



HR & BENEFITS UPDATE

Affordable Care Act's Health Plan External & Internal Review Safe Harbor & Other Regulations Require Health Plan Updates

Order Recording of 8/24 2010 Health Plan Update Briefing

August 26, 2010

The Patient Protection & Affordable Care Act (Affordable Care Act) generally mandates that all group and individual health plans and policies comply with these mandates no later than the first plan or policy year beginning after September 22, 2010 unless the plan or policy qualifies as a “grandfathered plan” under the Affordable Care Act. Employer and other health plan sponsors, insurers, fiduciaries and administrators of all federally-regulated employment-based health plans should move quickly to update plan documents, administrative procedures and agreements, decisional criteria, investigation and decision-making documentation, and claims and appeals-related notification and other communications to comply with a series of new Federal guidance governing health plan claims and appeals published in the Federal Register on July 23, 2010 as further supplemented by additional “safe harbor” external review procedures published in the Federal Register today (August 26, 2010) (collectively the ACA Appeals Rules”).

Although the ACA Appeals Rules technically apply only to non-grandfathered plans, Agency commentary about existing Labor Department health plan claims and appeals procedures published along with the ACA Appeals rules sends a strong signal that the adequacy of all health plan claims and appeals procedures is warranted. As many health plan sponsors and health insurers are deciding that compliance with Affordable Care Act mandates is more cost effective than meeting the conditions that federal regulations require for a health plan to maintain grandfathered plan status, most group health plans and policies will need to be updated to comply with these new rules quickly. Even if a plan qualifies as a grandfathered plan, however, comments contained included the preamble to the July 23, 2010 guidance and recent court decisions send a strong signal that a review and update of existing claims and appeals procedures and practices is warranted.

Affordable Care Act Appeals Rules

Federal law generally requires that all employer or union-sponsored group health plan adopt and administer claims and appeals procedures in accordance with reasonable claims and appeals procedures that comply with Labor Department Regulations published in 2000. In addition to complying with these regulations, the Affordable Care Act also will require that non-grandfathered plans also fulfill additional health plan claims and appeals procedures imposed by the Affordable Care Act.

On July 23, 2010, the Departments of Labor, Health & Human Services, and Internal Revenue Service (Agencies) published initial guidance providing initial guidance about the additional claims and appeals standards (ACA Appeals Rules) that group health plans not “grandfathered” under the Affordable Care Act must meet by the first plan year beginning after September 22, 2010.

The Agencies further refined and clarified the requirements that health plans subject to the ACA Appeals Rules through the publication [here](#) of Technical Release No. 2010-01, “Interim Procedures for Federal External Review and Model Notices Relating to Internal Claims and

Appeals and External Review Under the Patient Protection and Affordable Care Act.” Among other things, Technical Release No. 2010-01 provides an interim enforcement safe harbor for non-grandfathered self-insured group health plans not subject to a State external review process, and therefore subject to the Federal external review process. for plan years beginning after September 22, 2010 until superseded by future guidance. According to Technical Release No. 2010-01, the Department of Labor and the Internal Revenue Service will not take any enforcement action (or assess any excise tax under the Internal Revenue Code) for non-compliance with the ACA Appeals Rule external review mandates against a non-grandfathered self-insured group health plan that complies with one of the interim compliance methods. Plan sponsors, fiduciaries, administrators and insurers dealing with non-grandfathered health plans and policies must act quickly to review and update their program terms and procedures in response to this new guidance to ensure timely compliance with the Affordable Care Act mandates. Sponsors, insurers, fiduciaries and administrators of grandfathered plans also should consider evaluating the adequacy of their policies and practices in light of this new guidance, as clarifications of the Labor Department’s interpretation of existing claims and appeals rules for employment-based group health plans shared in the preamble to the ACA Appeals Rules are likely to make adjustments to the claims and appeals practices and policies of even grandfathered plans advisable in many instances.

Review of Grandfathered Plan Claims & Appeals Procedures Also Warranted

Even if a plan qualifies as a grandfathered plan for purposes of the ACA Appeals Rules, employer and other health and employee benefit plan sponsors, insurers, fiduciaries and administrators nevertheless should evaluate the advisability of updating applicable claims and appeals decision-making, documentation and notice processes and procedures. Labor Department commentary about its interpretation of existing Labor Department claims and appeals regulations included in the preamble to the July 23, 2010 ACA Claims Rules guidance may be a basis for questioning the adequacy of certain existing claims and appeals practices under existing Labor Department regulations. The potential need for concern is further advanced by an apparent growing willingness of federal courts to overturn benefit denials based upon findings of process, documentation, notification, conflict of interest or other deficiencies in the processing and denial of claims and appeals. [Read more.](#) Given these developments, prompt review and update of the adequacy of claims and appeals procedures and processes generally is advisable for all employment-based health plans regulated by the Labor Department, whether or not the plan qualifies as a grandfathered plan for purposes of the ACA Appeals Rules.

For assistance to review and update your health or other employee benefit claims and appeals or other terms, processes, notices and communication or other processes and procedures, please contact the author of this update, attorney Cynthia Marcotte Stamer at (469) 767-8872 or cstamer@solutionslawyer.net.

Recording of August 24 “2010 Health Plan Update” Internet Workshop Includes Information On ACA Appeals Rules and Other Changes To Federal Rules Affecting Health Plans

Details of recently released guidance about federal health plan rules applicable to employment-based health plans under the Affordable Care Act and other federal health plan regulations were among the topics covered in a “2010 Health Plan Update” internet broadcast briefing on Tuesday, August 24 2010. For more information about this briefing, see [here](#). If you are interested in purchasing a recording of this briefing, e-mail [here](#).

For Assistance or More Information

If your organization needs assistance updating your health care program documentation, policies or procedures in response to these or other requirements or with other employee benefit, insurance or human resources matters, please contact the author of this update, Board Certified Labor & Employment attorney Cynthia Marcotte Stamer at (469) 767-8872 or via e-mail [here](#).

Current Chair of the American Bar Association (ABA) RPTE Employee Benefit & Other Compensation Group, a Council Member of the ABA Joint Committee on Employee Benefits and Past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group, Ms. Stamer continuously advises employers, health and other employee benefit plans, plan sponsors, fiduciaries, plan administrators, plan vendors, insurers and others about health program related legal, operational, documentation, public policy, enforcement, privacy, technology, litigation and risk management and other concerns. Ms. Stamer also publishes, conducts client and other training, speaks and consults extensively on these and other health and managed care program concerns and practices. She regularly speaks and conducts training for the ABA, American Health Lawyers Association, Institute of Internal Auditors, Society for Professional Benefits Administrators, Southwest Benefits Association and many other organizations. Her insights on these and related topics have appeared in Atlantic Information Service, Bureau of National Affairs, World At Work, The Wall Street Journal, Business Insurance, Managed Healthcare, Health Leaders, various ABA publications and a many other national and local publications. To contact Ms. Stamer or for additional information about Ms. Stamer, her experience, involvements, programs or Publishers of her many highly regarded writings on health industry and human resources matters include the Bureau of National Affairs, Aspen Publishers, ABA, AHLA, Aspen Publishers, Schneider Publications, Spencer Publications, World At Work, SHRM, HCCA, State Bar of Texas, Business Insurance, James Publishing and many others. You can review other highlights of Ms. Stamer's experience [here](#).

Other Resources

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- ✓ [**New Regulations & Court Decisions Require Health Plan Claims & Appeal Updates & Strengthening**](#)
- ✓ [**Small Employers Sponsoring Health Coverage May Qualify For New Tax Credit, Must Act Quickly To Comply With Other New Federal Health Plan Mandates Under Affordable Care Act & Other Laws**](#)
- ✓ [**Rite Aid Pays \\$1 Million HIPAA Privacy Settlement As OCR Tightens HIPAA Regulations**](#)
- ✓ [**New Affordable Care Act Mandated High Risk Pre-Existing Condition Insurance Pool Program Regulations Prohibit Plan Dumping of High Risk Members, Set Other Rules**](#)
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- ✓ [**Congress & Labor Department Considering Tightening of Retirement Plan Regulations**](#)
- ✓ [**Testimony Highlights Growing Exposure of Businesses Misclassifying Workers; Businesses Should Act to Minimize Risks**](#)
- ✓ [**Businesses Employing Children Should Review & Tighten Practices In Light of Tightened Rules & Increased Penalties**](#)
- ✓ [**New Affordable Care Act Health Plan Appeals Regulations Require Health Plan Updates**](#)
- ✓ [**Blockbuster & Health Delivery Disability Discrimination Settlements Highlight Need For Tightened Disability Discrimination Risk Management**](#)

- ✓ [Agencies Release Regulations Implementing Affordable Care Act Health Plan Preventative Care Mandates](#)
- ✓ [New Retirement Plan Resource To Help Spanish-Speaking Participants With Retirement Planning](#)
- ✓ [Office of Civil Rights Proposes Changes To HIPAA Privacy, Security & Civil Sanctions Rules](#)
- ✓ [St. Louis Employer's OSHA Violations Trigger Contempt Order and Penalties](#)
- ✓ [Review & Strengthen Defensibility of Existing Worker Classification Practices In Light of Rising Congressional & Regulatory Scrutiny](#)
- ✓ [Key Affordable Care Act Health Plan Coverage Mandates Guidance Issued June 28; Apply ASAP For Early Retirement Reinsurance Program](#)
- ✓ [HHS, DOL & IRS Rules Define "Grandfathered" Group Health Plans & Health Insurance Coverage under the Patient Protection and Affordable Care Act](#)
- ✓ [New Rule Requires Federal Government Contractors To Post New "Employee Rights Under The National Labor" Poster](#)
- ✓ [Defined Contribution Plans Investing In Publically Traded Employer Securities Face New Requirements](#)
- ✓ [CBO Raises Estimated Cost of Health Care Reforms As Employers, Health Plans Brace Costs Of Newly Effective & Impending Mandates](#)
- ✓ [Certain Workforce Reductions Trigger Plant Closing Notice & Other Obligations](#)
- ✓ [Mishandling Employee Benefit Obligations Creates Big Liabilities For Distressed Businesses & Their Business Leaders](#)
- ✓ [DOL Plans To Tighten Employment Protections For Disabled Veterans & Other Disabled Employees Signals Need For Businesses To Tighten Defenses](#)
- ✓ [COBRA, HIPAA, GINA, Mental Health Parity or Other Group Health Plan Rule Violations Trigger New Excise Tax Self-Assessment & Reporting Obligations](#)

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