JENKINS INSURANCE GROUP

Commitment.
To you, your people, your enterprise.

DOL Delays Effective Date of New HCR Internal Claims and Appeals Provisions for Non-Grandfathered Plans

LEGISLATIVE BRIEF

April 7, 2011

Summary

The DOL has again **delayed the date by which non-grandfathered group health plans must comply** with most of the new internal claims and appeals provisions mandated by the Affordable Care Act (ACA or "HCR law"). **For calendar-year plans, the new delayed effective date is January 1, 2012**. Of course, plans must continue to comply with the claims and appeals provisions that were already in effect prior to enactment of the HCR law in March 2010. Plan sponsors should check with their carriers and TPAs to see if they intend to take advantage of this new delayed effective date and, if so, **review and revise SPDs to ensure that they include the correct effective date.** This article details the specifics of the DOL guidance.

Background

The HCR law and interim final regulations required non-grandfathered plans to implement additional claims and appeals and external review procedures by January 1, 2011 for calendar-year plans (specifically, the first day of the first plan year beginning on or after September 23, 2010). In September 2010 the DOL extended the deadline to July 1, 2011, in Technical Release 2010-02 (issued September 20, 2010). Now, with Technical Release 2011-01 (March 18, 2011) the DOL has modified and further extended the enforcement grace period from July 1, 2011 to January 1, 2012 for calendar year plans. (Note below the earlier effective date for certain provisions for non-calendar year plans.)

The reason the DOL, HHS and Treasury (the Departments with jurisdiction over implementing the HCR law) are delaying the compliance deadline at this time is that they intend to modify the existing interim final regulations in the near future (in response to comments received), so they do not want to start enforcing the existing rules as of July 1, 2011 and then change them soon after, as this would confuse both plans and participants and would increase costs for plans.

Two Different Delayed Effective Dates for Different Provisions

Technical Release 2011-01 includes two separate provisions specifying delayed enforcement dates, but for calendar year plans both provisions result in a delayed enforcement date of January 1, 2012. The two delayed enforcement dates are:

- The first day of the 2012 plan year, and
- The first day of the first plan year beginning on or after July 1, 2011. >Off-calendar-year plans that begin between July 1 and December 31, 2011 will have to start complying before 2012 with certain provisions.

Additionally, keep in mind that these new claims and appeals procedures apply to health insurance issuers (i.e., carriers), as well as to group health plans (i.e., Plan Administrators). The prior (2000) DOL claims procedures applied only to group health plans but not to carriers.

Provisions that must be Effective by the First Day of the 2012 Plan Year

- ***Urgent care claims determination within 24 hours:*** A plan or issuer must notify a claimant of a benefit determination (adverse or not) involving an "urgent care" claim as soon as possible, but not later than 24 hours after receipt of the claim. The current standard is within 72 hours after receipt of the claim.
- ***Culturally and linguistically appropriate:*** A plan or issuer must provide notices to claimants in a culturally and linguistically appropriate manner.
- ***Diagnostic and treatment codes***: A plan or issuer must automatically disclose diagnosis and treatment codes (and their meanings) in benefit determination notices to claimants.
- ***"Deemed denial:"*** If a plan or issuer does not strictly adhere to all the requirements of the 2010 interim final regulations, the claimant is deemed to have exhausted the internal claims and appeals process and can go directly to external review processes or to court.

Provisions that must be Effective by the First Day of the Plan Year beginning on or after July 1, 2011

(Still January 1, 2012 for calendar-year plans.)

Benefit determination notices to claimants must include the following information:

- Sufficient information to identify a claim (other than the diagnosis and treatment information noted above);
- The reasons for an adverse benefit determination;
- A description of available internal appeals and external review process;
- For plans and issuers in States that have an office of health consumer assistance program or ombudsman program, information about such program and contact information for it. (A list is attached as an Appendix to Tech. Rel. 2011-01.)

Other Provisions of Technical Release 2011-01

Under the 2010 Technical Release, plans and issuers could only take advantage of the enforcement grace period if they were working in good faith to implement the required HCR standards. Under the new 2011 Technical Release, plans are not required to be working in good faith for either the extended or the original enforcement grace period to apply.

JENKINS INSURANCE GROUP

Tech. Rel. 2011-01 also provides that during the grace period, the Departments will not take any enforcement action against group health plans with respect to the above provisions. Additionally, HHS is encouraging States to provide similar grace periods for health insurance issuers, and HHS will not cite a State for failing to substantially enforce these new provisions.

Caveats and Additional Information

During this enforcement grace period, plans must continue to comply with the claims and appeals provisions that were already in effect prior to enactment of the HCR law in March 2010. This new DOL guidance addresses only the internal claims and appeals procedures and does not address the Federal external review process, which is still under review and may be the subject of future guidance.

Additionally, the following information is available to assist self-insured plans in understanding their responsibilities with respect to implementing external review processes:

- The DOL's Technical Release 2010-01 (August 23, 2010), and
- Frequently-asked-question guidance available at www.dol.gov/ebsa/healthreform.

The Departments have issued model notices (also available at www.dol.gov/ebsa/healthreform) that provide a template for the disclosures that should be made regarding external review (e.g., contact information and timeframes for initiating external review). Plans and issuers that complete and use the model notices authorized by the Departments are considered to meet the relevant content requirements.

Action Steps for Employers

- If your plan year begins between July 1 and December 31, 2011, notices to claimants must include the additional information noted above as of the start of the 2011 plan year. You *can't* wait until January 2012.
- If your plan year begins between January 1 and June 1, you *can* wait until the 2012 plan year to comply with the new claims and appeals procedures.
- Check with your insurers and TPAs to find out if they plan to take advantage of the new delayed effective dates.
- Review your summary plan descriptions (SPDs) and issue summaries of material modifications (SMMs) if necessary (i.e., if you will use the delayed effective dates but your recently-issued SPDs list the July 1, 2011 date for compliance).
- If your notices of adverse claims determinations must include information about your State's health consumer assistance program, check the Departments' websites. For July 1, 2011 plan years, you can use the current list of State consumer assistance programs and ombudsmen in the Appendix to Technical Release 2011-01. (http://www.dol.gov/ebsa/healthreform and http://cciio.cms.gov/programs/consumer/capgrants/index.html).

© 2011 Leavitt Benefits. All Rights Reserved. Reprint with permission only. This Benefits Compliance bulletin is general in nature and is not intended or provided as legal advice or opinion in any particular case. If you have questions, contact Lisa-Klinger@Leavitt.com.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.