

Perhaps because of the July 4th holiday the government agencies took a break from issuing new rules. This will give us an opportunity to look at the previously issued rules and some other items of interest.



Prohibition on Rescissions

As reported in the last newsletter the government issued 55 pages of regulations on June 28, 2010, addressing a number of topics under health care reform. One of those areas had to do with the ability of the carrier or plan to rescind coverage. As we reported, this has not been a major issue in the group market. That is, most individuals do not commit fraud or intentionally misrepresent a material item on the enrollment form for group coverage. However, the regulations contain an example that may have more common application in the group market.

Basically the example talks about an employee who was a full time employee and then becomes a part time employee. The plan continues to collect premiums, cover this person and pays claims. The plan does a routine audit and discovers this person is not entitled to coverage because the employee is no longer full time. The regulations say that since the person did not commit fraud or intentionally misrepresent a material fact, the plan cannot rescind the coverage. That is, the plan can only terminate the coverage prospectively.

http://www.groom.com/media/publication/738_1_GLG%20Summary%20-%20Annual%20Limits%20Regulations%207.7.10.pdf

The regulations did not address the COBRA issues with respect to the employee going from full time to part time status.



Early Retiree Reinsurance Program

The Department of Health and Human Services released the final version of the application under the early retiree reinsurance program.

http://www.groom.com/media/publication/742_ERRP%20Application%20Summary.pdf

Remember; it is first come-first serve. So we encourage you to file the application if you plan to participate in the program. However, here is an article listing things to consider before filing the application.

<http://www.towerswatson.com/assets/pdf/2383/TW-HCR%20ERRP%20New%20Guidance%20FINAL.pdf>

On one hand, it is a government hand out. On the other hand, there are restrictions on how the money can be used and completing the application can be a daunting task.



Health Care Reform and Self Funded Health Plans

Health care reform is going to impact every employer. However, self funded employers, by definition, have to take a more active role. The following article talks about the statute's impact on self funded health plans. If you are sponsoring a self funded health plan the article is worthwhile reading.

http://www.ebglaw.com/files/40540_Temchine-PPACA-WHITE-PAPER-EMPLOYERS.pdf

Although there are tons of articles on health care reform this article addresses issues unique to self funded health plans.

Ohio Supreme Court Ruling On Leave Policy

Let me start off by saying this is really a labor issue so it is outside my bailiwick. Therefore, I really have no comment but I at least wanted to alert you to this recent development. The Ohio Supreme Court ruled that an employer's neutral leave policy that imposes a uniform minimum length of service for eligibility is not direct evidence of sex

discrimination, even when it results in an ineligible employee's termination for taking maternity leave. For those of you who are interested the following article discusses this case.

<http://tinyurl.com/2bjwund>

Again, this is not my area of expertise but you still may find the case interesting or important in your situation.



2011 Checklist of Events

As I said before, there has been (and will continue to be) a ton of articles on health care reform. The following article lists the changes that are applicable for plan years beginning on or after September 23, 2010.

http://www.seyfarth.com/dir_docs/news_item/a419b05d-c98b-4296-a596-811ead3aa151_documentupload.pdf

The nice thing about this article is that it simply focuses on what is on the immediate horizon.



Government Portal Operational

One of the main components of health care reform is the new health care exchanges that will become operational January 1, 2014. However, the government has launched a webpage that is a precursor to the exchanges. That webpage can be accessed at:

<http://www.healthcare.gov/>

The webpage is snappy but, in my opinion, it is pretty rudimentary. I am sure the government will expand and enhance the webpage as time goes on. Like they say “a journey of a thousand miles begins with a single step.” I guess this is the government’s first baby step towards the health care exchanges.



New Preexisting Condition Insurance Plan

One of the “carrots” as opposed to a “stick” under health care reform is a temporary program where individuals with pre-existing conditions can get health coverage. To be eligible for the program the person must have a preexisting condition and not had coverage six months prior to entering the program. There has been \$ 5 billion set aside

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and the program is scheduled to end on January 1, 2014, when the health care exchanges start. As a practical matter, some question how valuable the program will really be in the end. Putting that aside, the government kicked off the program on July 1st. The following is a link to that program.

<http://www.hhs.gov/news/press/2010pres/07/20100701a.html>

The states have the option to operate their own program or participate in the Federal government's program. Ohio, which will receive \$ 152 million, has elected to operate its own program and is working with Medical Mutual of Ohio to run the program.



Grandfathered Status

As everyone knows by now, the government has issued the regulations governing grandfathered status for group health plans under health care reform. As a practical matter, few plans will remain grandfathered over the long haul. Therefore, it makes sense to look at what happens when a plan does, in fact, lose its grandfathered status. Quite frankly it is not the end of the world. The following article lists the consequences of losing your grandfathered status:

<http://tinyurl.com/2dlng94>

In my opinion you should not let maintaining grandfathered status be your guiding light. That is, I would base the decision on business reasons rather than simply trying to maintain the plan's grandfathered status. Basically, you do not want the tail wagging the dog. If circumstances (e.g. costs) dictate a plan change, I would go ahead with the change even if the plan loses its grandfathered status.

Additional HITECH Guidance

The HIPAA privacy rules have been around for some time. Basically, covered entities (e.g. health plans and medical providers) and business associates (e.g. brokers and third party administrators) have been required to protect certain individually identifiable health information called PHI. HITECH modifies the HIPAA privacy rules, in part, by imposing new notification requirements on covered entities and business associates whenever there is a security breach. The government continues to issue rules governing these changes. The following government website talks about the new rules:

<http://www.hhs.gov/news/press/2010pres/07/20100708c.html>

As a practical matter, the new rules will have minimal impact on most employers. First, if the health plan is fully insured, the bulk of the requirements fall on the insurance company. If you sponsor a self funded health plan, contact the third party administrator to make sure they are up to speed on the new rules.

As always, please call me if you have any questions regarding any of these topics with the caveat that I do not deal with leave policies.

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