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Health Care Reform: Another Extended Grace Period

On March 18, 2011, the Department of Labor (“DOL”) issued Technical Release 2011-01 (“TR 2011-01”), extending the enforcement grace period for four provisions of the interim final claims and appeals regulation. These provisions, which are applicable only to non-grandfathered group health plans, (1) mandate faster responses to urgent care claims, (2) require notices to be provided in a non-English language in certain cases, (3) apply a new strict compliance standard, and (4) expand the required content for adverse benefit determinations. Prior to the issuance of TR 2011-01, these four provisions were scheduled to become enforceable July 1, 2011. Now, for calendar year plans, the provisions will not become enforceable until January 1, 2012. To take advantage of this extension, employers sponsoring non-grandfathered health plans should coordinate with their third party administrators and carriers and review the description of their claims procedures.

The Four Provisions

The four provisions at issue require non-grandfathered group health plans to:

- Notify a claimant of the grant or denial of an urgent care claim as soon as possible, but not more than 24 hours (rather than 72 hours) after receipt of a claim.
- Provide notices in a culturally and linguistically appropriate manner if a certain portion of plan participants are literate only in a non-English language.
- Strictly adhere to all requirements of the internal claims and appeals rules or have claims deemed exhausted—allowing the claimant to bypass all or part of the internal review process.
- Include additional content in notices of adverse benefit determinations. Specifically, notices must provide (1) the date of the service, (2) the health care provider, (3) any applicable claim amount, (4) the diagnostic, treatment, and denial codes, and the meaning of those codes, (5) a description of any applicable standard, such as the standard for medical necessity, (6) a discussion of the final decision, (7) a description of the internal and external review procedures and how to initiate an appeal, and (8) contact information for any applicable office of health insurance consumer assistance or ombudsman.

The Extended Enforcement Grace Periods

TR 2011-01 delays the enforcement of the first three requirements outlined above until the first day of the first plan year beginning on or after January 1, 2012. Accordingly, non-grandfathered group health plans have additional time to comply with the new time period for urgent care claims, provide notices in a culturally and linguistically appropriate manner, and come into strict compliance (rather than substantial compliance) with the regulatory requirements of the internal claims and appeals rules.

TR 2011-01 sets out slightly more complex timing rules with respect to the new content required to be included in notices of adverse benefit determinations.

- The requirement that diagnosis and treatment codes (and their corresponding meanings) be included in such determinations is enforceable for plan years beginning on or after January 1, 2012.
- The other expanded disclosure requirements will be enforceable the first plan year beginning on or after July 1, 2011.

Accordingly, all four provisions become enforceable January 1, 2012 for calendar year plans.

What Does This Mean?

The extended enforcement grace period for non-grandfathered health plans is welcome. To take advantage of the extension, plan sponsors should coordinate with their third party administrators and carriers and review the description of their claims procedures. As the extension is temporary in nature, however, they should also continue planning for these new rules. In particular, plan sponsors should keep in mind that:

- The extensions were granted because DOL and IRS expect the rules to change in light of the public comments they have received on the interim final regulations.
- The statutory rules underlying this new guidance are currently in effect—meaning that an individual could bring a private right of action against a plan now.
- New internal claims and appeals rules with respect to rescission, full and fair review, and conflicts of interest are currently in effect for calendar year, non-grandfathered plans.
- New guidance regarding the Federal external review process may be forthcoming. A footnote in TR 2011-01 states that the scope of this process is being reviewed and may be addressed in future guidance.

The lawyers in Venable's [Employee Benefits and Executive Compensation](#) group continue to closely monitor the development of these rules and can help you implement compliant claims and appeals procedures. Please contact any of the attorneys in the group if you have questions regarding this alert.

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