BRYAN CAVE
A Broader Perspective

Alert

Employee Benefits & Executive Compensation
Client Service Group

To: Our Clients and Friends

March 21, 2011

Department of Labor Extends Non-Enforcement Period for Certain Internal Claims and Appeals Requirements Applicable to Non-Grandfathered Plans Under the Affordable Care Act

On March 18, 2011, the Department of Labor ("DOL") issued Technical Release 2011-01 extending, with some modifications, the enforcement grace period established under DOL Technical Release 2010-02 until plan years beginning on or after January 1, 2012.

Background

The Patient Protection and Affordable Care Act (Affordable Care Act) revised the standards for internal claims and appeals and external review under Section 2719 of the Public Health Service Act ("PHS Act"). The interim final regulations issued on July 23, 2010 by the Departments of Labor, Health and Human Services and the Treasury (the "Departments") to implement the revised PHS Act Section 2719, imposed several additional standards for internal claims and appeals processes on non-grandfathered group health plans.

On September 20, 2010, the Department of Labor issued Technical Release 2010-02 establishing an enforcement grace period until July 1, 2011 with respect to the following standards:

1. In the case of an urgent care claim, notification of a benefit determination (whether adverse or not) must occur not later than 24 hours after the receipt of the claim by the plan;

2. Notices must be provided in a culturally and linguistically appropriate manner as set forth in the 2010 interim final regulations;

3. Any notice of adverse benefit determination or final internal adverse benefit determination must include information sufficient to identify the claim involved, including the date of the

This Client Alert is published for the clients and friends of Bryan Cave LLP. Information contained herein is not to be considered as legal advice.
This Client Alert may be construed as an advertisement or solicitation. © 2011 Bryan Cave LLP. All Rights Reserved.

service, the health care provider, the claim amount, the diagnosis code and treatment code and their corresponding meanings;

4. The reason(s) for an adverse benefit determination or final internal adverse benefit determination must include the denial code and its corresponding meaning, and a description of the plan's standards, if any, used in denying the claim. In the case of a final internal adverse benefit determination, the description of the plan's standard must also include a discussion of the decision;

5. The notice to the claimant must describe the available internal appeals and external review processes, including information regarding how to initiate an appeal;

6. The notice to the claimant must disclose the availability of, and contact information for, an applicable office of health insurance consumer assistance or ombudsman established under PHS Act Section 2793; and

7. If a plan fails to strictly adhere to all the requirements under the 2010 interim final regulations, the claimant is deemed to have exhausted the plan's internal claims and appeals process and may initiate any available external review process or remedies available under ERISA or State law.

During the non-enforcement period, neither the DOL or the Internal Revenue Service ("IRS") would take any enforcement action against a group health plan working in good faith to implement such additional standards but does not yet have them in place.

Technical Release 2011-01

Pursuant to Technical Release 2011-01 the DOL and the IRS will not take any enforcement action with respect to standards 1 (timeframe for urgent care determinations), 2 (provision of culturally and linguistically appropriate notices), and 7 (substantial compliance) listed above until January 1, 2012 to afford the Departments time to publish new regulations implementing the internal claims and appeals provisions. In the case of the broader content requirements for notices to claimants, the enforcement grace period is only partially extended. The requirement under standard 3 to disclose diagnosis codes, treatment codes and their corresponding meanings will not be enforced until plan years beginning on or after January 1, 2012. With respect to other notice requirements, enforcement will be effective on a rolling plan year basis, starting with the first day of the first plan year beginning on or after July 1, 2011 (January 1, 2012 for calendar year plans) for the following: (i) the disclosure of information sufficient to identify the claim (other than the diagnosis and treatment information); (ii) the reasons for the adverse benefit determination; (iii) the description of available internal appeals and external review processes and (iv) the disclosure of the availability of, and contact information for, a state office of health consumer assistance program or ombudsman. However, nothing in Technical Release 2011-01 is intended to affect the disclosure requirements under ERISA under the DOL claims procedure regulations.

In addition, the Departments are no longer requiring that plans be working in good faith to implement the standards to be able to qualify for the grace period. Previously, the Departments required plans to be working in good faith to implement the standards for the grace period to apply. This requirement is

no longer applicable for plans to take advantage of the original grace period or the extended grace period. While the guidance does not say why this requirement was removed, the Departments stated in another portion of the Technical Release that the standards will be revised in future regulations. Thus, the removal of this "good faith" requirement may be an indication that the standards will be revised significantly in future guidance.

Furthermore, this guidance does not address the rights of participants or beneficiaries in private litigation. It is unclear what impact this guidance has on, for example, a participant's ability to sue under ERISA if an employer fails to strictly adhere to all the requirements of the regulations. Therefore, while this guidance gives some comfort, plan sponsors should consider making efforts to comply with the requirements to limit possible claims by participants.

Technical Release 2011-01 also includes an appendix listing current consumer assistance programs and ombudsmen. Group health plans with July 1 plan years may rely upon this list for developing their adverse benefit determination and final internal adverse benefit determination notices for plan years beginning on July 1, 2011. The Departments will review the list and any updated information will be available at www.dol.gov/ebsa/healthreform. For plan years beginning after July 1, 2011, group health plans must check the website to ensure that their notices contain information that is as up-to-date as practicable. However, plans are not required to update the consumer assistance programs and ombudsmen information more than once per year.

If you have any questions regarding anything discussed in this Alert, the attorneys and other professionals of the Employee Benefits and Executive Compensation group of Bryan Cave LLP are available to answer your questions.

Richard (Rick) L. Arenburg	(404) 572-6765	richard.arenburg@bryancave.com
Brian W. Berglund	(314) 259-2445	bwberglund@bryancave.com
Harold G. Blatt	(314) 259-2216	hgblatt@bryancave.com
Armin G. Brecher	(404) 572-6634	armin.brecher@bryancave.com
Bard Brockman	(404) 572-4507	bard.brockman@bryancave.com
Carrie E. Byrnes	(312) 602-5063	carrie.byrnes@bryancave.com
Paul F. Concannon	(404) 572-6856	paul.concannon@bryancave.com
Chad R. DeGroot	(314) 259-2803	chad.degroot@bryancave.com
Edmund (Ed) Emerson	(404) 572-6739	edmund.emerson@bryancave.com
Jennifer Faucett	(404) 572-4516	jennifer.faucett@bryancave.com
Kyle P. Flaherty	(212) 541-2134	kpflaherty@bryancave.com
Mark H. Goran	(314) 259-2686	mhgoran@bryancave.com
Carrie E. Herrick	(314) 259-2212	carrie.herrick@bryancave.com
Rebecca Holdredge	(314) 259-2042	rebecca.holdredge@bryancave.com
Jonathan Hull	(314) 259-2359	jthull@bryancave.com
Charles B. Jellinek	(314) 259-2138	cbjellinek@bryancave.com
Michele L. Lux	(314) 259-2519	mllux@bryancave.com
Hal B. Morgan	(314) 259-2511	hbmorgan@bryancave.com
Dan O'Keefe	(314) 259-2179	dmokeefe@bryancave.com
Christian Poland	(312) 602-5085	christian.poland@bryancave.com
Jeffrey S. Russell	(314) 259-2725	jsrussell@bryancave.com
Christopher (Chris) Rylands	(404) 572-6657	chris.rylands@bryancave.com
Steven G. (Steve) Schaffer	(404) 572-6830	steven.schaffer@bryancave.com
Kathleen R. Sherby	(314) 259-2224	krsherby@bryancave.com
Sarah Roe Sise	(314) 259-2741	srsise@bryancave.com
Michael Corey Slagle	(214) 721-8031	corey.slagle@bryancave.com
Alan H. Solarz	(212) 541-2075	ahsolarz@bryancave.com
Jennifer W. Stokes	(314) 259-2671	jennifer.stokes@bryancave.com
Lisa A. Van Fleet	(314) 259-2326	lavanfleet@bryancave.com
Tom Wack	(314) 259-2182	tewack@bryancave.com
Julie A. Wagner	(314) 259-2637	jawagner@bryancave.com
Jay P. Warren	(212) 541-2110	jpwarren@bryancave.com
Carolyn Wolff	(314) 259-2206	carolyn.wolff@bryancave.com
Serena F. Yee	(314) 259-2372	sfyee@bryancave.com

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.