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Extended Grace Period For Some, But Not All New Affordable Care Act Health Claims & Appeals Rules Gives Qualifying Plans, Insurers Limited & Imperfect Relief

The Departments of Labor, Health & Human Services and Internal Revenue Service are extending a previously announced enforcement grace period under which the agencies will not take enforcement against health plans or health insurers that attempt to operate in good faith compliance with, but fail to meet certain new requirements for handling medical claims and appeals enacted as part of the Patient Protection and Affordable Care Act (Affordable Care Act).

As signed into law on March 23, 2010, the Affordable Care Act generally requires that health plans and health insurance policies that are not “grandfathered” to begin complying with a series of new requirements by the first day of the first plan year that begins after September 22, 2010. These new requirements include a number of new requirements about the way that nongrandfathered health plans and health insurance policies handle medical claims and appeals. For instance, the Affordable Care Act as construed by the agencies in interim final regulations published by the agencies on July 23, 2010 will require that non-grandfathered group health plans and insurers issuing non-grandfathered health insurance plans and policies:

- Implement specified internal and external review procedures that among other things mandate independent external review of medical judgment based decisions in accordance with the regulations for reviews of appeals of medical judgment based denials;
- Provide a broad range of new information in notices regarding claims and do so in a culturally and linguistically appropriate manner;
- Provide continued coverage pending the outcome of an internal appeal; and
- Comply with a laundry list of additional criteria for ensuring that a claimant receives a full and fair review in addition to complying with the requirements of existing Labor Department claims and appeals procedures.

After the agencies jointly published interim final regulations defining and implementing these requirements on July 23, 2010, last September the agencies announced that they would not enforce certain elements (but not all) of the new requirements set forth in the interim final regulations against covered health plans or health insurers seeking to comply in good faith with the new requirements through July 1, 2011. In the March 18, 2011 announcement, the Department of Labor said that the agencies now have agreed to extend this reprieve from agency enforcement of the requirements listed in the guidance against plans seeking to comply in good faith with the new requirements until plan years beginning on or after January 1, 2012.

While offering welcome relief, covered health plans and insurers, their sponsors and issuers should not overestimate the reach and protection provided by this new guidance. For instance:

- First, in order to qualify for the enforcement grace period, efforts must be made to administer the health plan or health insurance policy in good faith compliance with the new requirements during the enforcement grace period.
- Second, the enforcement grace period provides only limited relief. The extension to 2012 only four of a series of new requirements set forth in the interim final regulations. Nongrandfathered plans and their administrators and insurers remain accountable for prudently administering claims and appeals in accordance with all other requirements of the Affordable Care Act as well as pre-existing claims and appeals regulations set forth in 2000 claims regulations issued by the Department of Labor pursuant to the Employee Retirement Income Security Act.

- Third Furthermore, the enforcement grace period guidance only means that the agencies will not exercise their power to take action against a non-compliant plan. It does not prevent plan members, health care providers with benefit assignments or other plan beneficiaries from bringing lawsuits against health plans, health insurers or their administrators for failing to comply with the new requirements during post- September 22, 2010 plan years even if the enforcement grace period otherwise protects the plan or insurer from agency enforcement action. This means that health insurers and health plans may still run the risk that plan members or beneficiaries will ask courts to reverse claims or appeals denials or impose other penalties and sanctions against plans or their fiduciaries for failing to meet the new requirements for post-September 22, 2010 plan years.
- Finally, and perhaps most significantly, the grace period guidance requires nongrandfathered plans and insurers to make “good faith” efforts to comply with the requirements covered by the relief during the grace period in order to be eligible to claim the relief offered by the enforcement grace period guidance.

Consequently, despite the relief announced March 18, nongrandfathered health plans still have significant work to do to comply with the new Affordable Care Act claims and appeals requirements even during the announced enforcement grace period.

For Help With Affordable Care Act or Other Employee Benefits or HR Needs

If you have any questions or need help responding to the Affordable Care Act or other any other health plan or insurance employee benefit, compensation, workforce or internal control concerns, please contact the author of this update, Cynthia Marcotte Stamer [here](#) or at (469)767-8872.

Ms. Stamer helps businesses, employee benefit plans and other organizations solve problems, develop and implement strategies to manage people, processes, and regulatory exposures to achieve their business and operational objectives and manage legal, operational and other risks. Board certified in labor and employment law by the Texas Board of Legal Specialization, with more than 23 years management-focused human resource and employee benefits experience, Ms. Stamer helps businesses manage their people-related risks and the performance of their internal and external workforce through appropriate human resources, employee benefit, worker’s compensation, insurance, outsourcing and risk management strategies domestically and internationally.

Recognized in the International Who’s Who of Professionals and bearing the Martindale Hubble AV-Rating, Ms. Stamer also is a highly regarded author and speaker, who regularly conducts management and other training on a wide range of labor and employment, employee benefit, human resources, internal controls and other related risk management matters. Her writings frequently are published by the American Bar Association (ABA), Aspen Publishers, Bureau of National Affairs, the American Health Lawyers Association, SHRM, World At Work, Government Institutes, Inc., Atlantic Information Services, Employee Benefit News, and many others. For a listing of some of these publications and programs, see [here](#). Her insights on human resources risk management matters also have been quoted in The Wall Street Journal, various publications of The Bureau of National Affairs and Aspen Publishing, the Dallas Morning News, Spencer Publications, Health Leaders, Business Insurance, the Dallas and Houston Business Journals and a host of other publications. Chair of the ABA RPTE Employee Benefit and Other Compensation Committee, a council member of the ABA Joint Committee on Employee Benefits, and the Legislative Chair of the Dallas Human Resources Management Association Government Affairs Committee, she also serves in leadership positions in numerous human resources, corporate compliance, and other professional and civic organizations. Her insights on these and other matters appear in the Bureau of National Affairs, Spencer Publications, the Wall Street Journal, the Dallas Business Journal, the Houston Business Journal, World At Work, the ICEBS, SHRM and many other national and local publications. For additional information about Ms. Stamer and her experience or to access other publications by Ms. Stamer see [here](#) or contact Ms. Stamer directly.

Other Helpful Resources & Information

If you found this article of interest, you also may be interested in reviewing other Breaking News, articles and other resources available [here](#) including:

- [EEOC Finalizes Updates To Disability Regulations In Response to ADA Amendments Act: Employers Should Manage Risks](#)
- [Stamer Speaks 4/29 On “Welcome to the Jungle - Health Care Reform Bootcamp” At ABA RPTE](#)
- [Stamer Speaks 4/28 On “Lean On Me” - Group Health and Disability Claims and Appeals At ABA RPTE 3/7/2011Speak Up On The 1st Anniversary of Health Care Reform](#)
- [Employer Pays \\$754,578 To Settle Charges Workers Misclassified & Underpaid In Violation of FLSA](#)
- [Avoiding Liability For Another’s Health Plan Fraud](#)
- [\\$1 Million + FLSA Overtime Settlement Shows Employers Should Tighten On-Call, Other Wage & Hour Practices](#)

- **CMS Publishes Proposed Consumer Disclosure Notices Detailing Required Health Insurer Rate Increase Justification Disclosures**
- **\$4.3 Million HIPAA Penalty Signals Health Plans, Sponsors & Service Providers**
- **HHS Imposes 1st HIPAA Privacy Civil Penalty of \$4.3 Million**
- **NLRB Settlement Shows Care Necessary When Employers Use Social Networking & Other Policies Restricting Employee Communications**
- **Attorney Cynthia Stamer Shares Best Practices for Protecting Plan Participant & Other Employee Information At SBWA/IRS Plan Administrator Skills Workshops**
- **Supreme Court Medical Resident Stipend Ruling Highlights Advisability of Worker Classification & Payroll Practice Review Advisable For Health Care, Other Employers**
- **IRS, HHS & DOL To Delay Enforcement of New Insured Group Health Plan Non-Discrimination Rules Pending Guidance; Seek Public Input on Rules**
- **IRS Expands When HFSA's & HRAS May Allow Over-The-Counter Drug Purchases With Drug Cards**
- **Holiday Season Celebration Reminder To Manage Intoxication Risks**
- **Avoiding Post-Holiday Season HR Liability Hangover**
- **2011 Standard Mileage Rates Announced**
- **Proposed New DOL Defined Benefit Plan Annual Funding Notice Rule**
- **Affordable Care Act Grandfathered Plan Rules Loosened To Allow Insured Plans Making Some Insurance Changes To Qualify**
- **Managed Care Executive Quotes Stamer On Implications Of Affordable Care Act Claims & Appeals Rules**
- **DOL Proposes To Expand Investment Related Services Giving Rise to ERISA**
- **EEOC Charges Employers With Violating ADA By Denying Medical Leave**
- **Annual Benefit Limitation Waiver & Anticipated HHS Medical Loss Ratio Guidance Offer Quick Acting Employers, Insurers New Mini-Med, Health Plan Design Options**
- **New Insured Group Health Plan Non-Discrimination Rules Create Significant Liability For Employers & Insurers; Prompt IRS Also To Review Self-Insured Group Health Plan Rules**
- **Tighten & Update of Health & Other Plan Claims & Appeals Procedures & Documentation In Response To New Regulations, Tightening Court Review**
- **Small Employers Sponsoring Health Coverage May Qualify For New Tax Credit, Must Act Quickly To Comply With Other New Federal Health Plan Mandates**
- **Rite Aid Agrees to Pay \$1 Million to Settle HIPAA Privacy Case As Office of Civil Rights Proposes Tighter HIPAA Privacy & Security 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**
- **Review Of Worker Classifications Needed As Classification Scrutiny Rises**
- **Businesses Employing Children Should Review & Tighten Practices in Light of Tightened Rules & Increased Penalties**
- **Labor Department FMLA Guidance Adopts Broad Interpretation, Employer Care Needed Determining Who Qualifies As Child**
- **Agencies Release Regulations Implementing Affordable Care Act Health Plan Preventative Care Mandates**
- **Office of Civil Rights Proposes Changes To HIPAA Privacy, Security & Civil Sanctions Rules**

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, unsubscribe by updating your profile [here](#).

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