



Client Bulletin



Health Care Reform Updates

On December 23, 2010, the regulatory agencies released another round of health care reform related guidance. A summary of this guidance and links to further information are included below. As always, if you have any questions, please contact your Keller consultant.

Nondiscrimination Rules for Non-Grandfathered Insured Plans – Delayed

Health care reform imposed new nondiscrimination rules for insured plans “similar to” existing rules for self-insured plans. The current self-insured plan nondiscrimination rules prohibit health plans from favoring highly compensated individuals with regard to eligibility or contributions, or basing benefits on age, years of service, or compensation.

With many outstanding questions and no regulatory guidance, compliance with this provision has been difficult for employers to understand. The regulatory agencies have recognized these concerns and stated that until guidance is issued, insured health plans will not have to comply with nondiscrimination rules. The earliest regulations will be issued in the spring of 2011. The nondiscrimination rules will not go into effect for a plan until the first plan year after guidance is issued.

Please note that if your insured health plan is currently grandfathered, your plan will not have to comply with nondiscrimination rules until grandfathered status is lost and after guidance is issued.

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Welcome New Clients

We thank all of our clients for your business and wish you a successful 2011.

- ◆ American Association for Clinical Chemistry
- ◆ The American Cleaning Institute
- ◆ American Council for an Energy Efficient Economy (ACEEE)
- ◆ American Industrial Hygiene Association (AIHA)
- ◆ American Insurance Association
- ◆ The Center for Public Integrity
- ◆ Cermak Nakajima LLP
- ◆ Chesapeake Bay Foundation
- ◆ Cordev, Inc.
- ◆ Ecological Society of America
- ◆ Federal Strategies Group LLC
- ◆ Isidorey
- ◆ Kenealy Vaidya
- ◆ Okos Solutions, LLC
- ◆ Staffing Advisors
- ◆ Tennis Center at College Park
- ◆ Virtustream, Inc.
- ◆ Widmeyer Communications

ACTION ITEMS

- [CMS Notification](#) by 3/1 for Calendar Year Plans
- Pre-test 2011 Cafeteria Plan Elections for Nondiscrimination Testing



Health Care Reform Updates (continued)

Preventive Services Cost-Sharing – May Be Allowed In Certain Circumstances

According to new guidance, group health plans *may* be permitted to impose a co-pay, deductible, or coinsurance on certain in-network preventive services based upon “reasonable medical management techniques” designed to steer patients towards high-value settings. Health plans must make some form of the required preventive service free to members but may restrict where the free service is provided in order to maintain cost savings. For example, a plan may offer free colonoscopies at an in-network outpatient surgery center while charging a co-pay for the same service performed in a more expensive in-network hospital setting. The plan must waive the co-pay for members with a medical need to have the service performed in the higher cost setting. At this time, we have not seen carriers implementing these restrictions. We will be monitoring future developments.



Automatic Enrollment for Large Employers

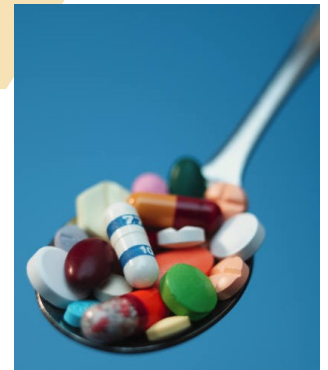
Under health care reform, large employers with 200 or more employees will have to automatically enroll new full-time employees into the group health plan. However, the law had no clear effective date for this provision which created much confusion. Recent guidance clarifies that employers will not have to begin complying with this provision until regulations are issued. Regulations are expected by 2014.

60 Day Prospective Notice of Plan Changes

Another health care reform provision with an unclear effective date was the section requiring health plans to provide members with a notice of plan changes 60 days prior to the effective date. The recent guidance clarifies that plans will not have to comply with this prospective notice requirement until the new standardized benefit summaries become available, expected around March 2012.

Debit Cards for Prescribed Over-the Counter (OTC) Drugs

The IRS has issued guidance establishing a process for FSA or HRA debit cards to be used to purchase prescribed OTC drugs. Beginning in 2011, OTC drugs will no longer be eligible expenses under a health care flexible spending account (FSA), health reimbursement arrangement (HRA), or health savings account (HSA) unless the OTC drug is prescribed. The original rule essentially eliminated the use of debit cards for purchase of prescribed OTC drugs. The new guidance creates a system where members will present a prescription to the pharmacist who would “fill” the prescription by verifying the prescription, assigning an Rx number, “dispensing” the OTC drug, and logging the transaction.



Until providers, pharmacies, and debit card administrators begin to understand all of these rules, we do not expect debit cards will be allowed for the purchase of prescribed OTC drugs in the near future.

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Health Care Reform Updates (continued)

Wellness Program Participation Incentives

Beginning in 2014, health care reform will permit employers to provide greater financial incentives for members who participate in a wellness program with health-related standards (e.g. quitting smoking or lowering cholesterol levels). Currently, health plans can reward members who participate in a wellness program with health-related standards with up to 20% health plan premium discounts without violating HIPAA nondiscrimination rules. Under the new law, those incentives can be increased to up to 30%. The regulators have indicated that they intend to implement this higher incentive prior to 2014. We will notify you when this change takes effect.



Coming Soon: Grants for Wellness Programs for Small Employers

Beginning in 2011, grants will be available for small employers to establish a new comprehensive workplace wellness program. Eligible employers must have less than 100 employees and no existing wellness program. In order to be eligible for a grant, the employer's wellness program must include the following components:



- **Health awareness initiatives** including health education, preventive screenings, and health risk assessments;
- **Efforts to maximize employee engagement;**
- **Initiatives to change unhealthy behaviors and lifestyle choices** including counseling, seminars, online programs, and self-help materials; and
- **Supportive environment efforts** including workplace policies to encourage healthy lifestyles, healthy eating, increased physical activity, and improved mental health.

We are awaiting regulatory guidance including the application process and the amount of funds available. We will notify you as soon as more information becomes available.

Additional Resources

Health Reform [FAQs - Part V](#)

Non-discrimination for Insured Plans [Notice 2011-01](#)

Debit Card for OTC drugs [IRS FAQs](#), [Notice 2011-05](#)