

September 1, 2010

Appeals process regulations extend DOL rules to non-ERISA plans

By Jamie J. Gooch

Laws vary across states, but most employers have little to worry about



Andrew Webber

NATIONAL REPORTS—While many health plans already have an appeals process in place for self-insured employers under the Employee Retirement Income Security Act (ERISA) and extend that same appeals process to the individual market, new federal rules clarify the process for consumers to challenge denials and rescissions.

The federal requirement will apply for the first time to companies that self-insure, as well as to other employer-sponsored and individual plans.

CONSUMER ORIENTED

The rules allow consumers to present information their health plan might not have been aware of when a claim was denied or coverage was rescinded. Rules also expect plans to proactively give consumers detailed information on the grounds for the denial of claims or coverage, and to notify them of their right to appeal.

If the patient's appeal is denied through the internal channel, members will have the right to appeal all denied claims to an independent reviewer not employed by the health plan. According to a statement issued by the Obama administration, 44 states provide some form of external appeals, but the laws vary from state to state.

For denials as well as many other new regulations, the administration is asking lagging states to increase their regulatory oversight of health plans.

The appeals-process regulations, which are part of the Patient Protection and Affordable Care Act (PPACA), don't apply to health plans considered to be grandfathered—plans that were operating at the time President Obama signed the law, and that maintain other specific cost parameters.

"Most employers will blow off being a grandfathered plan because the conditions regarding cost increases are so onerous," says Cynthia Stamer, a Texas-based management attorney and consultant specializing in human resources. "Most of my clients are seeing insurance premiums go up, so they're going to have to increase deductibles to keep the plan. You can't change an insurance contract for insured plans and stay grandfathered."

Appeals-process requirements won't create added red tape for most employers, observers say.

"The new rules for ERISA plans are not at all burdensome for employers," says Helen Darling, president of the National Business Group on Health, Washington, D.C. "It's not a huge change. It only really has an impact on the individual market."

While plans that are regulated under ERISA will need to tweak their appeals process to comply with the new regulations' time limits and scope, smaller plans may have to make more significant adjustments to be in compliance.

"The new regulations are broader and more 'claimant-friendly' than the current Department of Labor (DOL) regulations," says Andrew Webber, president and CEO of the National Business Coalition on Health, Washington, D.C. "There's a wider scope of applicability since the DOL regulations apply to 'claims for benefits,' not just inquiries or claims involving eligibility. They also apply to rescissions of benefits, and to initial eligibility claims for individual coverage, too."

Though Webber agrees that the new rules aren't earth shattering to large, self-insured employers.

"Basically, the new PPACA claims and appeals procedures simply build on existing DOL claims procedure rules by extending DOL rules to non-ERISA and individual plans," he says.

Many large health plans follow ERISA guidelines for both the self-insured and the individual market to take advantage of economies of scale, to ensure various state laws are being met with one process and to do their due jurisprudence in case of a lawsuit.

MORE CLARIFICATION NEEDED

While the new federal rules may spell out the internal and external reviews process better than some of the state rules, they could still use some definition.

"If a plan fails to 'strictly adhere' to all appeal review requirements, a claimant is deemed to have exhausted internal claims and appeals processes and may initiate an external review or go to court," says Webber. "This new rule applies regardless of whether a plan 'substantially complied' or whether there was an error. The concern is that the appeals process is complicated, so there is plenty of room for unintentional errors along the way."

Employers are also waiting to see what future regulations are on the horizon. The PPACA regulation preamble says DOL expects to issue future regulations with "additional, more comprehensive updates" to existing regulations.

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