

Understanding Health Care Reform

Employee Benefits *ALERT*

Preexisting Condition Exclusions, Annual and Lifetime Limits, and Rescissions

The Patient Protection and Affordable Care Act (the Affordable Care Act) restricts the ability of a group health plan to impose preexisting condition exclusions, rescind coverage, and impose lifetime and annual limits. Interim final regulations recently issued by the Departments of Treasury, Labor, and Health and Human Services (the Agencies) provide guidance regarding these provisions and impose new notice requirements.

Preexisting Condition Exclusions. As of the first plan year beginning on or after September 23, 2010, health plans may not impose any preexisting condition exclusions on enrollees under age 19. Effective January 1, 2014, plans may not impose any preexisting condition exclusions on *any* enrollee, regardless of age. The regulations provide that the prohibition applies not only to an exclusion from coverage for specific benefits under a plan, but also to a complete exclusion from a plan. Accordingly, an individual cannot be denied enrollment in a plan because he or she has a preexisting condition.

Annual and Lifetime Limits. The Affordable Care Act generally prohibits the imposition of annual and lifetime limits on “essential health benefits.” Restricted annual limits on “essential health benefits” are permitted until 2014. The regulations provide that the annual and lifetime limit prohibition does not apply to health flexible spending arrangements, medical savings accounts, and health savings accounts. The prohibition also does not apply to a retiree-only health reimbursement arrangement (HRA) or to an HRA integrated with other coverage as part of a group health plan where the other coverage complies with the annual and life-

time limit prohibition. The Agencies requested comments on the application of the Affordable Care Act to stand-alone HRAs.

Until the Agencies issue regulations defining the term, plans may apply a reasonable good faith interpretation of “essential health benefits.” Plans must apply their good faith definitions consistently, however.

The regulations also clarify that a plan may exclude all benefits for a particular condition. If benefits are provided for a condition, however, then the benefit limit prohibitions apply.

The regulations provide a three-year phased approach to the permitted annual limits on essential health benefits:

Plan Year Beginning:	Annual Limit
On or after September 23, 2010, but before September 23, 2011	\$750,000
On or after September 23, 2011, but before September 23, 2012	\$1.25 million
On or after September 23, 2012, but before January 1, 2014	\$2 million

Only essential health benefits may be taken into account for purposes of the limits, and the limits apply on an individual-by-individual basis.

In addition, individuals who reached a lifetime limit prior to the applicability date of the regulations must be provided a notice that the lifetime limit no



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longer applies. If such individuals are no longer participating in the plan, they must be given an opportunity to re-enroll assuming they would otherwise be eligible. The notice and enrollment opportunity must be provided no later than the first day of the first plan year beginning on or after September 23, 2010. A model notice is available on the Department of Labor website: <http://www.dol.gov/ebsa/>

Rescissions. The Affordable Care Act prohibits plans from rescinding coverage for reasons other than fraud or material misrepresentation of a material fact. The regulations require plans to provide at least 30 days advance notice to an individual before coverage may be rescinded. A model notice is available on the Department of Labor website: <http://www.dol.gov/ebsa/>

Plan sponsors should review plan documents and summary plan descriptions to ensure compliance with the new requirements that become effective for plan years beginning on or after September 23, 2010. Plan administrators should be prepared to ensure that plans operationally comply with the new rules.

The interim final regulations are the latest in a series of regulations under the Affordable Care Act that have been and will be issued. Williams Mullen Benefits Alerts have summarized regulations regarding the [adult child coverage requirement](#) and maintaining [grandfathered plan status](#).

Contact any member of the Williams Mullen Employee Benefits Group if you have any questions regarding preexisting condition exclusions, annual and lifetime limits, and rescissions or the Affordable Care Act. This information is provided as an educational service and is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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