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legislativeUPDATE

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New Rules Released on Healthcare Reform Provisions

Last week the Obama administration released new proposed rules on employer-based wellness programs, essential health benefits, and pre-existing condition exclusions. These are expected to be the first in a series of proposed healthcare reform regulations to be released over the next few months. Public comments will be collected first before the agencies will alter and finalize these rules.

The newly issued rules are as follows:

- A **Wellness Incentive** [proposed rule](#) (and [fact sheet](#)) intended to encourage employers to offer incentives for employees to stay healthy without discriminating against sick employees. These proposed rules largely retain the prior wellness program rules under the Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination provisions, but make some changes consistent with the healthcare reform law. The rule raises the maximum reward for participation in certain health-contingent wellness programs starting in 2014 from 20% to 30% of the total cost of coverage in employer-sponsored plans. For programs designed to prevent or reduce tobacco use, the limit is 50% of the cost of coverage. The prior limit was 20% of the cost of coverage. These new rules apply to all plans – grandfathered and non-grandfathered, and also include new standards for determining when a program provides a “reasonable alternative” for obtaining the same reward as other participants in a “health-contingent wellness program.” For example, in the case of a diet program, the membership or participation fee must be paid for by the plan, but not the food, and if the alternative program is based on completion of an educational program, the plan must make the program available and pay for the cost of the program. New sample language is also provided for a plan to use for purposes of disclosing the availability of a reasonable alternative standard (or the possibility of waiver of the otherwise applicable standard).
- An **Essential Health Benefits** [proposed rule](#) (and [fact sheet](#)) outlining policies and standards for coverage of essential health benefits which will govern the products sold in state individual and small-group markets. Generally, insurance plans sold to individuals who buy their own coverage and to employers -- except those that self-insure -- must include a core package of items and services known as “essential health benefits.” The benefits are required to cover 10 categories, among them emergency services, hospitalization and pediatric services. While the essential health benefits package directly applies to insured

plans in the individual and small group markets, there are implications for large group and self-insured plans, as the prohibition on lifetime and annual dollar limits applies to group health plan coverage for any “essential health benefits.” The new guidance on essential health benefits remains unaltered, with little additional guidance on specific details on the benefits required in the 10 broad categories. The proposed rules reaffirm earlier guidance providing that states can choose the exact package of “benchmark” benefits that insurers must provide, based largely on what is already offered in the most popular plans currently sold in their states. The proposed rule also provides guidance regarding the determination of actuarial value (AV) for the various “metal” categories.

- A **Pre-Existing Condition Exclusion** [proposed rule](#) (and [fact sheet](#)) prohibiting discrimination, beginning in 2014, against pre-existing conditions and chronic conditions. Under the rule, insurance companies would be allowed to vary premiums within limits, permitting higher charges for tobacco users and varying rates based on geography and family size. Insurers would be prohibited from denying coverage to any American because of a pre-existing condition or from charging higher premiums to certain enrollees because of their current or past health problems, gender, occupation, and small employer size or industry. The rule is intended to ensure that people for whom coverage would otherwise be unaffordable, and young adults, have access to a catastrophic coverage plan in the individual market.

While these rules are significant, the Obama administration still has to issue regulations on many other parts of the healthcare law. Conner Strong & Buckelew will continue to follow the ever-changing landscape and also develop tools and resources to assist plan sponsors with compliance.

Should you have questions about this or any aspect of healthcare reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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