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DOL Updated FAQs

This afternoon the Department of Labor issued its fifteenth set of frequently asked questions concerning the Affordable Care Act. This update dealt with those plans that have an annual limit waiver, the provider nondiscrimination rules and clinical trials.

With respect to the provider nondiscrimination rules, the Affordable Care Act provides that beginning in 2014 a group health plan and an insurer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable state law. But, this provision does not require that a group health plan or insurer contract with any particular health care provider. Further, this requirement does not prevent a group health plan or insurer from establishing varying reimbursement rates based on quality or performance measures.

With respect to the clinical trial requirement, a group health plan and insurer in the group and individual health insurance market beginning in 2014 (1) may not deny an individual participation in an approved clinical trial with respect to the treatment of cancer or another life-threatening disease or condition, (2) may not deny (or limit or impose additional conditions on) the coverage of routine patient costs for items and services furnished in connection with participation in the trial, and (3) may not discriminate against the individual on the basis of the individual's participation in the trial.

Many practitioners have been wondering when the Agencies would issue additional guidance about these two important requirements that start to apply in 2014. Unfortunately, the guidance states that the Agencies will not be issuing any guidance with respect to the two requirements, as the Agencies view these two provisions as self-effectuating. While the statutory language may be self-effectuating, the application of that language to group health plans certainly is not. Plan sponsors will have a difficult time applying these requirements beginning in 2014.