



Annual Limits: New PPACA Waiver Guidance Provides Relief

LEGISLATIVE BRIEF

September 2, 2011

On August 19, 2011, the Center for Consumer Information and Insurance Oversight (CCIIO) issued supplemental guidance on stand-alone limited benefit plans which may provide relief for many employers, especially those who are subject to San Francisco's Health Care Security Ordinance (HCSO), originally enacted in 2006. The purpose of this Memorandum is to discuss the guidance as it applies to employers, generally, as well as to employers subject to the HCSO.

In Brief

The new guidance automatically exempts stand-alone limited health plans as a class (no application required), from the prohibition of annual benefit limits, so long as the plan meets the following conditions:

- It was established prior to September 23, 2010;
- It reimburses employees for some or all medical expenses (as defined in IRC Section 213(d)), up to a specific dollar limit;
- It allows participants to carry forward unused amounts remaining at the end of the coverage period (e.g. plan year), to the next coverage period for use to pay expenses incurred after the end of the previous coverage period.

It is important to note that this automatic waiver applies only to stand-alone limited benefit health plans with the rollover provisions which meet the requirements of [IRS Rev. Rul. 2002-41](#) and [IRS Notice 2002-45](#). It does not apply to stand-alone limited benefit plans whose unused benefits are forfeited.

Discussion

1. **Plan with Forfeiture Provisions.** For those stand-alone limited benefit plans with forfeiture provisions, the original PPACA provision, PHS Section 2711, did provide some relief as long as the Plan Sponsor filed an application for a waiver of the benefit limit provisions, with the Department of Health and Human Services (HHS). To obtain relief under Section 2711, Plan Sponsors with plans in effect prior to September 23, 2010 could file for a waiver from the HHS by filing an application prior to the beginning of its next plan year demonstrating that compliance would result in a significant decrease in access (i.e. plan shuts down) or there

would be a significant increase in premiums. A number of plan sponsors (1,500) filed and received waivers for the 2011 plan year, with the option to file for an extension for future years up to January 1, 2014. The initial period for filing had expired for most plan including calendar year plans.

2. **Waiver Application Period Extended.** On June 17, 2011 the CCIIO announced an extension for the waiver and extension program to allow plan sponsors who had not yet done so, to file for the waiver from the annual limit restrictions as long as the filing occurs on or before September 22, 2011.
3. **The Waiver Application Instructions.** For instructions on how to file for a waiver, Plan Sponsors may refer to the "[Technical Instructions for the Waiver Extension and Waiver Application Process](#)" available on the CCIIO website.
4. **Retiree Health Plans.** Limited benefit retiree only stand-alone health plans are exempt from complying with PPACA's PHSA Section 2711.
5. **The Importance of the Additional Guidance.** The additional guidance impacts all plan sponsors with stand-alone limited benefit plans, to one degree or another:
 - A plan sponsor whose stand-alone limited benefit plan contains the rollover provision may continue business as usual. August 19, 2011 guidance exempts these plans as a class from the requirement to apply for the waiver.
 - A plan sponsor whose stand-alone limited benefit plan contains a forfeiture provision and who has not yet filed for a waiver, based on the June 17, 2011 guidance, can still file for the waiver exempting them from the PPACA annual limits requirements, as long as they do so prior to September 22, 2011 regardless of the plan year (e.g. plan sponsors with calendar year plans who failed to file prior to the December cutoff date).

San Francisco

1. **Background.** A number plan sponsors with employees working in San Francisco (the City) elected to set up stand-alone limited benefits plans in lieu of making the otherwise mandatory Health Care Security Ordinance (HCSO) quarterly contribution to the City to fund medical benefits provided by the City contractors/providers. Some chose to follow the rules found in the IRS Notice 2002-45 by allowing unused funds to roll forward to the next coverage period (usually quarterly). Others established the same type of plan without the rollover provision. Of this latter group, some but not all plan sponsors, filed for the HHS waiver.
2. **Recent City Proposal.** In a related matter, the San Francisco Board of Supervisors considered a proposal prohibiting plans with forfeiture provisions in light of the revenues being lost as a result of plan sponsors who have established stand-alone limited benefit health plan with forfeiture provisions. A San Francisco study showed that employers paid out about 20% of the amounts available under these plans. By requiring a rollover provision, the City would force many employers to terminate their plans and to pay into Healthy San Francisco, increasing its revenues by over \$50 million per year. The proposal failed.

2011 HCSO Health Care Expenditure Rates. The 2011 employer contribution rate for employers with 20-99 employees (regardless of location) is \$1.37/hour (\$1.46/hour in 2012). For employers with 100 or more employees, the 2011 rate is \$2.06/hour (\$2.20/hour in 2012).

Action Plan

1. If you are a plan sponsor with a stand-alone limited benefit plan with a forfeiture provision, and you have not filed an application for the waiver of the PPACA annual limits provision, you may wish to do so, as soon as you can.
2. If you are a plan sponsor who has such a plan and have obtained a waiver, you must file extensions for waivers in future years.
3. If you are a plan sponsor with a plan containing the rollover provision, you have no requirement to file a waiver application.
4. If you are a plan sponsor of a plan with a forfeiture provision, and you wish to modify the plan from a forfeiture plan to a rollover plan, you may want to seek the advice of counsel. The guidance does not address this issue.
5. If you are a San Francisco employer, keep your eye on the local news. The Board of Supervisors may not be through!

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