

Cynthia Marcotte **S**tamer, P.C. OLUTIONS LAWYER™

Primary Office
16633 Dallas Parkway, Suite 600
Addison, Texas 75001
Mobile Telephone: (469) 767.8872

HELPING MANAGEMENT MANAGE

Plano Office
3948 Legacy Drive
Suite 106, Box 397
Plano, Texas 75023

August 2, 2011

Affordable Care Act To Require Health Plans Cover Contraception & Other Women's Health Procedures Beginning In 2012

Contraception Mandate Might Not Apply To Certain Religious Employer Plans

Starting with plan years beginning after July 31, 2011, most employer and union sponsored group health plans and group and individual health insurers generally must cover contraceptive and certain other preventive services for women ("Women's Preventive Services") at no cost to comply with federal rules that these programs cover preventive care for members with no cost sharing enacted as part of the Patient Protection and Affordable Care Act ("ACA").

On Monday, August 1, 2011, the Department of Health & Human Services ("HHS") on Monday, August 1, 2011 announced guidelines (Women's Preventive Services Guidelines") that add contraception and a list of women's health procedures to the preventive care procedures that ACA requires covered health plans and health insurance policies covered by the Affordable Care Act to cover without cost to members. ACA's general preventive coverage rules generally have required covered health plans and policies to cover without cost a broad list of other preventive care procedures since the first plan year beginning after September 22, 2009.

Interim Final Regulations implementing ACA's new preventive care mandate published July 14, 2010 interpreted this ACA preventive care mandate broadly to dictate that ACA covered health plans and health insurers cover as preventive services at no member cost hundreds of procedures.

Concerning the Women's Preventive Services, however, the Interim Final Regulations delayed implementation of requirements to cover Women's Preventive Services until August 1, 2011 to give time to HRSA time to issue its recommendations about what procedures should qualify as Women's Preventive Services. When HRSA failed to finalize its input by August 1, 2011, HHS finalized its list of required Women's Preventive Services now rather than to continue waiting for HRSA's final input.

Finalization of the list of required Women's Preventive Services now means covered health plans and policies must add coverage for these listed procedures with no co-pay beginning with all post-July 31, 2012 plan years.

While the published list of required Women's Preventive Services generally mandates that ACA-covered health plans and policies cover contraceptive services for women at no cost beginning in 2012, some plans sponsored by religious employers and group health policies covering these groups may be exempt from the duty to coverage contraception under a new regulation that HHS, along with the Department of Labor Employee Benefit Services Administration ("EBSA") and the Department of Treasury Internal Revenue Service ("IRS")(collectively, the "Agencies") will jointly publish in the Federal Register on August 3, 2011. [See here for more detailed information.](#)

Plans & Insurers Should Review & Update Preventive Care & Other Wellness Benefits

Non-grandfathered health plans and policies, their sponsors, insurers, fiduciaries and administrators should carefully review and update their health plans for compliance with the existing preventive care mandates and other evolving rules about disease management and wellness benefits and coverages, as well as to consider the impending requirement to comply with additional Women's Preventive Services coverage requirements in 2012 as part of their plan design and cost projections.

Existing health plans and health insurance should be reviewed to ensure that the programs appropriately cover all preventive services currently required by the applicable ACA mandates or other laws and re-reviewed for compliance with any updated rules before each plan year to identify any additional costs, changes to plan documents, communications, administrative procedures and vendor contracts required to administer the health plan in accordance with existing rules. For 2012, this should specifically consider the need to comply with the new Women's Preventive Services coverage requirements that take effect next plan year also should be considered.

In addition to specifically planning for compliance with ACA's preventive services coverage mandates, all health plans and policies, their sponsors, insurers, fiduciaries and administrators should review the other wellness and disease management components of their plans. In addition to ACA compliance, these arrangements may need redesign to minimize emerging exposures to challenge by the Equal Employment Opportunity Commission ("EEOC") or private plaintiffs under the Americans With Disabilities Act ("ADA"). Since the Obama Administration took office, the EEOC has taken the position that many common wellness and disease management programs violate the ADA. In addition to these exposures, amendments to the nondiscrimination requirements of the Health Insurance Portability & Accountability Act ("HIPAA"), new nondiscrimination rules added by the Genetic Information & Nondiscrimination Act ("GINA"), federal mental health parity rules, evolving Affordable Care Act claims, coverage and other rules and guidance about essential benefits and other statutory, regulatory and enforcement changes often require updates to common disease management and wellness programs as well as other health plan provisions. Appropriate steps should be taken to review and update these and other plan terms, procedures, communications and practices to maintain compliance and support the ability to enforce plan terms and rely on plan cost projections.

The author of this update, attorney Cynthia Marcotte Stamer frequently conducts training and publishes on these and other matters. She is scheduled to speak about these and other changing health plan requirements in light of health care reform at the September 14, 2011 Houston WEB Chapter lunch and will be conducting briefings on preventive care, wellness and disease management and other rules for several other organizations over the next few months. You can find out about upcoming training or other events and get updates at www.CynthiaStamer.com.

For Help With These Or Other Health Plan Or Employee Benefit Matter

If you would like help reviewing or defending your organizations health plan or other insurance or employee benefit and employment practices in light of these or other laws, please contact attorney Cynthia Marcotte Stamer.

Chair of the American Bar Association (ABA) RPTE Employee Benefits & 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 is

recognized, internationally, nationally and locally for her more than 23 years of work, advocacy, education and publications on employee benefit and related matters.

A board certified labor and employment attorney Ms. Stamer continuously advises and assists employee benefit plans, their sponsoring employers, fiduciaries, insurers, administrators and others to monitor and respond to evolving legal and operational requirements and to design, administer, document and defend medical and other welfare benefit, qualified and non-qualified deferred compensation and retirement, severance and other employee benefit, compensation, and human resources programs and practices. She works extensively with plan sponsors, insurers, administrators, technology and other service providers and others to develop and operate legally defensible programs, practices and policies that promote the client's human resources, employee benefits or other management goals. Ms. Stamer also is a widely published author and highly regarded speaker on these and other employee benefit and human resources matters who is active in many other employee benefits, human resources and other management focused organizations.

You can review other recent human resources, employee benefits and internal controls publications and resources and additional information about the employment, employee benefits and other experience of Ms. Stamer [here](#). Some recent publications and programs that may be of interest include:

- [Stamer Speaks 9/14 On Coping With Health Care Reform: What's New, What Lies Ahead & What To Do](#)
- [Labor Department 2011 Stats Show Employer Health Coverage & Other Benefit Statistics](#)
- [Borzi Tells House Committee Current Fiduciary Regs Flawed; Must Fix Loopholes In Investment Advisor Definition To Protect Plans](#)
- [Labor Department 2011 Stats Show Employer Health Coverage & Other Benefit Statistics](#)
- [Conviction Highlights Risks Of Misleading Investors](#)
- [DOL Considers Easing Rules For Electronic Benefit Communications](#)
- [Improving The Effectiveness Of Compliance & Risk Management By Getting Hr On The Compliance Team](#)
- [IRS Establishes Safe Harbor Election For Allocating Success-Based Fees Paid On Certain Business Transactions](#)
- [IRS Changing Substantiation Rules For Business Travel Expenses](#)
- [9/22/11 Cutoff To Apply For Affordable Care Act Annual Limit Temporary Waiver](#)
- [Spectrum Healthcare NLRB Charge Settlement Highlights Need To Defend Against Possible Unfair Labor Practices & Other Union Exposures](#)
- [IRS Releases Health Savings Account, High Deductible Health Plan 2012 Indexed Amounts](#)
- [IRS Guidance On Affordable Care Act Requirement That Employers Report Cost Of Health Coverage On W-2 Released](#)
- [Plan Sponsors, Their Owners & Management & Others Risk Personal Liability If Others Defraud Plans Or Mismanage Employee Benefit Plan Responsibilities](#)
- [Health Plans, Insurers Get Limited & Imperfect Relief From Grace Period Extension For Some New Affordable Care Act Health Claims & Appeals Rules](#)
- [EEOC Finalizes Updates To Disability Regulations In Response To Ada Amendments Act: Employers Should Manage Risks](#)

- **Employer Charged With Misclassifying & Underpaying Workers To Pay \$754,578 FLSA Back Pay Settlement**
- **Avoiding Liability For Another's Health Plan Fraud**
- **Health Plans & Employers Beware! \$4.3 Million Civil Penalty Shows OCR Serious About Hipaa Enforcement**
- **IRS Expands When Hfsas & Hras May Allow Over-The-Counter Drug Purchases With Drug Cards**
- **DOL Announces Changes To H-2b Prevailing Wage Calculation Rules**
- **\$1 Million + FLSA Overtime Settlement Shows Employers Should Tighten On-Call, Other Wage & Hour Practices**
- **Affordable Care Act Grandfathered Plan Rules Loosened To Allow Insured Plans Making Some Insurance Changes To Qualify**
- **Update Employment Practices To Manage Genetic Info Discrimination Risks Under New EEOC Final Gina Regulations**
- **EEOC Attacks Medical Leave Denials As Prohibited Disability Discrimination**
- **DOL Proposes To Expand Investment Related Services Giving Rise To Erisa Fiduciary Status As Investment Fiduciary**

If you need help investigating or responding to a known or suspected compliance, litigation or enforcement or other risk management concern, assistance with reviewing, updating, administering or defending a current or proposed employment, employee benefit, compensation or other management practice, wish to inquire about federal or state regulatory compliance audits, risk management or training, or need legal representation on other matters please contact Ms Stamer [here](#) or at (469) 767-8872.

If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile [here](#). For important information concerning this communication click [here](#). If you do not wish to receive these updates in the future, send an e-mail with the word “Remove” in the Subject to [here](#).

©2011 Cynthia Marcotte Stamer, P.C. All rights reserved.