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Essential Health Benefits - Working Toward a Possible Solution

Last month our firm submitted comments on behalf of two clients concerning the proposal for essential health benefits (EHB). (These comments are included in a prior post.) The proposal set forth by HHS to rely on each state's insurance laws is really unworkable for self-insured plans and large group insured plans, and it is also contrary to ERISA. As released, the EHB proposal would require each multi-state employer to annually test its plan benefits for compliance with the annual and lifetime limits and the employer penalty based on each state's EHB list. This test would have to be performed for each state in which the employer had employees.

Due to this significant increase in administration, our comments to the agencies set forth two alternative resolutions requiring only one set of EHB standards to apply to self-insured plans and large group insured plans. Based on the comments we submitted last month, HHS has already started to think about how it can revise these rules to accommodate self-insured and large group insured plans. In a statement released last Friday, HHS said the following:

To determine which benefits are essential health bnefits (EHB), the Departments of Labor, Treasury, and HHS will consider a self-insured group health plan, a large group market health plan, or a grandfathered group health plan to have used a permissible definition of EHB under section 1302(b) of the Affordable Care Act if the definition is one that is authorized by the Secretary of HHS (including any available benchmark option, supplemented as needed to ensure coverage of all ten statutory categories). Furthermore, the Departments intend to use their enforcement discretion and work with those plans that make a good faith effort to apply an authorized definition of EHB to ensure there are no annual or lifetime dollar limits on EHB.

While the statement above is certainly lacking in specifics, it gives a clear indication that HHS is working on a solution. Further, based on informal conversations that I had with Treasury officials last week, they also indicate that they are aware of the problems for multi-state employers with both self-insured plans and large insured plans. The agencies are working toward finding a solution, although at this point, it is unclear whether they will adopt or revise one of our solutions, or fashion their own solution. We should know sometime later this year.