

INSURANCE LAW ALERT

AUGUST 2011

Annual Limit Waiver Program And Health Reimbursement Arrangement (“HRA”) - With A Deadline Watch

As an integral part of the Patient Protection and Affordable Care Act (“PPACA”), group health plans must eliminate, on or before the 2011 plan year, any annual or lifetime dollar limits on so-called “essential benefits”.

PPACA included a phased-in approach for the annual limit prohibition, however, and instituted a waiver process under which, for a given period of time, approved plans could have annual limits lower than those permitted under the phased-in provisions. At the time that the annual dollar limit regulations were released, they provided an exemption from the annual dollar limit for an HRA that was integrated with other group health plan coverage: then, the group coverage alone is deemed compliant with the restrictions on annual dollar limits. That the HRA, when viewed independently, would not be compliant is justified because the combined benefit satisfies the requirement. Prior regulations, however, did not address those HRAs that were not integrated with other group health plan coverage (so-called “stand-alone HRAs”).

On August 19, 2011, the Department of Health and Human Services' Center for Consumer Information and Insurance Oversight (“CCIIO”) released new guidance in response to questions it received on whether the restrictions on annual dollar limits apply to HRAs. This CCIIO guidance exempts all those HRAs that are subject to the annual dollar limits and that were in effect prior to September 23, 2010 from having to apply individually for an annual limit waiver for plan years beginning on or after September 23, 2010, but before January 1, 2014. Because all HRAs set limits on the amount that may be reimbursed, and because those limits would always be less than the applicable annual dollar limit amounts, applying the restrictions on annual limits to HRAs would have resulted in a significant decrease in access to HRA benefits.

Any plan receiving a waiver from the annual dollar limit is subject to certain additional requirements. For instance, an HRA that is exempt from applying for an annual dollar limit waiver must comply with the record retention and annual notice requirements to participants. Finally, the CCIIO guidance does clarify that the exemption from the waiver application process is only applicable to HRAs. In other words, if an employer maintaining an HRA also maintains other coverage, whether or not that coverage is integrated with the HRA, the other coverage must meet the annual dollar limit requirements or must obtain a waiver. All waiver and waiver extension applications must be received by the CCIIO on or before September 22, 2011—**LESS THAN ONE MONTH AWAY!** ■

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