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Government Extends Enforcement Grace Period for Certain of the Internal Health Claims and Appeals Requirements

The DOL has issued, on behalf of itself, HHS, and the Treasury, Technical Release 2011-01 which extends and modifies the enforcement grace period provided in Technical Release 2010-02 for certain provisions of the 2010 interim final regulations for internal claims and appeals. Technical Release 2011-01 extends the enforcement grace period, depending on the provision, to the first day of the first plan year beginning on or after January 1, 2012 or the first day of the first plan year beginning on or after July 1, 2011. Because of different enforcement dates for different provisions, plan sponsors should check when they must comply with each provision of the interim final regulations.

Background

Section 2719 of the Public Health Service Act (PHSA) – as added by the Patient Protection and Affordable Care Act (PPACA) – requires non-grandfathered group health plans (generally, health plans that are modified or established after March 23, 2010) to initially incorporate an internal appeals process that satisfies the requirements of the [ERISA claims regulations](#) (DOL Reg. Section 2560.503-1) and update such processes in accordance with any additional DOL regulations.

BUCK COMMENT. *Although only ERISA-covered plans are subject to the ERISA claims process, PPACA extends identical requirements to plans not subject to ERISA such as governmental plans and church plans.*

In July 2010, the Departments of Health and Human Services (HHS), the Treasury and Labor (DOL) (collectively, the Departments) released [interim final regulations](#) addressing the internal claims and appeals processes and external review rules. (See our August 11, 2010 [For Your Information](#).) Those rules are applicable for plan years beginning on or after September 23, 2010.

In September 2010, the DOL issued [Technical Release 2010-02](#) on behalf of all the Departments. (See our October 1, 2010 [For Your Information](#).) Technical Release 2010-02 set out an enforcement grace period until July 1, 2011 (without regard to the plan year) for compliance with some of the internal claims and appeals standards contained in the interim final regulations. The grace period applied to the following requirements:

- A plan must shorten the timeframe for making the initial benefit determination involving an urgent care claim from 72 hours to 24 hours (72-hour rule);

- A plan must provide notices in a culturally and linguistically appropriate manner (culturally and linguistically appropriate notices rule);
- A plan must meet expanded content and specificity requirements for adverse benefit determinations and final internal adverse benefit determination notices (notice content and specificity rule); and

If a plan fails to strictly adhere to all the requirements of the interim final regulations, a claimant is deemed to have exhausted all internal remedies and may initiate any available external review process or remedies available under ERISA or state law (strict adherence rule).

Technical Release 2010-02 conditioned the enforcement grace period on a plan working in good faith to implement the standards of the interim final regulations.

Technical Release 2011-01

Acknowledging that the Departments will be amending the July 2010 interim final regulations in the near future, the DOL has issued [Technical Release 2011-01](#) on behalf of all the Departments. The new Release extends and modifies Technical Release 2010-02. Technical Release 2011-01 changes the absolute July 1, 2011 enforcement grace period to a grace period based on the first day of the first plan year beginning on or after January 1, 2012 or to the first day of the first plan year beginning on or after July 1, 2011, depending on the provision. Technical Release 2011-01 also retroactively eliminates the requirement that to take advantage of the grace period the plan must work in good faith to implement the interim regulations.

BUCK COMMENT. *The enforcement grace periods do not apply to other provisions of the interim final regulation such as standards relating to (1) provision of additional information and (2) conflicts of interest.*

Extension to First Day of First Plan Year Beginning on or after January 1, 2012

Technical Release 2011-01 extends the enforcement grace period to the first day of the first plan year beginning on or after January 1, 2012 for the following requirements of the interim final regulations:

- 72-hour rule;
- Culturally and linguistically appropriate notices rule;
- The part of the notice content and specificity rule dealing with diagnosis codes and treatment codes and the corresponding meaning of these codes; and
- Strict adherence rule.

BUCK COMMENT. *Prior to the enforcement date, plans must provide diagnosis codes and descriptions upon request.*

Extension to First Day of First Plan Year Beginning on or after July 1, 2011

Technical Release 2011-01 extends the enforcement grace period until the first day of the first plan year beginning on or after July 1, 2011 with respect to the part of the notice content and specificity rule requiring the following:

- Information sufficient to identify a claim (other than diagnosis and treatment codes);
- A description of any standards used in denying the claim, and in the case of a final internal adverse determination, a discussion of the decision;
- A description of the available internal appeals and external review processes (including how to initiate an appeal); and
- A statement regarding the availability of, and contact information for, any applicable office of health insurance consumer assistance or ombudsman to assist with claims, appeals, and external reviews. (The Appendix to Technical Release 2011-01 provides consumer assistance program contact information for the various states.)

BUCK COMMENT. *Moving the enforcement date of the grace period provisions to a plan year basis should simplify administration.*

Enforcement

During the extended enforcement grace periods set forth in Technical Release 2011-01, the DOL and the Treasury will not take any enforcement action against group health plans, and HHS will not take any enforcement action against self-funded non-federal government health plans. HHS encourages states to provide similar grace periods for issuers, and HHS will not cite a state for failing to substantially enforce PHSA Section 2719(a) with respect to requirements to which the enforcement grace periods apply.

Conclusion

In Technical Release 2010-02, the DOL explained the extension as being in response to requests for more time to change plan or policy procedures and to modify computer systems. In Technical Release 2011-01, the DOL explains the extension as acting as a “bridge” until an amendment to the 2010 interim final regulations is issued. Technical Release 2010-02 provided an enforcement grace period for only some of the provisions of the interim final regulations. Notice 2011-01 provides further extensions of those provisions, but to two different dates. Plan sponsors and administrators should review the interim final regulations and the Technical Releases on a provision-by-provision basis, noting carefully the enforcement date for each provision.

Buck’s consultants are available to assist you in updating your plan’s internal claims and appeals procedures.

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.