \$1.25 million for plan years beginning on or after September 23, 2011; and no less than \$2 million for plan years beginning on or after September 23, 2012 (and before January 1, 2014).

Additional notice and enrollment rules apply with respect to people whose coverage or benefits ended by reason of having reached a lifetime limit. For example, individuals who have reached the plan’s lifetime limit prior to the effective date of the new regulations must be notified that the lifetime limit no longer applies, and those people who are not enrolled in the plan must be given an opportunity to do so.

Prohibition Against Preexisting Condition Exclusions—PPACA prohibits plans from imposing any preexisting condition exclusion on enrollees under age 19. Preexisting condition exclusions currently in effect are permitted to continue with regard to enrollees age 19 and older until the 2014 plan year. The regulations clarify that these prohibitions apply for purposes of denying enrollment in the plan and also specific benefit coverage.

Prohibition Against Coverage Rescission—PPACA prohibits plans from retroactively rescinding coverage unless due to fraud or intentional misrepresentation. The regulations provide guidance as to when rescission is permitted and what constitutes rescission. According to the regulations, it is permitted to retroactively terminate coverage for failure to pay premiums in a timely manner. Also, a termination with only a prospective effect is not considered a rescission and thus is permitted, such as if ineligible dependents are to be dropped pursuant to an audit of dependent coverage.

New Patient Protection Rules (Not Applicable to Grandfathered Plans)—If a plan utilizes a network of providers, there are three new choice-of-provider requirements imposed by PPACA: (1) the plan must allow participants to designate any participating Primary Care Provider (PCP) who is available; (2) the plan must allow a participating pediatrician to be designated as the PCP for a child; and (3) the plan cannot require any preauthorization or referral to access an OB/GYN. The regulations require plans to notify participants of these rights and provide model language.

Action—Though not all questions raised by PPACA have been answered, there has been enough guidance issued via regulations such that plan sponsors should be in the process of identifying required changes to existing plans for the upcoming open enrollment. Decisions will need to be made as to what changes will be made and as of what date, whether grandfather status will be lost if additional changes are made, documents need to be revised, and notification given to participants. An upcoming Katten Client Advisory will describe these regulations in more detail.

For a link to the interim final regulations, click [here](#).

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