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Additional Guidance Released on Notice of Grandfather Status

The agencies responsible for implementing the health care reform law continue to release guidance in the form of Frequently Asked Questions (FAQs). The most recent set of FAQs provides helpful guidance on the requirements for distribution of notice of grandfather status. It also contains an illustration of how the agencies will apply the "reasonable good faith" standard with respect to a plan sponsor's interpretation of what constitutes an essential health benefit.

Background

The Departments of Health and Human Services, Labor and Treasury (the agencies responsible for implementing health care reform) continue to issue sub-regulatory guidance in response to questions raised by plan sponsors and others. They have now issued a fourth set of FAQs for plan sponsors. FAQs [Part I](#) was posted on September 20, 2010. (See our September 22, 2010 [For Your Information](#).) FAQs [Part II](#) and [Part III](#) were posted in early October. (See our October 18, 2010 [For Your Information](#).) The newest set, FAQs [Part IV](#), was released on October 29, 2010.

Notice of Grandfather Status

The new guidance provides a welcome clarification with respect to how frequently a plan sponsor must provide notice of grandfather status. The [interim final regulations](#) on grandfather status, issued on June 17, 2010, called for this notice to be included in any participant materials describing the benefits provided under a plan. Some commentators had speculated that this would require a notice of grandfather status with any details relative to plan coverage, including each time an explanation of benefits (EOB) was issued. The most recent FAQs clarify that notice is not required with each EOB. The FAQs state that notice should be provided at times "in which the disclosure of grandfather status would be appropriate and consistent with the goal of providing participants and beneficiaries information necessary to understand and make informed choices regarding health coverage."

BUCK COMMENT. *Based on this guidance, it appears reasonable to include the notice of grandfather status with summary plan descriptions, as well as with benefit grids or other summaries that may be provided in connection with initial enrollment, annual enrollment or mid-year elections associated with qualified status changes.*

Sponsor's Interpretation of "Essential Health Benefits"

Effective for plan years beginning on and after September 23, 2010, plans may not impose lifetime dollar limits and can only impose "restricted" annual dollar limits on "essential health benefits." (See our July 2, 2010 [For Your Information](#).) In the preamble to [interim final regulations](#) implementing these limits, the agencies stated that for plan years beginning before the issuance of final regulations defining "essential health benefits," they would take into account good faith efforts to comply with a reasonable interpretation of the term "essential health benefits" for enforcement purposes.

The FAQs provide an illustration of how the agencies will apply the "reasonable good faith interpretation" standard. The FAQs ask whether it would be a reasonable good faith interpretation of the law for the plan sponsor to take the position that a plan does not violate the prohibition on lifetime dollar limits on essential benefits in the following situation –

- The plan was in effect prior to enactment of health care reform.
- The program reimburses (up to a specified dollar limit) expenses for special treatment of employees' children with physical, mental or developmental disabilities. Eligible items include special treatment or therapy, day or residential special care facilities, special education facilities, special medical devices and camps offering medically oriented programs.
- The plan is operated separately from the employer's primary medical plan and participation in the special program is not contingent on participation in the primary medical plan.

The agencies state that they will treat the plan sponsor's position as a reasonable good faith interpretation of the law for plan years beginning before final regulations defining "essential health benefits" are issued and that the imposition of a lifetime dollar limit would not result in an enforcement action against the plan. They note, however, that the definition in the final regulations may differ from interpretations used before the regulations are issued.

BUCK COMMENT. *It is unfortunate that the fact pattern described in the FAQs is so specific and does not involve a common plan design. Nevertheless, it does indicate that the agencies are providing some latitude to plan sponsors in making a reasonable interpretation of the term "essential health benefits."*

Conclusion

The agencies have received many questions regarding the implementation of the health care reform law and have been using the FAQs to provide answers quickly. This process is likely to continue with the issuance of additional sub-regulatory guidance in the near-term.

Buck's consultants are available to assist you in assessing the impact of this guidance on your plans.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.