Alert 10-165 Mobile and Print-friendly version

Health Care Reform Act Update – Federal Agencies Issue Guidance

On June 28, 2010, the Department of Health & Human Services ("HHS"), in conjunction with the Department of Labor ("DOL") and the Treasury Department, issued interim final regulations that address pre-existing condition exclusions, lifetime and annual limits, rescissions, and patient protections. These regulations provide guidance under the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively, the "Health Care Reform Act"). The DOL has also issued certain model notices for use by plan sponsors.

Pre-existing Condition Exclusions. Under the Health Care Reform Act, effective January 1, 2014, a participant cannot be denied benefits based upon a pre-existing condition. The regulations, however, (i) clarify that a plan can exclude benefits for a specific condition if the exclusion applies regardless of when the condition arose and (ii) appear to expand the rules regarding pre-existing condition exclusions to include exclusions on eligibility for coverage.

Lifetime and Annual Limits. Effective for plan years beginning after September 23, 2010, a group health plan may not establish any annual or lifetime limit on the dollar amount of benefits for any participant. However, a plan may place annual or lifetime limits on specific covered benefits that are not "essential health benefits," and may exclude from plan coverage all benefits for a specific condition. Under the regulations, effective as of the first day of the plan year beginning on or after September 23, 2010, plans that imposed a lifetime limit must provide a notice and special enrollment period for certain individuals who previously exceeded the lifetime limit. The regulations also require plans that implement restricted annual limits to use a "three-year phased approach," which restricts the annual limit that may be used each year until January 1, 2014, when annual limits will no longer be permitted.

No Rescissions. Under the Health Care Reform Act, effective for plan years beginning on or after September 23, 2010, a group health plan cannot rescind coverage except in the case of fraud or intentional misrepresentation of a material fact. The regulations define a rescission to be a retroactive cancellation or discontinuance of coverage. The regulations also provide that the prospective cancellation or discontinuance of coverage or the retroactive cancellation or discontinuance of coverage because of a failure to timely pay premiums or contributions toward coverage will not qualify as a rescission. The regulations require a group health plan to provide at least 30 days' notice to an individual before coverage may be rescinded.

Patient Protections. The patient protection provisions below apply for plan years beginning on or after September 23, 2010:

- Choice of Health Care Professional and Coverage for Obstetrical and Gynecological Services. Under the Health Care Reform Act, when a group health plan requires a participant to designate a primary care provider or pediatrician (collectively, "PCP"), the plan must permit the participant to designate any participating PCP who is accepting patients. A plan also may not require prior authorization or a referral for obstetrical or gynecological ("ob/gyn") care provided by a participating health care professional. Under the regulations, a plan may select a default PCP if none is selected, and if a plan requires PCP designation, the plan must provide each participant with a notice informing them of the plan's terms regarding designation of a PCP, and that no prior authorization or referral is needed for ob/gyn care.

- Emergency Services. Under the Health Care Reform Act, a plan that provides emergency services must do so without the participant or health care provider having to obtain prior authorization and regardless of whether the services are provided in-network or out-of-network. The regulations provide that if emergency services are provided out-of-network, the plan may not impose any administrative requirement or limitation that is more restrictive than the requirements or limitations that apply to in-network emergency services. The regulations also

provide that cost-sharing requirements (i.e., copayments or coinsurance rates) for out-of-network emergency services cannot exceed in-network cost-sharing requirements, but that a participant may be required to pay the excess of the amount the out-of-network provider charges over the amount the plan is required to pay.

Application to Grandfathered Group Health Plans. Grandfathered group health plans must comply with the prohibition against pre-existing condition exclusions, the limitation on imposing lifetime or annual limits, and the rules regarding rescissions. The rules regarding patient protections do not apply to grandfathered health plans; however, federal or state laws related to these patient protections may apply regardless of grandfather status.

Model Notices. The DOL has also issued three separate model notices that may be used by plan sponsors to satisfy certain of the requirements discussed above, and requirements with regard to the coverage for dependents through age 26. Plan sponsors that must provide notice regarding the removal of lifetime limits, and the special enrollment period and the selection of primary care physicians and ob/gyns, may use the DOL's model notices to satisfy these requirements. The DOL has also provided a model notice that may be used to inform participants of the extension of dependent coverage and the required special enrollment period.

The rules regarding pre-existing conditions, exclusions, lifetime and annual limits, rescissions, and patient protections are complex. We recommend that plans and procedures be reviewed and amended to comply with these changes. Employers should also begin to work on creating required notices. If you have questions regarding theses rules, model notices, or the Health Care Reform Act in general, please contact your Reed Smith attorney or one of the attorneys listed below.

John D. Martini
Partner
Philadelphia
+1 215 241 7908

Dodi Walker Gross
Partner
Pittsburgh
+1 412 288 4132

Laurie S. DuChateau
Counsel
Pittsburgh
+1 412 288 3004

Rachel Cutler Shim
Counsel
Philadelphia
+1 215 851 8158

Jacqueline M. Herzog
Associate
Pittsburgh
+1 412 288 8925