



Benefit Trends

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Health Care Reform – Special Edition

Health Care Reform: Lifetime and Annual Limits

LEGISLATIVE BRIEF

Week 10; June 25, 2010

This memorandum is the tenth installment in our effort to address the critical and imminent changes brought about by the Patient Protection and Affordable Care Act ([H.R. 3590](#); Reform Bill) and the Health Care and Education and Affordability Reconciliation Act ([H.R. 4872](#); Reconciliation Bill), collectively referred to as the Health Care Reform Law.

Patients' Bill of Rights

Informally, it's called the "new Patients' Bill of Rights." Formally, the Internal Revenue Services (IRS), the Department of Labor (DOL), and the Department of Health and Human Services (HHS) have just released yet another [Interim Final Rule](#) discussing pre-existing condition exclusions, lifetime and annual limits, prohibition on rescissions, and other patient protections. The purpose of this Memorandum is to discuss the lifetime and annual limits rules contained in the most recent Interim Final Rule. For a full discussion of this Interim Final Rule, please refer to our Legislative Update 2010-13.

Background

The Health Reform Law contains a prohibition against lifetime limits and, under most circumstances, annual limits subject to a phase-in period prior to January 1, 2014. According to the statute itself, for plan years beginning prior to January 1, 2014, group health plans may impose a restricted annual limit on the dollar value of benefits payable per participant under a plan, even though the limit applies to an essential health benefit, as defined by the law and considered essential under HHS rules (yet to be released).

Discussion

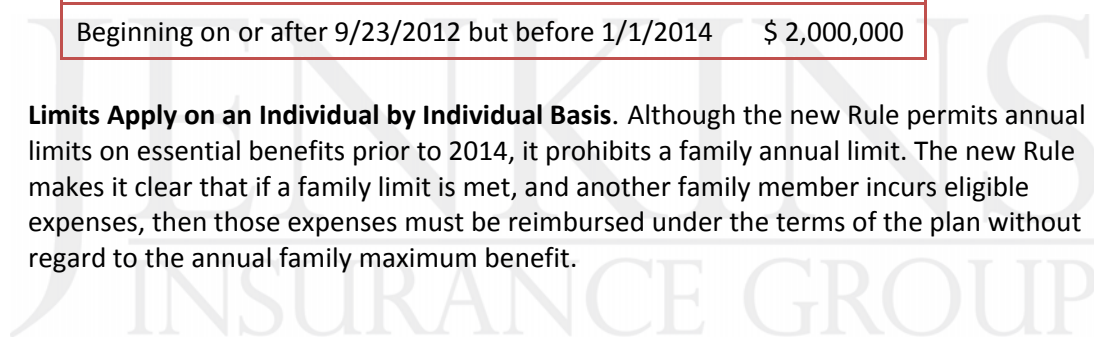
The restriction on lifetime and/or annual limits is not universal. The law still permits the use of annual limits including those set by Health Reform (such as the FSA salary reduction

contributions at \$2,500, effective for tax years beginning in 2013). The annual limit rule also will not apply to Medical Savings Accounts or Health Savings Accounts, since these are not group health plans, per se.

- Health Reimbursement Accounts (with Rollover of Unused Balances).** The new Rule explicitly allows these specific types of reimbursement plans if they are “integrated with” other group health coverage (e.g. HRA reimburses enrollee for outpatient surgery deductibles) when the other coverage alone would comply with the Health Reform Laws. PHS Act Section 2711 allows for pre-2014 annual limits but only for essential health benefits as defined by the Health Reform Law and determined as such by the Secretary of health and Human Services. The new Rule also makes it clear that retiree-only HRAs are not subject to Section 2711 on lifetime and annual limits.
- Medical Expense Reimbursement Plans.** May plan sponsors supplement their existing group health plans by establishing a self-funded (sometimes self-administered) Medical Expense Reimbursement Plan (MERP) with annual limits ranging typically from \$500 to \$2,500 at no cost to health plan participants. Sometimes the benefit is targeted (hospital daily deductible), other times it is any medical expense qualified under IRC Section 213. If the benefits are unused at the end of the plan year they are forfeited. Based on the Interim Final Rule inferences, MERPs remain viable since they are integrated with other coverage (i.e. group health plan). So, as long as the group health plan is in compliance, so, too, is the MERP.
- Mini-Med Type Plans.** The Health Reform Law itself requires that restrictions on annual limits must ensure access to necessary services with a minimal impact on premiums. The new Interim Final Rule delegates this responsibility to the Secretary of health and Human Services who must develop a program which will allow a waiver if implementation of this annual limit provision would result in a significant decrease in access to benefits or a significant increase in premiums. As we all know, plan sponsors occasionally offer very limited health care coverage to part time employees or to full time employees with short service, through so-called “mini-med” programs. On their face, these programs currently provide access to necessary services with annual limits that are far less than those specified in this Interim Final Rule. We expect that the HHS position on this issue will allow mini-med plans to continue to exist. We will keep you informed of developments.
- Annual Limits on Essential Benefits.** The new Rule will allow annual limits on essential benefits under group health plans, whether insured on self-funded, between now and January 1, 2014, but they may not be less than the following table:

Plan or Policy Years:	Annual Limit
Beginning on or after 9/23/2010 but before 9/23/2011	\$ 750,000
Beginning on or after 9/23/2011 but before 9/23/2012	\$ 1,250,000
Beginning on or after 9/23/2012 but before 1/1/2014	\$ 2,000,000

- Limits Apply on an Individual by Individual Basis.** Although the new Rule permits annual limits on essential benefits prior to 2014, it prohibits a family annual limit. The new Rule makes it clear that if a family limit is met, and another family member incurs eligible expenses, then those expenses must be reimbursed under the terms of the plan without regard to the annual family maximum benefit.



- **Lifetime Limits.** Individuals who are subject to lifetime limits and who have reached those limits prior to the applicability of these Interim Rules, who would otherwise be eligible for group health coverage, must be given notice that the lifetime limit no longer applies, and that they may re-enroll. The rule requires that plan sponsors provide the notice no later than the first day of the first plan year on or after September 23, 2010. The plan must treat these individual as HIPAA special enrollees, entitling them to enroll in any benefit option available to similarly situated employee as long as they do so within 30 days. Coverage would be effective as of the first day of the plan year.
- **The Grandfather Rule.** Grandfathered plans must comply with these Rules or lose their exemption, subject to the flexibility contained in the Interim Final Rule on Grandfathered Plans.

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