VENABLE LLP

employee benefits and executive compensation alert

www.Venable.com
December 2011

Please contact any of the attorneys in our Employee Benefits and Executive Compensation Group if you have any questions regarding this Employee Benefits alert.

Authors

Thora A. Johnson
tajohnson@Venable.com
410.244.7747

Christopher E. Condeluci
cecondeluci@Venable.com
202.344.4231

Jennifer S. Berman
jsberman@Venable.com
410.244.7756

Jessica E. Kuester
jekuester@Venable.com
410.244.7476

Health Care Reform: Defining "Essential Health Benefits"

On December 16, 2011, the Center for Consumer Information and Insurance Oversight issued an Essential Health Benefits Bulletin (the "Bulletin") providing information regarding how the Department of Health and Human Services ("HHS") intends to define "essential health benefits" under the Patient Protection and Affordable Care Act of 2010 ("PPACA"). The Bulletin does not include much additional detail on what constitutes an essential health benefit, but does include more information on how these benefits will be determined.

Significance of Defining Essential Health Benefits

The definition of essential health benefits has dual significance under PPACA. First, effective January 1, 2014, all non-grandfathered insured products offered in the individual and small group health insurance markets (both inside and outside of the new health insurance Exchanges) will be required to provide essential health benefits. Second, all health plans, including self-insured employer plans, are prohibited from applying lifetime and annual limits[1] on essential health benefits.

PPACA provides that essential health benefits include items and services falling within the following 10 general benefit categories:

1. Ambulatory patient services;
2. Emergency services;
3. Hospitalization;
4. Maternity and newborn care;
5. Mental health and substance use disorder services, including behavioral health treatment;
6. Prescription drugs;
7. Rehabilitative and habilitative services and devices;
8. Laboratory services;
9. Preventive and wellness services and chronic disease management; and
10. Pediatric services, including oral and vision care.

The statute, however, provides no more detail and instructs HHS to further define essential health benefits so that they are equal in scope to the benefits offered under "a typical employer plan."

State-by-State Benchmark Approach

According to the Bulletin, each state may select a "benchmark plan" that would serve as a reference, reflecting both the scope of services and any limits offered by a typical employer plan for that state. HHS intends that this approach will give each state flexibility in defining the essential health benefits that must be covered within its borders. The Bulletin sets out the standards to be used by each state in selecting its benchmark plan for 2014 and 2015, thereby providing insurers in the individual and small group markets with general guideposts for anticipating what benefits will ultimately be deemed essential in their state for these initial years.

The benchmark plan may be: (1) one of the three largest small-group plans in the state by enrollment, (2) one of the three largest state employee health plans by enrollment, (3) one of the three largest federal employee health plan options by enrollment, or (4) the largest HMO plan operating in the state.

Questions Remain

Many questions, however, remain—particularly for employers offering self-insured benefit plans operating across state lines, where the benchmark plans may differ in their scope of services and limits. Until these questions are answered, all plans will have to continue to operate without definitive guidance regarding what constitutes essential health benefits and apply a reasonable interpretation as to which benefits are and are not essential.

A copy of the Bulletin can be accessed **here**.

Comments are being accepted on the Bulletin until January 31, 2012.

The attorneys in Venable's Employee Benefits and Executive Compensation Group are available to help plan sponsors and other interested parties planning for and complying with the changes under health care reform.

---

[1] Plans are currently permitted to gradually phase out certain annual limits. Effective for plan years beginning on or after January 1, 2014, these annual limits will no longer be permitted.

Please contact any of the attorneys in our Employee Benefits and Executive Compensation Group if you have any questions regarding this Alert.

Harry I. Atlas hiatlas@Venable.com 410.528.2848	**Jennifer S. Berman** jsberman@Venable.com 410.244.7756	**Bradford S. Cohen** bcohen@Venable.com 310.229.9942	**Christopher E. Condeluci** cecondeluci@Venable.com 202.344.4231
Robin C. Gilden rcgilden@Venable.com 310.229.9967	**Kenneth R. Hoffman** krhoffman@Venable.com 202.344.4810	**Thora A. Johnson** tajohnson@Venable.com 410.244.7747	**Jessica E. Kuester** jekuester@Venable.com 410.244.7476
Gregory J. Ossi gossi@Venable.com 703.760.1957	**Barbara E. Schlaff** beschlaff@Venable.com 410.244.7494	**Lisa A. Tavares** latavares@Venable.com 202.344.4075	**Martha Jo Wagner** mjwagner@Venable.com 202.344.4002
John A. Wilhelm jawilhelm@Venable.com 703.760.1917			