

IMPORTANT DEVELOPMENTS AFFECTING HEALTH PLANS: HIPAA Nondiscrimination Regulations Finalized, New TRICARE Rules Issued, Mental Health Parity Regulations Extended, New Cafeteria Plan Regulations Proposed, and Massachusetts Health Care Reform Law Enacted

As the summer starts to wane and your attention shifts to open enrollment season for your health plans for 2008, we wanted to provide you with a brief synopsis of several new developments to keep in mind.

- **Final HIPAA Nondiscrimination and Wellness Program Regulations Issued:** The Federal government issued final regulations regarding the nondiscrimination rules that apply to health plans and their wellness programs under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The regulations, which are effective January 1, 2008 for calendar year plans, do not differ substantially from the interim regulations issued in 2001. However, they do include important additional guidance to health plans regarding source-of-injury exclusions, what it means to be "actively at work," and how the nondiscrimination rules apply to wellness programs.
- **New TRICARE Rules Prohibit Incentives Not To Participate in Employer- Sponsored Group Health Plans:** TRICARE is the medical plan for United States military personnel and their dependents. Effective January 1, 2008, employers who have employees eligible for TRICARE will be prohibited from providing financial or other incentives to those employees not to enroll, or to terminate their enrollment in, an employer group health plan that would otherwise be the primary payor for their health claims. These rules are similar to the Medicare secondary payor rules.

Despite the new rules, the Department of Defense has indicated that an employer may be able to continue to offer a cash-out option under its cafeteria plan to all employees, including those eligible for TRICARE, who do not elect coverage under the employer's group health plan. In contrast, it may be problematic for an employer to offer medical plans which supplement or "wrap" around TRICARE under these new rules. The Department of Defense is expected to release interim final rules on these issues in the near future.

- **Regulations under the Mental Health Parity Act Extended:** Interim final regulations under the Mental Health Parity Act (MHPA) have been extended to December 31, 2007. The MHPA prohibits a group health plan from having lower annual or aggregate lifetime dollar limits for mental health benefits than it has for medical and surgical benefits. This past year, Federal legislation was also introduced to further expand the requirements of the MHPA, and we will be sure to keep you updated if those changes become law.
- **New Regulations Proposed For Cafeteria Plans Enacted:** The Internal Revenue Service recently issued new proposed regulations that apply to cafeteria and flexible benefits plans. These proposed regulations update and consolidate prior regulations and other guidance that the IRS has issued in recent years. For example, the proposed regulations provide helpful clarification in a number of areas, including plan document requirements, grace periods, debit cards, and contributions to health savings accounts. It is proposed that these regulations generally be effective for plan years beginning on or after January 1, 2009. Employers may rely on them now until final regulations are issued and should begin to review their plans in light of these regulations.

SPECIAL ALERT FOR EMPLOYERS WITH EMPLOYEES IN MASSACHUSETTS

- **Massachusetts Health Care Reform Law:** Massachusetts is at the forefront of state initiatives to require universal—or near-universal—health insurance coverage for its residents. In order to achieve this goal, a new law—the Massachusetts Health Care Reform Act (the “HCRA”)—places significant new obligations on ALL employers with 11 or more full-time employees in the state. Two of its key provisions relating to employers are discussed in more detail below.
- **Fair Share Contributions:** The HCRA requires that employers make a “fair and reasonable” contribution towards the cost of health insurance for their Massachusetts employees. An employer is considered to have made such a contribution if either (1) there is at least 25% participation by full-time employees in the employer’s health plan, or (2) the employer contributes at least 33% of the premium cost of its health plan to all full-time employees. If an employer does not meet one of the criteria listed above, it must make a “fair share” contribution to the state. This contribution is capped at \$295 per employee per year. Employers will be required to report to the state that they have met this requirement. This reporting will likely be done through an online system that is currently being developed. It is expected that the first reporting deadline will be sometime during the Fall of 2007.
 - **Premium Conversion Cafeteria Plans:** Also, in order to allow all Massachusetts employees to pay health plan premiums on a pre-tax basis, covered employers are required to have adopted a cafeteria plan under Section 125 of the Internal Revenue Code. These premium conversion Section 125 plans must meet certain criteria mandated by the HCRA. Notably, many existing Section 125 plans do not meet these criteria because they do not cover all employees required to be covered by the HCRA. Consequently, many employers are meeting their obligations under the HCRA by amending their Section 125 plans or by creating separate “Massachusetts Only” premium conversion plans. Employers are required to submit their premium conversion plans to the Commonwealth Health Insurance Connector Authority (the state agency created to administer the HCRA) by October 1, 2007.

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