New Guidance Issued on Market Reforms, Essential Benefits and Wellness

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The Departments (HHS, DOL and IRS) just issued several proposed rules and extensive regulations on insurance market reforms, essential benefits and wellness programs.

The regulations on insurance market reforms and essential benefits are geared to the individual and small group markets and their interaction with the Exchanges that will be set up by the various States, beginning in 2014. They set a framework, but their definitive impact will be dependent on the programs and rules yet to be adopted under the Exchanges, which will vary from State to State. Generally speaking, the proposed rule regarding market reforms states that, beginning in 2014, health insurance companies will be prohibited from discriminating against individuals because of a pre-existing or chronic condition. Under this rule, insurance companies would be permitted to vary premiums within limits, only based on age, tobacco use, family size and geography. The carriers would not be permitted to deny coverage to anyone because of a pre-existing condition and could not charge higher premiums to certain enrollees because of their current or past health problems, gender, occupation, and small employer size or industry. The rule also ensures that people who couldn't normally afford coverage and young adults have access to a catastrophic coverage plan in the individual market. The regulations on essential benefits outline policies and standards for coverage of essential health benefits and give states more flexibility to implement the ACA.

The wellness guidance builds on the existing wellness program rules that already apply to employer sponsored group health plans and addresses changes under the ACA effective for plan years beginning on or after January 1, 2014. The reform provides some important enhancements to existing wellness program rules, including an increase in allowed reward thresholds. It should be noted that the new guidance on wellness is in proposed format and does not apply until, at the earliest, the first plan year that begins on or after January 1, 2014. Thus, 2013 renewals (e.g., February 1, 2013 – January 31, 2014) cannot make reward adjustments to the 30% or 50% thresholds until the first plan year that begins on or after January 1, 2014. Briefly, the proposed guidance:

- Applies to both grandfathered and non-grandfathered plans;
- Reclassifies the types of wellness programs as "participatory wellness programs" (currently referred to as "participation only programs") and "health-contingent wellness programs" (where participants must satisfy a health related factor to achieve the reward);
- Increases the reward threshold, beginning in 2014, from a maximum of 20% to a maximum of 30% for a health-contingent wellness program; and, with respect to programs designed to prevent or reduce tobacco use, to a maximum of 50%;

- Clarifies that a plan cannot require a participant to find his or her own program to satisfy the reasonable alternative standard unassisted and the participant cannot be required to pay for the program (e.g., if the program is a smoking cessation program, the plan would need to help facilitate enrollment and pay for the program); and
- Provides a new notice to be used to disclose the availability of a reasonable alternative.

We will release a more detailed summary shortly. Please note that, given the proposed format of the wellness guidance, there are likely to be changes between now and when final or interim final rules are published.