Affordable Care Act (Supplementary Information)

The Patient Protection and Affordable Care Act (the Affordable Care Act), Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (the Reconciliation Act), Public Law 111–152, was enacted on March 30, 2010. The Affordable Care Act and the Reconciliation Act reorganize, amend, and add to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans.

The Departments of Labor, Health and Human Services, and the Treasury (the Departments) have been issuing regulations in several phases to implement the revised PHS Act sections 2701 through 2719A and related provisions of the Affordable Care Act.

Section 2719 of the PHS Act applies to group health plans and health insurance coverage that are not grandfathered health plans within the meaning of section 1251 of the Affordable Care Act. It sets forth standards for plans and issuers regarding both internal claims and appeals and external review. The Departments published interim final regulations implementing PHS Act section 2719 on July 23, 2010, at 75 FR43330 (the interim final regulations). In general, the interim final regulations require plans and issuers to comply with the requirements of 29 CFR2560.503–1 (the DOL claims procedure regulation) and impose specified additional standards for internal claims and appeals.

Section 2719 of the PHS Act provides that plans and issuers in States without an applicable State external review process shall implement an effective external review process that meets minimum standards established by the Secretary through guidance and that is similar to a State external review process described in PHS Act Section 2719(b)(1). The statute and the interim final regulations also provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process. Generally, if a State has an external review process that meets, at a minimum, the consumer protections set forth in the interim final regulations, an issuer (or a plan) subject to the State process must comply with the State process. The regulations include a transition period for plan years (in the individual market, policy years) beginning before July 1, 2011, during which the Department of Health and Human Services (HHS) will work individually with States on an ongoing basis to assist in making any necessary changes to incorporate additional consumer protections so that the State process will continue to apply after the end of the transition period.