



# HR & BENEFITS UPDATE

## Agencies Release Regulations Implementing Affordable Care Act Health Plan Preventative Care Mandates

*Recording of July 9 Briefing on Other Affordable Care Act Health Plan Guidance Now Available*

July 15, 2010

The Departments of Health and Human Services (HHS), Labor, and the Treasury yesterday (July 14, 2010) issued new [Interim Final Regulations](#) requiring private health plans that do not qualified as grandfathered under the Patient Protection and Affordable Care Act (Affordable Care Act) to cover evidence-based preventive services and eliminate cost sharing requirements for such services.

### Preventive Care Interim Final Regulations

The Regulations interpret and implement a new federal health plan mandate that non-grandfathered employer-sponsored group health plans and health insurers provide 100% coverage for certain preventive care that the Affordable Care Act for plan years beginning after September 22, 2010.

Under the regulations, non-grandfathered plans beginning with the first plan year beginning after September 22, 2010 must cover preventive services that have strong scientific evidence of their health benefits and may no longer charge a patient a copayment, coinsurance or deductible for these services when they are delivered by a network provider. Specifically, the Interim Final Regulations interim final regulations require that a group health plan and a health insurance issuer offering group or individual health insurance coverage provide benefits for and prohibit the imposition of cost-sharing requirements with respect to “recommended preventive services.” Under the Interim Final Regulations, “recommended preventive services include:

- Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force (Task Force) with respect to the individual involved.
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (Advisory Committee) with respect to the individual involved. A recommendation of the Advisory Committee is considered to be “in effect” after it has been adopted by the Director of the Centers for Disease Control and Prevention. A recommendation is considered to be for routine use if it appears on the Immunization Schedules of the Centers for Disease Control and Prevention.
- With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).
- With respect to women, evidence-informed preventive care and screening provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the Task Force). The Department of HHS is developing these guidelines and expects to issue them no later than August 1, 2011.

The complete list of recommendations and guidelines required to be covered under these interim final regulations can be found [here](#). Non-grandfathered health plans and policies, their sponsors, insurers, fiduciaries and administrators will need to monitor this list for periodic updates. The Affordable Care Act provides for updates in the required preventive services. The Affordable Care Act requires that the Departments establish an interval of not less than one year between when new recommendations or guidelines are issued, and the plan year (in the individual market, policy year) for which coverage of the services addressed in such recommendations or guidelines must be in effect. The Interim Final Regulations provide that non-grandfathered group health plans and insurance policies will be required to update their preventive care coverage in response to changes in these standards for plan years (in the individual market, policy years) beginning on or after the later of September 22, 2010, or one year after the date the recommendation or guideline is issued. This means that non-grandfathered plans will be required to comply with recommendations and guidelines issued prior to September 23, 2009 for plan years (in the individual market, policy years) beginning after September 22, 2010. For recommendations and guidelines adopted after September 23, 2009, information at [here](#) will be updated on an ongoing basis and will include the date on which the recommendation or guideline was accepted or adopted.

With respect to a plan or health insurance coverage that has a network of providers, the Interim Final Regulations make clear that a plan or issuer is not required to provide coverage for recommended preventive services delivered by an out-of-network provider and may impose cost-sharing requirements for recommended preventive services delivered by an out-of-network provider.

The Interim Final Regulations also address and clarify various other concerns relating to the application of the new preventive care mandate including:

- The cost-sharing requirements when a recommended preventive service is provided during an office visit;
- That a plan or issuer may rely on established techniques and the relevant evidence base to determine the frequency, method, treatment, or setting for which a recommended preventive service will be available without cost-sharing requirements to the extent not specified in a recommendation or guideline;
- That a plan or issuer continues to have the option to cover preventive services in addition to those required to be covered and may impose cost-sharing requirements on these additionally covered preventive services at its discretion;
- That a plan or issuer may impose cost-sharing requirements for a treatment that is not a recommended preventive service even if the treatment results from a recommended preventive service; and
- That a plan or issuer is not required to provide coverage or waive cost-sharing requirements for any item or service that has ceased to be a recommended preventive service provided other provisions of law don't independently require coverage of that requirement and appropriate advance notice is provided in accordance with the Affordable Care Act and other provisions of law.

The Affordable Care Act gives authority to the Departments to develop guidelines for group health plans and health insurance issuers offering group or individual health insurance coverage to utilize value-based insurance designs as part of their offering of preventive health services. Value-based insurance designs include the provision of information and incentives for consumers that promote access to and use of higher value providers, treatments, and services. In recognition of the role that value-based insurance design can play in promoting the use of appropriate preventive services, the Interim Final Regulations authorize the use of certain value-based design features by non-grandfathered group health plans and health insurance policies. The preamble accompanying the Interim Final Regulations states that the Departments are developing additional guidelines regarding the utilization of value-based insurance designs by group health plans and health insurance issuers with respect to preventive benefits and invites public comment on this and certain other matters.

#### **Plans & Policies Exempt As Grandfathered Plans**

Regulations previously published by the agencies on June 14, 2010 define the conditions when a plan or policy qualifies as exempt from this and certain other Affordable Care Act mandates as a "grandfathered plan." Whether or not a health plan or policy qualifies as grandfathered under the Affordable Care Act, fiduciaries, administrators, insurers and sponsors of health plans and policies should keep in mind that in addition to the requirements of the Interim Final Regulations, their program separately may be required to cover certain preventive services by other provisions of Federal or State law.

#### **Catch Up On Guidance On Other Affordable Care Mandates**

The Interim Final Regulations are the latest of a series of guidance implementing various Affordable Care Act health plan mandates issued by the Regulations in May, June and July. For information about purchasing a recording of the July 9, 2010 Solutions Law Press-sponsored briefing on regulations issued through July 8, 2010 by the Departments interpreting the Affordable Care Act's rules about when plans and policies qualify as grandfathered plans, and its impending mandates about pre-existing conditions, patient protections and various other Affordable Care Act health plan mandates, e-mail your request [here](#).

#### **About Ms. Stamer**

Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization, management attorney and consultant Ms. Stamer has more than 23 years experience working with employer and other plan sponsors, insurers, Managing Editor of Solutions Law Press and a member of the editorial advisory board of many other industry publications and programs. The Chair of the American Bar Association (ABA) RPTE Employee Benefits & Other Compensation Committee, a Council Representative on the ABA Joint Committee on Employee Benefits, Government Affairs Committee Legislative Chair for the Dallas Human Resources Management Association, past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group, and the editor and publisher of [Solutions Law Press HR & Benefits Update](#) and other Solutions Law Press Publications, Ms. Stamer also is recognized for her publications, industry leadership, workshops and presentations on these and other health industry and human resources concerns. She regularly speaks and conducts training for the ABA, Institute of Internal

Auditors, Society for Professional Benefits Administrators, Southwest Benefits Association and many other organizations. Publishers of her many highly regarded writings on health industry and human resources matters include the Bureau of National Affairs, Aspen Publishers, ABA, AHLA, Aspen Publishers, Schneider Publications, Spencer Publications, World At Work, SHRM, HCCA, State Bar of Texas, Business Insurance, James Publishing and many others. You can review other highlights of Ms. Stamer's experience [here](#). Her insights on these and other matters appear in Managed Care Executive, Modern Health Care, the Wall Street Journal, the Dallas Business Journal, the Houston Business Journal, MDNews, Kentucky Physician, and many other national and local publications.

If you need help with human resources or other management, concerns, wish to ask about compliance, risk management or training, or need legal representation on other matters please contact Cynthia Marcotte Stamer [here](#) or (469)767-8872.

#### **Other Resources**

If you found this information of interest, you also may be interested in reviewing other recent Solutions Law Press updates including:

- [Office of Civil Rights Proposes Changes To HIPAA Privacy, Security & Civil Sanctions Rules](#)
- [St. Louis Employer's OSHA Violations Trigger Contempt Order and Penalties](#)
- [Review & Strengthen Defensibility of Existing Worker Classification Practices In Light of Rising Congressional & Regulatory Scrutiny](#)
- [Key Affordable Care Act Health Plan Coverage Mandates Guidance Issued June 28; Apply ASAP For Early Retirement Reinsurance Program](#)
- [Key Guidance Issued About New Affordable Care Act Health Plan Requirements; Teleconference Briefing Planned July 9](#)
- [Registration Open For July 9 In "Affordable Care Act & Other Federal Health Plan Guidance Update"](#)
- [HHS, DOL & IRS Rules Define "Grandfathered" Group Health Plans & Health Insurance Coverage under the Patient Protection and Affordable Care Act](#)
- [Stamer Speaks On "Designing Legally Defensible Wellness Programs That Work Amid Changing Federal Regulations" On June 10 in Dallas](#)
- [New Rule Requires Federal Government Contractors To Post New "Employee Rights Under The National Labor" Poster](#)
- [Defined Contribution Plans Investing In Publically Traded Employer Securities Face New Requirements](#)
- [CBO Raises Estimated Cost of Health Care Reforms As Employers, Health Plans Brace Costs Of Newly Effective & Impending Mandates](#)
- [Join Project COPE: Help Develop Real Tools To Meaningfully Empower Patients & Improve Health Care Access, Affordability & Quality](#)
- [Unemployment, COBRA Premium Subsidy Temporarily Extended As Congress Mulls Passing Longer Relief](#)
- [Agencies Invite Public To Share Input About Insurer Obligation To Report About Health Premium Use Under Health Care Reform Law](#)
- [Certain Workforce Reductions Trigger Plant Closing Notice & Other Obligations](#)
- [Mishandling Employee Benefit Obligations Creates Big Liabilities For Distressed Businesses & Their Business Leaders](#)
- [DOL Plans To Tighten Employment Protections For Disabled Veterans & Other Disabled Employees Signals Need For Businesses To Tighten Defenses](#)
- [COBRA, HIPAA, GINA, Mental Health Parity or Other Group Health Plan Rule Violations Trigger New Excise Tax Self-Assessment & Reporting Obligations](#)

If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile [here](#) or e-mailing this information [here](#) or registering to receive our Solutions Law Press distributions [here](#). For important information about this communication click [here](#). If you do not wish to receive these updates in the future, send an e-mail with the word "Remove" in the Subject to [here](#).