



## Legal Alert: Agencies Issue Additional FAQs on Health Care Reform and the Mental Health Parity Act

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Right before the holidays, the Departments of Health and Human Services, Labor and Treasury issued additional Frequently Asked Questions (FAQs) regarding implementation of the Patient Protection and Affordable Care Act ("health care reform") and the Mental Health Parity and Addiction Equity Act. The guidance of most note to employers is as follows:

- 1. Automatic Enrollment in Health Plans:** The agencies clarified that the automatic enrollment requirement of health care reform does not become effective until the agencies issue regulations on the requirement. The Department of Labor indicated that it intends to issue regulations on the automatic enrollment requirement sometime before 2014.
- 2. 60-Day Prior Notice Requirement for Material Modifications:** Health care reform requires group health plans to provide notice of modifications to participants no later than 60 days *prior* to the date on which the modification becomes effective. The agencies clarified that group health plans are not required to comply with the 60-day advance notice requirement until standards for the requirement are issued by the agencies.
- 3. Dependent Coverage of Children to Age 26:** Health care reform prohibits group health plans from making distinctions based upon age in dependent coverage. (For example, charging a higher premium for adult children than for minor children would be a prohibited distinction.) The agencies clarified that health care reform does not prohibit distinctions based upon age that apply to all coverage under the plan. Therefore, in answer to the specific question posed in the FAQs, the agencies determined that it is permissible for a group health plan that normally charges a co-payment for physician visits that do not constitute preventive services, to charge a co-payment to individuals age 19 and over, including employees, spouses, and dependent children but waive the requirements for those under age 19.
- 4. Grandfathered Health Plans:** The agencies clarified that a fixed amount cost-sharing, other than a co-payment, that is based on a percentage-of-compensation formula, will not cause a plan to lose grandfathered plan status as long as the formula remains the same as that which was in effect on March 23, 2010, even though the actual cost-sharing may change as a result of a change in the employee's compensation.
- 5. Mental Health Parity Act:** The agencies issued several answers to questions on the Mental Health Parity Act, including: (a) confirming that a

small employer exempt from the Act is an employer with 50 or fewer employees; (b) stating that a contracting health care provider can request and is entitled to receive the plan's criteria for medical necessity determinations; and (c) explaining that plans can apply for the increased cost exemption under the Act if costs under the plan have increased at least 2 percent in the first year that the Act applies to the plan (the first plan year beginning after October 3, 2009), or at least 1 percent in any subsequent plan year (generally, plan years beginning after October 3, 2010.) The exemption lasts for one year and allows the plan to be exempt from the requirements of the Act for the following year. Plans can apply for the cost exemption by following the exemption procedures described in the 1997 Mental Health Parity Act regulations.

**6. *Wellness Programs:*** Along with health care reform and the Mental Health Parity Act, the agencies also addressed a few FAQs on HIPAA and wellness programs. Most notably, the Department of Labor explained that under health care reform, the maximum reward that can be provided under a HIPAA wellness program will increase from 20% to 30%. The increase will not occur under health care reform until 2014. However, the agencies intend to propose regulations using regulatory authority under HIPAA to raise the percentage for the maximum reward that can be provided under a HIPAA wellness program to 30% before the year 2014.

### **Employers' Bottom Line**

The agencies continue to define the landscape of health care reform even for the first round of requirements that have already gone into effect or will be going into effect for employer-sponsored plans beginning on or after the first plan year following September 23, 2010. Employers should keep an eye out for additional guidance and make a good-faith effort to comply with existing guidance with an understanding that additional adjustments may be necessary as further guidance and clarifications are issued.

If you have any questions regarding this Alert, or would like additional details concerning health care reform, you can contact the author of this Alert, Penny C. Wofford, 864-699-1100, [pwofford@fordharrison.com](mailto:pwofford@fordharrison.com), any member of Ford & Harrison's Employee Benefits practice group or the Ford & Harrison attorney with whom you usually work.

You may also visit the health care reform tab of the Ford & Harrison website for more helpful resources and tools on health care reform.