

Health Care Reform Updates: Final Regulations and Technical Release Issued

February 23, 2012 by [Kelley Kaufman](#)

The past couple of weeks have been busy ones for the Department of Labor (“DOL”), the Department of Health and Human Services (“DHHS”) and the Department of Treasury (“DOT”) (collectively, the “Departments”). Since February 9, 2012, the Departments have issued two sets of final regulations and a Technical Release bulletin, providing some long-awaited guidance on a variety of requirements under the federal Patient Protection and Affordable Care Act (“PPACA”), the health care reform legislation signed into law under President Obama in early 2010. Links to the regulations, the Technical Release and additional materials can be found on [the DOL’s PPACA Regulations and Guidance web page](#).

Technical Release Regarding Automatic Enrollment, Employer Shared Responsibility and Waiting Periods

On February 9, 2012, the Departments issued [Technical Release 2012-01](#), which provides information regarding the PPACA provisions governing automatic enrollment, employer shared responsibility and the 90-day limitation on waiting periods. The Technical Release provides a Question and Answer discussion on each of these issues, including approaches that the Departments are considering for future regulations.

Importantly, the Departments also announced that the automatic enrollment guidance will not be ready to take effect by 2014. Until final regulations are issued and applicable, employers are not required to comply with this requirement. Keep an eye out for proposed regulations on each of these requirements under PPACA.

Final Regulations Regarding Summary of Benefits and Coverage and Uniform Glossary

On February 14, 2012, the Departments issued [final regulations](#) implementing the disclosure requirements under PPACA, which include the requirement to provide a Summary of Benefits and Coverage (“SBC”), notice of material modifications and a uniform glossary. This information is intended to help plan participants better understand their health coverage, as well as other coverage options.

In part, the regulations set forth 12 required content elements for an SBC, as well as appearance requirements. The Departments also provided supplemental information, including an SBC template, instructions and other related materials, which can be found on [the DOL’s PPACA Regulations and Guidance web page](#).

Review the regulations carefully for additional information on who must provide each required disclosure, when the disclosures are required, what content must be provided, what format disclosures must take, and acceptable methods of disclosure. These requirements become

effective on the first day of the first open enrollment period beginning on or after September 23, 2012. Failure to provide the information required can result in a significant monetary penalty, including a fine of up to \$1,000 per failure.

Final Regulations Regarding Coverage of Preventive Services

On February 15, 2012, the Departments issued [final regulations](#) addressing the exemption of group health plans and group health insurance coverage sponsored by certain religious employers from having to cover certain preventive health services under provisions of PPACA, such as approved contraceptive methods and sterilization procedures.

The final regulations grant the DHHS' Health Resources and Services Administration the discretion to exempt group health plans established or maintained by certain religious employers from the requirement to cover contraceptive services. For purposes of this exemption, a "religious employer": (1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a non-profit organization described under the Internal Revenue Code.

In addition, the regulations provide a temporary, one year enforcement "safe harbor" for employers who are non-exempted, non-profit organizations with religious objections to covering contraceptive services whose group health plans are not [grandfathered health plans](#) under PPACA.

Responding to the most recent controversy regarding PPACA, the Departments are expected to issue additional regulations addressing the religious objections of non-profit religious organizations who do not qualify as a "religious employer" under the narrow exemption. These regulations are expected to require the insurers of such organizations to cover contraception if a religious organization chooses not to do so. In such cases, the insurers would be expected to offer contraception coverage to women directly and free of charge, with no role for their religious employers who oppose contraception.

If you have any questions regarding these recent guidance materials or any other aspect of PPACA, please consult our [prior posts](#) or contact any of the attorneys in our [Labor and Employment Practice Group](#).

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